

U.S. Customs and Border Protection



CUSTOMS BROKER USER FEE PAYMENT FOR 2020

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

ACTION: General notice.

SUMMARY: This document provides notice to customs brokers that the annual user fee that is assessed for each permit held by a broker, whether it may be an individual, partnership, association, or corporation, is due by January 31, 2020. Pursuant to fee adjustments required by the Fixing America's Surface Transportation Act (FAST ACT) and U.S. Customs and Border Protection (CBP) regulations, the annual user fee payable for calendar year 2020 will be \$147.89.

DATES: Payment of the 2020 Customs Broker User Fee is due by January 31, 2020.

FOR FURTHER INFORMATION CONTACT: Melba Hubbard, Broker Management Branch, Office of Trade, (202) 325-6986, or melba.hubbard@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to section 111.96 of title 19 of the Code of Federal Regulations (19 CFR 111.96(c)), U.S. Customs and Border Protection (CBP) assesses an annual user fee for each customs broker district and national permit held by an individual, partnership, association, or corporation. CBP regulations provide that this fee is payable for each calendar year in each broker district where the broker was issued a permit to do business by the due date. *See* 19 CFR 24.22(h) and (i)(9). Broker districts are defined in the General Notice entitled, "Geographic Boundaries of Customs Brokerage, Cartage and Light-erage Districts," published in the **Federal Register** on March 15, 2000 (65 FR 14011), and corrected, with minor changes, on March 23, 2000 (65 FR 15686) and on April 6, 2000 (65 FR 18151).

Sections 24.22 and 24.23 of title 19 of the Code of Federal Regulations (19 CFR 24.22 and 24.23) provide for and describe the procedures that implement the requirements of the Fixing America's Sur-

face Transportation Act (FAST Act) (Pub. L. 114–94, December 4, 2015). Specifically, paragraph (k) in section 24.22 (19 CFR 24.22(k)) sets forth the methodology to determine the change in inflation as well as the factor by which the fees and limitations will be adjusted, if necessary. The customs broker user fee is set forth in Appendix A of part 24. (19 CFR 24.22 Appendix A). On August 2, 2019, CBP published a **Federal Register** notice, CBP Dec. 19–08, which among other things, announced that the annual broker permit user fee would increase to \$147.89 for calendar year 2020. *See* 84 FR 37902.

As required by 19 CFR 111.96, CBP must provide notice in the **Federal Register** no later than 60 days before the date that the payment is due for each broker permit. This document notifies customs brokers that for calendar year 2020, the due date for payment of the user fee is January 31, 2020.

Dated: November 22, 2019.

BRENDA B. SMITH,
*Executive Assistant Commissioner,
Office of Trade.*

[Published in the Federal Register, November 27, 2019 (84 FR 65400)]



APPROVAL OF AMSPEC LLC (LA PORTE, TX), AS A COMMERCIAL GAUGER

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

ACTION: Notice of approval of AmSpec LLC (La Porte, TX), as a commercial gauger.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that AmSpec LLC (La Porte, TX), has been approved to gauge petroleum and certain petroleum products for customs purposes for the next three years as of June 12, 2019.

DATES: AmSpec LLC (La Porte, TX) was approved, as a commercial gauger as of June 12, 2019. The next triennial inspection date will be scheduled for June 2022.

FOR FURTHER INFORMATION CONTACT: Dr. Eugene Bondoc, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.13, that AmSpec LLC, 631 N 16th Street, La Porte, TX 77571 has been approved to gauge petroleum and

certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.13. AmSpec LLC (La Porte, TX) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
3	Tank Gauging.
7	Temperature Determination.
8	Sampling.
11	Physical Properties Data.
12	Calculations.
17	Marine Measurement.

Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquiries regarding the specific gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov*. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. <http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories>.

Dated: October 23, 2019.

DAVE FLUTY,
*Executive Director,
Laboratories and Scientific
Services Directorate.*

[Published in the Federal Register, November 27, 2019 (84 FR 65400)]

19 CFR PART 177

**MODIFICATION OF TWO RULING LETTERS AND
REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF THICKENED BEVERAGES**

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 thickened beverages.

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 concerning tariff classification of thickened beverages 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. 53, No. 35, on October 2, 2019. One comment was received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after February 10, 2020.

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to 19 U.S.C. § 1625(c)(1), a notice was published in the *Customs Bulletin*, Vol. 53, No. 35, on October 2, 2019, proposing to modify two ruling letters pertaining to the tariff classification of thickened beverages. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

Similarly, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical

transactions. Any person involved in substantially identical transactions should have advised CBP during the comment period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this notice.

In NY N301921 and NY N301923, CBP classified certain thickened beverages in heading 2106, HTSUS, which provides for "Food preparations not elsewhere specified or included." CBP has reviewed NY N301921 and NY N301923 and has determined the ruling letters to be in error. It is now CBP's position that the thickened beverages are properly classified, in heading 2202, HTSUS, which provides for "Waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavored, and other nonalcoholic beverages, not including fruit or vegetable juices of heading 2009."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is modifying NY N301921 and NY N301923 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter ("HQ") H303137, 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: November 19, 2019

YULIYA A. GULIS
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachment

HQ H303137

November 19, 2019

OT:RR:CTF:FTM H303137 PJG

CATEGORY: Classification

TARIFF NO.: 2202.99.24, 2202.99.90

MR. JOHN PETERSON
NEVILLE PETERSON LLP
ONE EXCHANGE PLAZA
55 BROADWAY, SUITE 2602
NEW YORK, NEW YORK 10006

RE: Modification of NY N301921 and NY N301923; tariff classification of thickened beverages

DEAR MR. PETERSON:

On February 7, 2019, U.S. Customs and Border Protection (“CBP”) issued New York Ruling Letter (“NY”) N301923 to you. The ruling pertains to the tariff classification under the Harmonized Tariff Schedule of the United States Annotated (“HTSUSA”) of four flavors of thickened beverages that are imported in two consistencies, which are identified as “nectar” and “honey,” and numbers 2 and 3, respectively. The flavors at issue are Lemon Water Hydra+, Cranberry Cocktail Hydra+, Apple Hydra+, and Orange Hydra+. We have reviewed NY N301923 and determined it to be in error with respect to the classification of the merchandise in heading 2106, HTSUS.

Similarly, we have reviewed NY N301921, dated February 5, 2019, which was also issued to you, and determined it to be in error with respect to the classification of the nectar and honey consistencies of the “Milk Beverage Hydra+” in heading 2106, HTSUS. For the reasons set forth below, NY N301923 and NY N301921 are modified with respect to the tariff classification of the products at issue.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. No. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed action was published on October 2, 2019, in Volume 53, Number 35, of the *Customs Bulletin*. One comment was received in response to this notice, supporting CBP’s modification and this decision.

FACTS:

In NY N301923, CBP considered the classification of four flavors of the product, specifically, “Apple Hydra+,” “Lemon Water Hydra+,” “Cranberry Cocktail Hydra+,” and “Orange Hydra+.” The products were described as follows in the ruling:

The literature explains that these products are specially thickened beverages designed for consumption by persons suffering from dysphagia, a chronic health condition which makes it difficult for a person to swallow. Because of the added thickener, these liquids do not have a normal consistency, but are thicker, with the consistencies of nectar and honey. The products are available in one-liter packages with the suggested serving size of 4 ounces, and in single-serve packages of 118 ml.

The 2019 HTSUS provisions under consideration are as follows:

2106 Food preparations not elsewhere specified or included:

2202 Waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavored, and other nonalcoholic beverages, not including fruit or vegetable juices of heading 2009:

Additional U.S. Note 1 to Chapter 4, HTSUS, provides as follows:

For purposes of this schedule, the term “*dairy products described in additional U.S. note 1 to chapter 4*” means any of the following goods: malted milk, and articles of milk or cream (except (a) white chocolate and (b) inedible dried milk powders certified to be used for calibrating infrared milk analyzers); articles containing over 5.5 percent by weight of butterfat which are suitable for use as ingredients in the commercial production of edible articles (except articles within the scope of other import quotas provided for in additional U.S. notes 2 and 3 to chapter 18); or, dried milk, whey or buttermilk (of the type provided for in subheadings 0402.10, 0402.21, 0403.90 or 0404.10) which contains not over 5.5 percent by weight of butterfat and which is mixed with other ingredients, including but not limited to sugar, if such mixtures contain over 16 percent milk solids by weight, are capable of being further processed or mixed with similar or other ingredients and are not prepared for marketing to the ultimate consumer in the identical form and package in which imported.

Additional U.S. Note 10 to Chapter 4, HTSUS, provides as follows:

The aggregate quantity of dairy products described in additional U.S. note 1 to chapter 4, entered under subheading 0402.29.10, 0402.99.70, 0403.10.10, 0403.90.90, 0404.10.11, 0404.90.30, 0405.20.60, 1517.90.50, 1704.90.54, 1806.20.81, 1806.32.60, 1806.90.05, 1901.10.21, 1901.10.41, 1901.10.54, 1901.10.64, 1901.20.05, 1901.20.45, 1901.90.61, 1901.90.64, 2105.00.30, 2106.90.06, 2106.90.64, 2106.90.85 and 2202.99.24 in any calendar year shall not exceed 4,105,000 kilograms (articles the product of Mexico shall not be permitted or included under the aforementioned quantitative limitation and no such articles shall be classifiable therein).

Additional U.S. Note 2 to Chapter 22, HTSUS, provides as follows:

Subheadings 2202.99.30, 2202.99.35, 2202.99.36 and 2202.99.37 cover vitamin or mineral fortified fruit or vegetable juices that are imported only in non-concentrated form. Such juices imported in concentrated form are classified in subheadings 2106.90.48, 2106.90.52 or 2106.90.54, as appropriate.

The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the “official interpretation of the Harmonized System” at the international level. *See* 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989). 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 id.*

The EN to 22.02 states in pertinent part, the following:

(A) Waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured.

This group includes, *inter alia*:

(1) Sweetened or flavoured mineral waters (natural or artificial).

- (2) **Beverages such as lemonade, orangeade, cola**, consisting of ordinary drinking water, sweetened or not, flavoured with fruit juices or essences, or compound extracts, to which citric acid or tartaric acid are sometimes added. They are often aerated with carbon dioxide gas, and are generally presented in bottles or other airtight containers.

* * *

(C) Other non-alcoholic beverages, not including fruit or vegetable juices of heading 20.09.

This group includes, *inter alia*:

* * *

- (2) **Certain other beverages ready for consumption**, such as those with a basis of milk and cocoa.

* * *

In *Maxcell Bioscience, Inc. v. United States*, 31 Ct. Int'l Trade 1999 (2007), the Court of International Trade ("CIT") considered whether certain liquid dietary supplements were classifiable in heading 2106, HTSUS, or 2202, HTSUS. In *Maxcell*, the CIT determined that the two dietary supplements were not classifiable in heading 2202, HTSUS, because they were not "beverages." *Id.* The court stated that the "liquid state of [the] products is not alone sufficient to justify their classification as 'beverages' under heading 2202. Nor does the fact that the products are not nutritionally complete preclude their classification under heading 2106." *Id.* at 2010 (citing Headquarters Ruling Letter ("HQ") 961909 (March 29, 1999)). The CIT stated that the products were not "beverages" because: (1) they were intended for consumption in measured doses (one to two ounces, taken three times a day, before meals); (2) one product had a bitter, medicinal taste, and the other had an oily appearance and texture or consistency and, therefore, they were not "designed to be flavorful and refreshing, or to quench thirst" and would likely only be purchased or consumed for "strictly health or nutritional purposes"; and (3) unlike nonalcoholic beverages, the products "carry warning labels cautioning against use by pregnant or nursing women without consulting a physician." *Id.* at 2007–2008. The court ultimately determined that the two products are classifiable in heading 2106, HTSUS. *Id.* at 2016.

First, we must consider whether the subject merchandise is in a liquid state. We note that CBP has previously classified smoothies and drinks containing thickening agents in heading 2202, HTSUS. *See, e.g.*, NY N279195 (Sept. 23, 2016), NY N249846 (Feb. 20, 2014), NY N028197 (May 29, 2008), NY J80167 (Feb. 5, 2003), and NY G81823 (Sept. 15, 2000). We have reviewed samples of the subject merchandise, submitted with your request for reconsideration of NY N301921 and NY N301923. We note that the consistencies are all of a liquid nature and no thicker than the consistency of smoothies. Therefore, upon reviewing the samples, we have determined that the subject merchandise are not so thick as to render them unpotable.

Second, CBP has previously stated that if a product is a "vital food and nutrient source" then it is precluded from heading 2202, HTSUS. *See* HQ 950299 (Dec. 30, 1991) (stating that the subject infant formula "is not merely a beverage, that is, liquid for drinking, generally without consequence to the amount ingested, but rather is a vital food and nutrient source for an infant in order to provide sustenance for and maintain the health and well-being

of an infant”). Your submissions and your website³ indicate that the instant products are designed to provide patients with hydration and nutrition, but unlike infant formula, there is no indication that these drinks are designed to be a vital or primary source of nutrition for individuals with dysplasia.

Third, we consider each of the three factors considered by the CIT in *Maxcell*. With regard to the first *Maxcell* factor, specifically, whether the products are intended to be consumed in measured doses, we agree with you that the subject merchandise is not medicinal and that there is no dosing for these products.⁴ You provide a suggested serving size, which is four ounces (the equivalent to half a cup). While a four ounce serving size is small, it is only a suggested serving size, and is not suggestive of a dosing. With regard to the second *Maxcell* factor, specifically, whether the products are “designed to be flavorful and refreshing, or to quench thirst,” we note that the instant products are designed to hydrate patients with dysplasia, therefore, they are designed to quench thirst. Finally, with regard to the third *Maxcell* factor, specifically, whether the products carry warning labels, we considered the submitted samples and did not find any warnings to consumers.

In accordance with the forgoing analysis, we have determined that the proper classification for the merchandise that was the subject of NY N301923 is heading 2202, HTSUS, which, in relevant part, provides for beverages. Specifically, the nectar and honey consistencies of the Lemon Water Hydra+, Cranberry Cocktail Hydra+, Apple Hydra+, and Orange Hydra+ are classified in subheading 2202.99.90, HTSUS, which provides for “Waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavored, and other nonalcoholic beverages, not including fruit or vegetable juices of heading 2009: Other: Other.”

The nectar and honey consistencies of the “Milk Beverage Hydra+,” which were the subject of NY N301921, are dairy products pursuant to Additional U.S. Notes 1 and 10 to Chapter 4, HTSUS, because they are “article[s] of milk.” Accordingly, the nectar and honey consistencies of the “Milk Beverage Hydra+” are classified in subheading 2202.99.24, HTSUS, which provides for “Waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavored, and other nonalcoholic beverages, not including fruit or vegetable juices of heading 2009: Other: Other: Milk-based drinks: Other: Described in additional U.S. note 10 to chapter 4 and entered pursuant to its provisions.”

Upon publication in the *Customs Bulletin*, CBP received one comment in support of its proposed action concerning NY N301923.

HOLDING:

Under the authority of GRIs 1 and 6 the nectar and honey consistencies of the Lemon Water Hydra+, Cranberry Cocktail Hydra+, Apple Hydra+, and Orange Hydra+ are classified under heading 2202, HTSUS, and specifically in subheading 2202.99.90, HTSUS, which provides for “Waters, including mineral waters and aerated waters, containing added sugar or other sweet-

³ See Lassonde, <https://lassondeservicealimentaire.ca/en/sector/ready-to-care/> (last visited on June 21, 2019).

⁴ We note that you list these products in the “medicinal products” section of your company’s website, but this factor alone does not render these products medicinal.

ening matter or flavored, and other nonalcoholic beverages, not including fruit or vegetable juices of heading 2009: Other: Other.” The 2019 column one, general rate of duty is 0.2¢/liter.⁵

Under the authority of GRIs 1 and 6 the nectar and honey consistencies of the “Milk Beverage Hydra+” are classified under heading 2202, HTSUS, and specifically in subheading 2202.99.24, HTSUS, which provides for “Waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavored, and other nonalcoholic beverages, not including fruit or vegetable juices of heading 2009: Other: Other: Milk-based drinks: Other: Described in additional U.S. note 10 to chapter 4 and entered pursuant to its provisions.” The 2019 column one, general rate of duty is 17.5 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 internet at www.usitc.gov/tata/hts/.

EFFECT ON OTHER RULINGS:

NY N301923, dated February 7, 2019, is MODIFIED.

NY N301921, dated February 5, 2019, is MODIFIED.

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

Sincerely

YULIYA A. GULIS

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division



REVOCATION OF ONE RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF HEADBOARDS, FOOTBOARDS, AND SIDE RAILS IMPORTED IN SEPARATE SHIPMENTS

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 headboards, footboards, and side rails imported in separate shipments.

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

⁵ Subheading 2202.99.90, HSTUS, cross-references subheading 9903.88.03, HTSUS.

revoking one ruling letter concerning the tariff classification of headboards, footboards, and side rails imported in separate shipments, 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. 53, No. 34, on September 25, 2019. 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 February 10, 2020.

FOR FURTHER INFORMATION CONTACT: Karen S. Greene, Chemicals, Petroleum, Metals & Miscellaneous Articles Branch, Regulations and Rulings, Office of Trade, at (202) 325–0041.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to 19 U.S.C. § 1625(c)(1), a notice was published in the *Customs Bulletin*, Vol. 53, No. 34, on September 25, 2019, proposing to revoke one ruling letter pertaining to the tariff classification of headboards, footboards, and side rails imported in separate shipments. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

Similarly, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during this comment period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of

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

In NY N277888 CBP classified headboards, footboards and side rails imported in separate shipments, in subheading 9403.50.90, HTSUS, which provides for “Other furniture and parts thereof: Wooden furniture of a kind used in the bedroom: Other: Other: Beds.” CBP has reviewed NY N277888 and has determined the ruling letter to be in error. It is now CBP’s position that headboards, footboards, and side rails imported in separate shipments are properly classified in heading 9403, HTSUS, specifically in subheading 9403.90.70, HTSUS, which provides for “Other furniture and parts thereof: Parts: Other: Of wood.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY N277888, and revoking or modify any other ruling not specifically identified to reflect the analysis contained in HQ 285903, 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: November 19, 2019

ALLYSON R. MATTANAH
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

HQ H285903

November 19, 2019

OT:RR:CTF:CPMM H285903 KSG

CATEGORY: Classification

TARIFF NO.: 9403.90.70

DONALD S. STEIN, ESQ.
GREENBERG TRAUIG LLP
2101 L STREET NW SUITE 1000
WASHINGTON, D.C. 20037

RE: Revocation of NY N277888; tariff classification of headboards, footboards, and side rails imported in separate shipments

DEAR MR. STEIN:

This ruling is in reference to your request on behalf of Haverty Furniture Companies, Inc., for reconsideration of New York Ruling Letter (NY) N277888, dated August 24, 2016, regarding the tariff classification of headboards, footboards, and side rails imported in separate shipments, under the Harmonized Tariff Schedule of the United States (HTSUS).

Upon review of NY N277888, U.S. Customs & Border Protection (CBP) has determined that the classification of headboards, footboards, and side rails imported in separate shipments is incorrect and should be revoked.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke NY N277888 was published on September 25, 2019, in Volume 53, Number 34, of the *Customs Bulletin*. No comments were received in response to this Notice.

FACTS:

In NY N277888, CBP classified headboards, footboards, and side rails imported in separate shipments in subheading 9403.50.90, HTSUS, which provides for “Other furniture and parts thereof: Wooden furniture of a kind used in the bedroom: Other: Other: Beds.”

The headboards, footboards, and side rails are imported in varying quantities.

ISSUE:

Whether the headboards, footboards, and side rails imported in separate shipments are classified in subheading 9403.50.90, HTSUS, as “Other furniture and parts thereof: Wooden furniture of a kind used in the bedroom: Other: Other: Beds” or in subheading 9403.90.70, HTSUS, as “Other furniture and parts thereof: Parts: Other: Of wood.”

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.

GRI 6 provides that for legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to the above Rules, on the understanding that only subheadings at the same level are comparable. For the purposes of this Rule the relative section and chapter notes also apply, unless the context otherwise requires. In this case, it is undisputed that the articles are classified in heading 9403, HTSUS. The issue presented is the tariff classification at the subheading level.

The HTSUS subheadings under consideration are the following:

9403	Other furniture and parts thereof:
9403.50	Wooden furniture of a kind used in the bedroom:
9403.50.90	Other:
	Other:
9403.90	Parts:
	Other:
9403.90.70	Of wood

In understanding the language of the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System, 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 for chapter 94, HTSUS, states that furniture presented disassembled or unassembled is to be treated as assembled furniture, provided the parts are presented together.

CBP ruled in Headquarters Ruling Letter (HQ) H079175, dated April 8, 2010, that mirrors and dressers imported in the same shipment, in equal quantities but packaged separately for safety reasons were classified as the assembled article pursuant to GRI 2(a). When unassembled components are imported as separate items, the components are classified separately.

In HQ H230217, dated July 20, 2016, CBP considered similar merchandise and the same issue; whether headboards, footboards, and side rails shipped in separate shipments were classified as if a complete bed in subheading 9403.50, HTSUS, or as parts of furniture in subheading 9403.90.70, HTSUS. CBP concluded that the headboards, footboards, and side rails were properly classified in subheading 9403.90.70 as parts of furniture. We affirm the conclusion reached in HQ H230217; the headboards, footboards, and side rails at issue in this case are classified in subheading 9403.90.70, HTSUS. The reasoning set forth in HQ H079175 that unassembled components imported in separate shipments are not classified as the assembled article, particularly when they may be imported in unequal quantities, is correct. The analysis in NY N277888, in which the essential character of the headboards, footboards, and side rails is determined by the wood, is affirmed.

Accordingly, the headboards, footboards, and side rails, imported in separate shipments, are classified in subheading 9403.90.70, HTSUS.

HOLDING:

By application of GRI's 1 and 6, the headboards, footboards, and side rails, when imported in separate shipments, are classified in subheading 9403.90.70, HTSUS, which provides for "Other furniture and parts thereof: Parts: Other: Of wood." 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.itc.gov.

EFFECT ON OTHER RULINGS:

NY N277888 is revoked with regard to the tariff classification of headboards, footboards, and side rails imported in separate shipments.

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

Sincerely,

ALLYSON R. MATTANAH
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division


19 CFR PART 177

**REVOCATION OF TWO RULING LETTERS AND
REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF PLYWOOD**

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

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

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking two ruling letters concerning tariff classification of plywood 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. 53, No. 31, on September 4, 2019. 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

February 10, 2020.

FOR FURTHER INFORMATION CONTACT: Karen S. Greene, Chemicals, Petroleum, Metals & Miscellaneous Classification Branch, Regulations and Rulings, Office of Trade, at (202) 325-0041.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to 19 U.S.C. § 1625(c)(1), a notice was published in the *Customs Bulletin*, Vol. 53, No. 31#, on September 4, 2019, proposing to revoke two ruling letters pertaining to the tariff classification of plywood. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

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

In NY L86523, dated August 18, 2005, and in NY N027781, dated June 4, 2008, CBP classified plywood in heading 4412, HTSUS, specifically in subheadings 4412.14.0560, HTSUS, and 4412.32.3170, HTSUS, which provide for "Plywood, veneered panels and similar laminated wood: Other plywood consisting solely of sheets of wood (other than bamboo), each ply not exceeding 6 mm in thickness: Other, with at least one outer ply of nonconiferous wood of the species alder (*Alnus* spp.), ash (*Fraxinus* spp.), beech (*Fagus* spp.), birch

(*Betula* spp.), cherry (*Prunus* spp.), chestnut (*Castanea* spp.), elm (*Ulmus* spp.), eucalyptus (*Eucalyptus* spp.), hickory (*Carya* spp.), horse chestnut (*Aesculus* spp.), lime (*Tilia* spp.), maple (*Acer* spp.), oak (*Quercus* spp.), plane tree (*Platanus* spp.), poplar and aspen (*Populus* spp.), robinia (*Robinia* spp.), tulipwood (*Liriodendron* spp.), or walnut (*Juglans* spp.): Not surface covered, or surface covered with a clear or transparent material which does not obscure the grain, texture or markings of the face ply: With a face ply of birch (*Betula* spp.): Other” and “Plywood, veneered panels and similar laminated wood: Other plywood consisting solely of sheets of wood (other than bamboo), each ply not exceeding 6 mm in thickness: Other, with at least one outer ply of nonconiferous wood of the species alder (*Alnus* spp.), ash (*Fraxinus* spp.), beech (*Fagus* spp.), birch (*Betula* spp.), cherry (*Prunus* spp.), chestnut (*Castanea* spp.), elm (*Ulmus* spp.), eucalyptus (*Eucalyptus* spp.), hickory (*Carya* spp.), horse chestnut (*Aesculus* spp.), lime (*Tilia* spp.), maple (*Acer* spp.), oak (*Quercus* spp.), plane tree (*Platanus* spp.), poplar and aspen (*Populus* spp.), robinia (*Robinia* spp.), tulipwood (*Liriodendron* spp.), or walnut (*Juglans* spp.): Not surface covered, or surface covered with a clear or transparent material which does not obscure the grain, texture or markings of the face ply: Other: Other: Other: Other.” CBP has reviewed NY L86523 and NY N027781 and has determined the ruling letters to be in error. It is now CBP’s position that plywood is properly classified, in heading 4412, HTSUS, specifically in subheading 4412.33.57, HTSUS, which provides for “Plywood, veneered panels and similar laminated wood: Other plywood consisting solely of sheets of wood (other than bamboo), each ply not exceeding 6 mm in thickness: Other.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY L86523 and NY N027781 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in HQ 266918, 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: October 31, 2019

ALLYSON R. MATTANAH
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachment

HQ H266918

October 31, 2019

OT:RR:CTF:CPMM H266918 KSG

CATEGORY: Classification

TARIFF NO.: 4412.33.57

MARTIN JAMES
NEAT CONCEPTS LIMITED
F25, HASTINGWOOD TRADING ESTATE
HARBET ROAD
LONDON, ENGLAND N18 3HU

RE: Revocation of NY L86523, and NY N027781; tariff classification of surface covered plywood; back ply covered

DEAR MR. JAMES:

This letter is in reference to two New York Ruling Letters (NY) L86523, dated August 18, 2005, and NY N027781, dated June 4, 2008, regarding the tariff classification of surface covered plywood known as Neatflex™ panels under the Harmonized Tariff Schedule of the United States (HTSUS).

In NY L86523, U.S. Customs & Border Protection (CBP) classified the birch plywood with fiberboard laminate to the back ply under subheading 4412.14.0560, HTSUS, which provided for not surface covered plywood with a face ply of birch. In NY N027781, CBP classified poplar plywood with a fiberboard covered back ply in subheading 4412.32.3170 HTSUS, which provided for not surface covered plywood with a face ply of other than certain species. Amendments to the HTSUS replaced subheading 4412.14.0560 with 4412.33.0670, HTSUS, and subheading 4412.32.3170, HTSUS with subheading 4412.33.3285, HTSUS. However, the terms “Not surface covered, or surface covered with a clear or transparent material which does not obscure the grain, texture or markings of the face ply” remain the same.

We have reviewed NY L86523 and NY N027781 and determined that the rulings are in error. Accordingly, for the reasons set forth below, CBP is revoking NY L86523 and NY N027781.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke NY L86523 and NY N027781 was published on September 4, 2019, in Volume 53, Number 31, of the *Customs Bulletin*. No comments were received in response to this Notice.

FACTS:

In NY L86523, CBP classified a wood panel consisting of 15 mm thick medium density fiberboard (MDF) laminated to the back of a three-ply 4 mm thick plywood with a birch face ply. The fiberboard is deeply grooved at 5/16” intervals to facilitate the bending of the plywood.

In NY N027781, CBP classified a wood panel consisting of a three-ply 3 mm thick poplar plywood with a 15 mm thick MDF laminated to the back ply. The fiberboard is deeply grooved at 5/16” intervals.

ISSUE:

Whether the surface covered plywood described above are properly classified in subheading 4412.33.06, HTSUS, and in subheading 4412.33.32, HTSUS, or in subheading 4412.33.57, 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 headings and legal notes do not otherwise require, the remaining GRI’s 2 through 6 may then be applied in order.

The 2018 HTSUS subheadings at issue are as follows:

- 4412: Plywood, veneered panels and similar laminated wood:
 - Other plywood consisting solely of sheets of wood (other than bamboo), each ply not exceeding 6 mm in thickness:
- 4412.33 Other, with at least one outer ply of nonconiferous wood of the species alder (*Alnus* spp.), ash (*Fraxinus* spp.), beech (*Fagus* spp.), birch (*Betula* spp.), cherry (*Prunus* spp.), chestnut (*Castanea* spp.), elm (*Ulmus* spp.), eucalyptus (*Eucalyptus* spp.), hickory (*Carya* spp.), horse chestnut (*Aesculus* spp.), lime (*Tilia* spp.), maple (*Acer* spp.), oak (*Quercus* spp.), plane tree (*Platanus* spp.), poplar and aspen (*Populus* spp.), robinia (*Robinia* spp.), tulipwood (*Liriodendron* spp.), or walnut (*Juglans* spp.):
 - Not surface covered, or surface covered with a clear or transparent material which does not obscure the grain, texture or markings of the face ply:
- 4412.33.06 With a face ply of birch (*Betula* spp.):
 - Other:
- 4412.33.32 Other:
 - Other:
 - Other:
 - Other:
- 4412.33.57 Other:

.....

The term “surface covered” as applied to articles of headings 4411 and 4412, is defined in Additional U.S. Note 1(c), Chapter 44, HTSUS, as “one or more exterior surfaces of a product have been treated with creosote or other wood preservatives, or with fillers, sealers, waxes, oils, stains, varnishes, paints or enamels, or have been overlaid with paper, fabric, plastics, base metal or other material.”

In NY L86523, CBP correctly concluded that the plywood was surface covered as defined by Additional U.S. Note 1(c), Chapter 44, but then incorrectly classified it at the eight-digit level in a subheading for articles that are

not surface covered or if surface covered, the surface cover must be clear or transparent material that does not obscure the grain, texture, or markings of the face ply (as opposed to the back ply). In fact, the plywood was surface covered on the back ply with a surface covering that was not clear or transparent. Additional U.S. Note 1(c), Chapter 44 relates to the surface covering of the exterior surface; it is not limited to the face surface. Accordingly, the plywood described in NY L86523 is properly classified in subheading 4412.33.57, HTSUS.

Likewise in NY N027781, the plywood is surface covered as defined by Additional U.S. Note 1(c), Chapter 44, and was incorrectly classified in a subheading for articles that are not surface covered or if surface covered, the surface cover must be clear or transparent material that does not obscure the grain, texture, or markings of the face ply. In this case, the plywood was also surface covered on the back ply with a surface covering that is not clear or transparent. Accordingly, the plywood described in NY N027781 is properly classified in subheading 4412.33.57, HTSUS.

HOLDING:

Pursuant to GRIs 1 and 6, the plywood known as Neatflex™ panels described in NY L86523, dated August 18, 2005, and in NY N027781, dated June 4, 2008, is classified in subheading 4412.33.57, HTSUS. The column one, general rate of duty is eight 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 for at www.usitc.gov.

EFFECT ON OTHER RULINGS:

NY L86523 and NY N027781 are revoked in accordance with the above analysis. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the *Customs Bulletin*.

Sincerely,

ALLYSON R. MATTANAH
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

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**WITHDRAWAL OF PROPOSED REVOCATION OF SIX
RULING LETTERS AND PROPOSED REVOCATION OF
TREATMENT RELATING TO THE TARIFF
CLASSIFICATION OF CERTAIN MEN'S SHORTS, MEN'S
SWEATERS, MEN'S SHIRTS, TUNIC-TYPE GARMENTS AND
DUST SKIRTS**

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

ACTION: Withdrawal of notice of proposed revocation of six ruling letters and proposed revocation of treatment relating to the tariff classification of certain men’s shorts, men’s sweaters, men’s shirts, tunic-type garments and dust skirts.

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), U.S. Customs and Border Protection (CBP) proposed to revoke six ruling letters relating to the tariff classification of certain men’s shorts, men’s sweaters, men’s shirts, tunic-type garments and dust skirts under the Harmonized Tariff Schedule of the United States (“HTSUS”). Notice of the proposed actions was published in the *Customs Bulletin*, Vol. 53, No. 9, on April 3, 2019. Five comments were received in opposition to the proposed revocation. After further review, we have determined that revocation of the subject rulings is not appropriate.

EFFECTIVE DATE: This action is effective immediately.

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

SUPPLEMENTARY INFORMATION:

Background

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

Pursuant to 19 U.S.C. § 1625(c)(1), a notice was published in the *Customs Bulletin*, Vol. 53, No. 9, on April 3, 2019, proposing to revoke New York Ruling Letters (“NY”) H84223, dated August 9, 2001; NY F89120, dated July 29, 2000; NY H84975, dated August 9, 2001; and Headquarters Ruling Letters (“HQ”) 085998, dated December 28, 1989; HQ 085150, dated September 22, 1989; and HQ 088132, dated November 9, 1990.

In NY H84223, CBP classified men's shorts made of 50 percent linen and 50 percent viscose rayon fiber blend in heading 6203, HTSUS, specifically in subheading 6203.49.80, HTSUS, providing for "Men's or boys' suits, ensembles, suit-type jackets, blazers, trousers, bib and brace overalls, breeches and shorts (other than swimwear): Trousers, bib and brace overalls, breeches and shorts: Of other textile materials: Other."

In NY H84975, CBP classified a men's shirt made of 50 percent linen and 50 percent viscose rayon fiber blend in heading 6205, HTSUS, specifically subheading 6205.90.40, HTSUS, which provides for "Men's or boys' shirts: Of other textile materials: Other."

In HQ 085150, CBP classified a dust skirt made of 50 percent polyester and 50 percent cotton in heading 6304, HTSUS, which provides for "Other furnishing articles, excluding those of heading 9404." This classification was later reconsidered in HQ 085998. Specifically, it was determined that the dust skirt at issue was classified in heading 6303, HTSUS, which provides for "Curtains (including drapes) and interior blinds; curtain or bed valances." More specifically, it was determined that if the dust skirt was composed of more than 50 percent cotton material, excluding the embroidery, it was classified under subheading 6303.91.00, HTSUS, which provides for "Curtains (including drapes) and interior blinds; curtain or bed valances: Other: Of cotton." Alternatively, if the dust skirt was composed of more than 50 percent polyester material, excluding the embroidery, it was classified under subheading 6303.92.00, HTSUS, which provides for "Curtains (including drapes) and interior blinds; Curtain or bed valances: Other: Of synthetic fibers."

In NY F89120, CBP classified a men's knit sweater made of 50 percent cotton and 50 percent silk knit fabric in heading 6110, HTSUS, specifically in subheading 6110.90.90, HTSUS, which provides for "Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: Of other textile materials: Other."

In HQ 088132, CBP classified a sleeveless, knit tunic-type garment made of 50 percent wool and 50 percent silk fabric in heading 6110, HTSUS, specifically in subheading 6110.90.00, HTSUS, which provides for "Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: Of other textile materials."

In the April 3, 2019 *Customs Bulletin* notice, we proposed to classify the merchandise at issue as follows: (1) the men's shorts at issue in NY H84223 in subheading 6203.43.90, HTSUS, which provides for "Men's or boys' suits, ensembles, suit-type jackets, blazers, 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: Other”; (2) the men’s shirt at issue in NY H84975 in subheading 6205.30.20, HTSUS, which provides for “Men’s or boys’ shirts: Of man-made fibers: Other: Other”; (3) the dust skirt at issue in HQ 085150 and HQ 085998 in subheading 6303.92.20, HTSUS, which provides for “Curtains (including drapes) and interior blinds; curtain or bed valances: Other: Of synthetic fibers: Other”; (4) the men’s sweater at issue in NY F89120 in subheading 6110.20.20, HTSUS, which provides for “Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: Of cotton: Other”; and, (5) the sleeveless, knit tunic-type garment at issue in HQ 088132 in subheading 6110.11.00, HTSUS, which provides for “Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: Of wool or fine animal hair: Of wool.”

Commenters argued that the proposed revocation was contrary to the sound interpretation of the HTSUS. Upon reconsideration of the matter, CBP has determined that no revocation is appropriate. Accordingly, we have determined that the tariff classification of the garments under consideration in the rulings at issue in the April 3, 2019 Customs Bulletin Notice will remain as determined in those rulings.

Pursuant to 19 U.S.C. § 1625(c), and 19 C.F.R. § 177.7(a), which states, in pertinent part, that “no ruling letter will be issued . . . in any instance in which it appears contrary to the sound administration of the Customs and related laws to do so,” CBP is withdrawing its proposed revocation of NY H84223, NY F89120, NY H84975, HQ 085998, HQ 085150, and HQ 088132.

Dated: November 21, 2019

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division



19 CFR PART 177

MODIFICATION OF A RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF A PLASTIC SHEET WITH A PRINTED NUMERAL

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 plastic sheet with a printed numeral.

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 plastic sheet with a printed numeral 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. 53, No. 34, on September 25. 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 February 10, 2020.

FOR FURTHER INFORMATION CONTACT: Karen S. Greene, Chemicals, Petroleum, Metals & Miscellaneous Articles Branch, Regulations and Rulings, Office of Trade, at (202) 325–0041.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to 19 U.S.C. § 1625(c)(1), a notice was published in the *Customs Bulletin*, Vol.53, No. 34, on September 25, 2019, proposing to modify one ruling letter pertaining to the tariff classification of a plastic sheet with a printed numeral. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice

memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

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

In NY N254739, dated July 24, 2014, CBP classified a plastic sheet with a printed numeral in heading 3926, HTSUS, specifically in subheading 3926.90, HTSUS, which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Other." CBP has reviewed NY N254739 and has determined the ruling letter to be in error. It is now CBP's position that a plastic sheet with a printed numeral is properly classified, in heading 4911, HTSUS, specifically in subheading 4911.99.8000, HTSUS, which provides for "Other printed matter, including printed pictures and photographs: Other: Other: Other: Other."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is modifying NY N254739 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in HQ H262220, 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: November 4, 2019

ALLYSON R. MATTANAH
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachment

HQ H262220

November 4, 2019

OT:RR:CTF:CPMM H262220 KSG

CATEGORY: Classification

TARIFF NO.: 4911.99.8000

MR. B. BAHRAMIAN
CENTER FOR TECHNOLOGY MANAGEMENT
202 HALPINE WALK CT
ROCKVILLE MD 20851

RE: Modification of NY N254739; tariff classification of a plastic sheet with a printed numeral

DEAR MR. BAHRAMIAN:

This letter is to inform you that we have reviewed New York Ruling Letter (NY) N254739, dated July 24, 2014, regarding the tariff classification of a plastic sheet with a printed numeral under the Harmonized Tariff Schedule of the United States (HTSUS). You requested reconsideration of the classification of the merchandise amongst other items. In response, we issued NY N255964, dated August 29, 2014. However, we declined to reclassify the plastic sheet and instead asked for further information. We received another request for reconsideration of the plastic numerals, amongst other items, and issued NY N257869, dated October 28, 2014, wherein we again declined to classify the merchandise without a sample and description of the printing process.

Upon review of NY N254739, and inspection of the sample provided, U.S. Customs & Border Protection (CBP) has determined that the classification of the plastic sheet with a printed numeral is incorrect and the ruling should be modified as explained below.

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 NY N254739 was published on September 25, 2019, in Volume 53, Number 34, of the *Customs Bulletin*. No comments were received in response to this Notice.

FACTS:

The sample provided is a clear plastic sheet about 7 inches by 3 $\frac{3}{8}$ inches (identified in NY N254739 as part #28). The numeral “3” is formed by printing a black background that leaves the shape of the numeral. The plastic sheet will be used in a light panel assembly that functions as an illuminated address sign. Each sheet is printed with a single number. The appropriate quantity of sheets with the applicable numbers are placed in a light panel assembly to form the address.

In NY N254739, CBP classified the article in subheading 3926.90, HTSUS, which provides for “Other articles of plastics and articles of other materials of headings 3901 to 3914: Other.”

ISSUE:

Whether a plastic sheet with the numeral on it is classified in heading 3920, HTSUS as a plastic sheet, in heading 3926, HTSUS, as a plastic article or in heading 4911, HTSUS, as other printed matter.

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.

GRI 6 provides that for legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to the above Rules, on the understanding that only subheadings at the same level are comparable. For the purposes of this Rule the relative section and chapter notes also apply, unless the context otherwise requires.

The HTSUS headings under consideration are the following:

- 3926 Other articles of plastics and articles of other materials of headings 3901 to 3914:
- 4911 Other printed matter, including printed pictures and photographs:

Section Note 2, Section VII, HTSUS, states that except for goods of heading 39.18 or 39.19, plastics, rubber and articles thereof, printed with motifs, characters, or pictorial representations, which are not merely incidental to the primary use of the goods, fall in Chapter 49.

Chapter 49 Note 2 states the following:

For the purposes of Chapter 49, the term “printed” also means reproduced by means of a duplicating machine, produced under the control of an automatic data processing machine, embossed, photographed, photocopied, thermocopied or typewritten.

In understanding the language of the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System, 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 general EN of Chapter 49, HTSUS, states, in pertinent part, the following:

With the few **exceptions** referred to below, this Chapter covers all printed matter of which the essential nature and use is determined by the fact of its being printed with motifs, characters or pictorial representations. . . .

For the purposes of this Chapter, the term “printed” includes not only reproduction by the several methods of ordinary hand printing (e.g., prints from engravings or woodcuts, other than originals) or mechanical printing (letterpress, offset printing, lithography, photogravure, etc.), but also reproduction by duplicating machines, production under the control of an automatic data processing machine, embossing, photography, photocopying (sic) thermocopying or typewriting (see Note 2 to this Chapter), irrespective of the form of the characters in which the printing is executed

(e.g., letters of any alphabet, figures, shorthand signs, Morse or other code symbols, Braille characters, musical notations, pictures, diagrams). The term **does not**, however, **include** coloration or decorative or repetitive-design printing.

The EN for heading 4911 states that it “covers all printed matter (including photographs and printed pictures) of this Chapter ...but not more particularly covered by any of the preceding headings of the Chapter.”

Since the use of the plastic sheets bearing numerals is determined by the fact of its being printed with the outline of the numeral, and it is not more particularly covered elsewhere in Chapter 49, we find that the articles are properly classified in heading 4911, HTSUS. Although the numerals are delineated by the absence of the black printing on the clear sheet, the numerals are formed by the printing process. They are not colored or repetitive-design printed.

Pursuant to GRI 6, since the article is not particularly covered by any other subheadings of Chapter 49, it is classified in subheading 4911.99.80, HTSUS, which provides for “Other printed matter, including printed pictures and photographs: Other: Other: Other: Other.”

HOLDING:

By application of GRI’s 1 and 6, the plastic sheets printed with numerals are classified in subheading 4911.99.80, HTSUS, which provides for “Other printed matter. Including printed pictures and photographs: Other: Other: Other: Other.” The column one, general 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.itc.gov.

EFFECT ON OTHER RULINGS:

NY N254739 is modified with regard to the tariff classification of the plastic sheets with numeral printed on them (part #28). The classification of the other articles in NY N254739 is unaffected.

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

Sincerely,

ALLYSON R. MATTANAH
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

19 CFR PART 177**REVOCATION OF ONE RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO THE
COUNTRY OF ORIGIN OF CERTAIN LAMINATED FABRICS**

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 certain laminated fabrics.

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 certain laminated fabrics 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. 53, No. 35, on October 2, 2019. 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 February 10, 2020.

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

SUPPLEMENTARY INFORMATION:**BACKGROUND**

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the public and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other

information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether any other applicable legal requirement is met.

Pursuant to 19 U.S.C. § 1625(c)(1), a notice was published in the *Customs Bulletin*, Vol. 53, No. 35, on October 2, 2019, proposing to revoke one ruling letter pertaining to the tariff classification of certain laminated fabrics. 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 this comment period.

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

In Headquarters Ruling Letter ("HQ") H192977, dated March 15, 2012, CBP determined that the country of origin of the fabric styles, identified as Styles Savoy and Taffeta, is China, and the country of origin of the fabric styles, identified as Styles Luna and Dahlia, is India. CBP has reviewed HQ H192977 and has determined that ruling letter to be in error. It is now CBP's position that the country of origin of the above-referenced styles, identified as Styles Savoy, Taffeta, Luna and Dahlia, is England.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking HQ H192977 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in HQ H267054, set forth as an attachment to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP 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: November 7, 2019

YULIYA A. GULIS
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachment

HQ H267054

November 7, 2019

OT:RR:CTF:FTM H267054 TSM

CATEGORY: Marking

THOMAS W. SINGER
iCUSTOM BROKER, INC.
2211 SHERIDAN DRIVE
BUFFALO, NY 14223

RE: Revocation of HQ H192977; Country of origin of certain laminated fabrics.

DEAR MR. SINGER:

This is in reference to Headquarters Ruling Letter (“HQ”) H192977, issued to Louver-Lite (Canada) Limited on March 15, 2012, concerning the country of origin of certain laminated fabrics. In that ruling, U.S. Customs and Border Protection (“CBP”) determined that the countries of origin of the fabrics at issue are China and India. Upon additional review, we have found this to be incorrect. For the reasons set forth below we hereby revoke HQ H192977.

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 53, No. 35, on October 2, 2019, proposing to revoke HQ H192977, and revoke any treatment accorded to substantially identical transactions. No comments were received in response to the notice.

FACTS:

HQ H192977, describes the subject merchandise as follows:

The fabrics at issue consist of four styles, namely, the Savoy, Taffeta, Luna and Dahlia. These fabrics are described as follows:

Style Savoy is a bonded fabric consisting of a face fabric woven in China and printed with a striped pattern, laminated to a backing woven in Pakistan and an ethylene vinyl acetate adhesive multi-layer film made in Italy.

Style Taffeta is a bonded fabric consisting of a face fabric woven in China and printed with flock in a floral pattern that has been laminated to woven backing from Pakistan and an ethylene vinyl acetate adhesive multi-layer film made in Italy.

Style Luna is a bonded fabric consisting of jacquard face fabric woven in India and laminated to a plain-woven backing made in Pakistan laminated to a backing woven and an ethylene vinyl acetate adhesive multi-layer film made in Italy.¹

¹ The description of style Luna fabric in HQ H192977 contains a reference to a “woven backing” twice, which appears to be a typo. This fabric is properly described in NY N183004 as follows: “Style Luna is a bonded fabric consisting of a jacquard-woven face fabric laminated to a plain-woven backing. The ethylene vinyl acetate adhesive multi layer film that bonds these fabrics together is not visible in cross section.”

Style Dahlia is a bonded fabric consisting of a jacquard face fabric woven in India and laminated to a plain-woven backing from Pakistan and an ethylene vinyl acetate adhesive multi-layer film made in Italy.

Based on the information submitted, the greige fabrics are sent to England, where they are printed, laminated together with the adhesive film, treated with a non-visible coating, trimmed and cut to width into long rectangular pieces of fabric with right angled corners. The fabrics are then wound onto rolls for export into the United States for the manufacture of window blinds.

In HQ H192977, CBP stated that lamination was not a fabric-making process, pursuant to HQ 968229, dated July 18, 2006. Thus, CBP determined that the lamination process in England did not impact the country of origin under 19 U.S.C. § 3592(b)(1)(C). Accordingly, CBP found the country of origin of laminated fabrics to be the country in which the face fabric of each style was woven. Therefore, pursuant to 19 U.S.C. § 3592(b)(1)(C), the country of origin for Styles Savoy and Taffeta was China, and for the Styles Luna and Dahlia, the country of origin was India. We have now reconsidered our country of origin determination, as set forth below.

ISSUE:

What is the country of origin of the laminated fabrics at issue?

LAW AND ANALYSIS:

The Uruguay Round Agreements Act (“URAA”), particularly Section 334, codified at 19 U.S.C. § 3592, as amended by Section 405 of Title IV of the Trade and Development Act of 2000 (“TDA”), sets forth rules of origin for textile and apparel products. In pertinent part, 19 U.S.C. § 3592 reads:

(b) Principles

(1) In general

Except as otherwise provided for by statute, a textile or apparel product, for purposes of the customs laws and the administration of quantitative restrictions, originates in a country, territory, or insular possession, and is the growth, product, or manufacture of that country, territory, or insular possession, if –

(A) the product is wholly obtained or produced in that country, territory, or possession;

(B) the product is a yarn, thread, twine, cordage, rope, cable, or braiding and —

(i) the constituent staple fibers are spun in that country, territory, or possession, or

(ii) the continuous filament is extruded in that country, territory, or possession;

(C) the product is a fabric, including a fabric classified under chapter 59 of the HTS, and the constituent fibers, filaments, or yarns are woven, knitted, needled, tufted, felted, entangled, or transformed by any other fabric-making process in that country, territory, or possession; or

(D) the product is any other textile or apparel product that is wholly assembled in that country, territory, or possession from its component pieces.

Part 102 of the U.S. Customs and Border Protection (“CBP”) Regulations (19 C.F.R. § 102) implements the rules of origin for textile and apparel products set forth in 19 U.S.C. § 3592. Section 102.21(c), CBP Regulations (19 C.F.R. § 102.21(c)), provides in pertinent part as follows:

(c) *General rules.* Subject to paragraph (d) of this section, the country of origin of a textile or apparel product will be determined by sequential application of paragraphs (c) (1) through (5) of this section and, in each case where appropriate to the specific context, by application of the additional requirements or conditions of §§ 102.12 through 102.19 of this part.

(1) The country of origin of a textile or apparel product is the single country, territory, or insular possession in which the good was wholly obtained or produced.

(2) Where the country of origin of a textile or apparel product cannot be determined under paragraph (c)(1) of this section, the country of origin of the good is the single country, territory, or insular possession in which each foreign material incorporated in that good underwent an applicable change in tariff classification, and/or met any other requirement, specified for the good in paragraph (e) of this section.

(3) Where the country of origin of a textile or apparel product cannot be determined under paragraph (c) (1) or (2) of this section:

(i) If the good was knit to shape, the country of origin of the good is the single country, territory, or insular possession in which the good was knit; or

(ii) Except for fabrics of chapter 59 and goods of heading 5609, 5807, 5811, 6213, 6214, 6301 through 6306, and 6308, and subheadings 6209.20.5040, 6307.10, 6307.90, and 9404.90, if the good was not knit to shape and the good was wholly assembled in a single country, territory, or insular possession, the country of origin of the good is the country, territory, or insular possession in which the good was wholly assembled.

(4) Where the country of origin of a textile or apparel product cannot be determined under paragraph (c) (1), (2) or (3) of this section, the country of origin of the good is the single country, territory, or insular possession in which the most important assembly or manufacturing process occurred.

(5) Where the country of origin of a textile or apparel product cannot be determined under paragraph (c) (1), (2), (3) or (4) of this section, the country of origin of the good is the last country, territory, or insular possession in which an important assembly or manufacturing process occurred.

The country of origin of textile and apparel products is determined by the sequential application of paragraphs (c)(1) through (c)(5) of Section 102.21. Paragraph (c)(1) provides that “[t]he country of origin of a textile or apparel product is the single country, territory or insular possession in which the good was wholly obtained or produced.” The components comprising the fabrics at

issue were produced in several different countries: the face fabrics were woven in China or India, depending on the style, the backings were woven in Pakistan, and the ethylene vinyl acetate adhesive multi-layer film was made in Italy. The components were then assembled together in England. Therefore, the origin of the finished fabrics cannot be determined by reference to paragraph (c)(1).

Paragraph (c)(2) of Section 102.21 provides that where the country of origin cannot be determined according to paragraph (c)(1), resort should next be to paragraph (c)(2). The country of origin, according to paragraph (c)(2), is “the single country, territory or insular possession in which each foreign material incorporated in that good underwent an applicable change in tariff classification, and/or met any other requirement, specified for the good in paragraph (e)” of section 102.21. In New York Ruling Letter (“NY”) N183004, dated September 30, 2011, these fabrics were determined to be classified in heading 5407, Harmonized Tariff of the United States (“HTSUS”). Therefore, paragraph (e)(1), as applicable to the instant determination, establishes a tariff shift rule that provides:

HTSUS Tariff Shift and/or Other Requirement
5407–5408

- (1) A change from greige fabric of heading 5407 through 5408 to finished fabric of heading 5407 through 5408 by both dyeing and printing when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decatizing, permanent stiffening, weighting, permanent embossing, or moireing; or
- (2) If the country of origin cannot be determined under (1) above, a change to heading 5407 through 5408 from any heading outside that group, provided that the change is the result of a fabric-making process.

In NY N183004, dated September 30, 2011, the essential character of the fabrics at issue was determined to be imparted by the face fabrics composed of 100% polyester. Polyester fabrics of heading 5407, HTSUS, do not undergo the required change in classification because the fabrics at issue are not finished by both dyeing and printing, and are not accompanied by any of the various finishing operations detailed in the rule (1) noted above.

In addition, the second portion of the rule is not satisfied, because there is no change to heading 5407 through 5408 from any heading outside that group. The fabrics at issue are classified in heading 5407. Moreover, the fabrics at issue also did not undergo a “fabric-making process” within the meaning of 19 C.F.R. § 102.21, which provides in relevant part that a fabric-making process is any manufacturing operation that begins with polymers, fibers, filaments (including strips), yarns, twine, cordage, rope, or fabric strips and results in a textile fabric. The bonded laminated fabrics at issue here consist of face fabrics, woven in China or India, depending on the style, and backings, woven in Pakistan. The face fabrics and backings are laminated together in England. The fabric-making process occurred in two different countries, China and Pakistan or India and Pakistan, where the face fabrics and backings were woven. In HQ 968229, lamination of a single fabric with a GORE-TEX® membrane was not regarded as fabric-making process and therefore was found to not impact the country of origin under 19 U.S.C. § 3592(b)(1)(C). Therefore, in HQ 968229 the country of origin was found to

be the country in which the “fabric-making process” of the single fabric occurred, specifically the country in which the fabric was woven. The fabrics at issue here, however, are different from the fabric at issue in HQ 968229, in that they are composed of two fabrics in addition to the adhesive film. Since the two fabrics underwent the “fabric-making process” in different countries, we find that the country of origin of the laminated fabrics cannot be determined pursuant to 19 C.F.R. § 102.211(c)(2), implementing 19 U.S.C. § 3592(b)(1)(C). Thus, we must turn to 19 C.F.R. § 102.211(c)(3) to determine the country of origin.

Paragraph (c)(3) of Section 102.21 provides that where the country of origin of a textile or apparel product cannot be determined under paragraph (c)(1) or (2) of this section: (i) If the good was knit to shape the country of origin of the good is the single country, territory or insular possession in which the good was knit; or (ii) Except for fabrics of chapter 59 and goods of heading 5609, 5807, 5811, 6213, 6214, 6301 through 6306, and 6308, and subheadings 6209.20.5040, 6307.10, 6307.90, and 9404.90, if the good was not knit to shape and the good was wholly assembled in a single country, territory, or insular possession, the country of origin of the good is the country, territory, or insular possession in which the good was wholly assembled.

The fabrics under consideration are not knit to shape, therefore rule (c)(3)(i) does not apply. The fabrics, however, are composed of three separately manufactured components (the face fabrics, the back fabrics and the adhesive film), assembled together. The term “wholly assembled,” for purposes of 19 C.F.R. § 102.21(c)(3)(ii), is defined in 19 C.F.R. § 102.21(b)(6). It states, in relevant part, that the term “wholly assembled” when used with reference to a good means all components, of which there must be at least two, preexisted in essentially the same condition as found in the finished good and were combined to form the finished good in a single country, territory, or insular possession. *See* HQ 562064, dated June 18, 2001 (the assembly operation performed abroad may consist of any method used to join or fit together solid components, such as welding, soldering, riveting, force fitting, gluing, lamination, sewing, or the use of fasteners). In the instant case, the face and back fabrics, as well as the adhesive film, preexisted in essentially the same condition prior to being laminated together in England. Therefore, we find that the fabrics at issue meet the above-discussed definition of wholly assembled. Since the fabrics were wholly assembled in England, we find that England is the country of origin for fabric styles Savoy, Taffeta, Luna and Dahlia pursuant to 19 C.F.R. § 102.21(c)(3)(ii), implementing 19 U.S.C. § 3592(b)(1)(D). In HQ H192977, it was determined that lamination, as it is not a fabric-making process, does not impart the country of origin, citing HQ 968229, dated July 18, 2006. However, this does not preclude finding that the place of assembly by lamination confers country of origin on a fabric.

HOLDING:

Under 19 U.S.C. § 3592(b)(1)(D) and 19 C.F.R. § 102.21(c)(3)(ii), the country of origin of the bonded laminated fabrics at issue, identified as Styles Savoy, Taffeta, Luna and Dahlia, is England, the country in which they were wholly assembled.

EFFECT ON OTHER RULINGS:

HQ H192977, dated March 15, 2012, 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

YULIYA A. GULIS

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division



19 CFR PART 177

MODIFICATION OF ONE RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF KAYAK SEAT BACK

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 a kayak seat back.

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 kayak seat backs 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. 53, No. 34, on September 25. 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 February 10, 2020.

FOR FURTHER INFORMATION CONTACT: Karen S. Greene, Chemicals, Petroleum, Metals & Miscellaneous Articles Branch, Regulations and Rulings, Office of Trade, at (202) 325–0041.

SUPPLEMENTARY INFORMATION:**BACKGROUND**

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

Pursuant to 19 U.S.C. § 1625(c)(1), a notice was published in the *Customs Bulletin*, Vol.53, No. 34, on September 25, 2019, proposing to modify one ruling letter pertaining to the tariff classification of a kayak seat back. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

Similarly, pursuant to 19 U.S.C. § 1625(c)(2), CBP is 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 N181156, CBP classified a kayak seat back in heading 3926, HTSUS, specifically in subheading 3926.90.99, HTSUS, which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other."

CBP has reviewed NY N181156 and has determined the ruling letter to be in error. It is now CBP's position that a kayak seat back is properly classified, in heading 9404, HTSUS, specifically in subheading 9404.90.20, HTSUS, which provides for "Mattress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered: Other: Pillows, cushions and similar furnishings: Other."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is modifying NY N181156 and modifying or modifying any other ruling not specifically identified to reflect the analysis contained in HQ H286422, 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: November 4, 2019

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

HQ H286422

November 4, 2019

OT:RR:CTF:CPMM H286422 KSG

CATEGORY: Classification

TARIFF NO.: 9404.90.20

BRYON BROWN

LIFETIME PRODUCTS

FREEPORT CENTER BLDG., D-11

P.O. BOX 160010

CLEARFIELD, UT 84404

RE: Modification of NY N181156, dated September 15, 2011; tariff classification of kayak seat back

DEAR MR. BROWN:

This letter is in reference to New York Ruling Letter (NY) N181156, dated September 15, 2011, regarding the classification of kayak seat backs in the Harmonized Tariff Schedule of the United States (HTSUS).

In NY N181156, U.S. Customs & Border Protection (CBP) classified kayak seat backs for children and for adults in subheading 3926.90.99, HTSUS, which provides for “Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other.”

We have reviewed NY N181156 and determined that the ruling is in error. Accordingly, for the reasons set forth below, CBP is modifying NY N181156.

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 NY N181156 was published on September 25, 2019, in Volume 53, Number 34, of the *Customs Bulletin*. No comments were received in response to this Notice.

FACTS:

The imported articles are kayak seat backs for children and for adults, which function as a back rest and are an accessory to a kayak. The childrens’ kayak seat is composed of polyethylene plastic foam and has a polyester textile strap with a clip at each end to secure it to the kayak. The adult kayak seat back is made of ethylene vinyl acetate foam and also has the polyester textile strap with a clip at each end to secure it to the kayak.

ISSUE:

Whether the kayak seat backs are properly classified in heading 3926, HTSUS, as other articles of plastics or in heading 9404, HTSUS, as pillows, cushions, and similar furnishings.

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.

GRI 6 provides that for legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to the above Rules, on the understanding that only subheadings at the same level

are comparable. For the purposes of this Rule the relative section and chapter notes also apply, unless the context otherwise requires.

The HTSUS subheadings under consideration are the following:

3926	Other articles of plastics and articles of other materials of headings 3901 to 3914:
3926.90	Other:
3926.90.99	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:
9404.90	Other: Pillows, cushions and similar furnishings:
9404.90.20	Other

In understanding the language of the HTSUS, the Explanatory Notes (EN's) of the Harmonized Commodity Description and Coding System, constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN's 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).

Chapter note 1 (a), chapter 94, HTSUS, provides that the chapter excludes pneumatic or water mattresses, pillows or cushions of chapter 39....

Chapter note 2(x), chapter 39, HTSUS, excludes articles of chapter 94 (for example, furniture, lamps and lighting fittings, illuminated signs, prefabricated buildings).

In Headquarters Ruling Letter (HQ) H265674, dated November 20, 2017, CBP considered whether airbeds were classified as “other articles of plastics” in heading 3926 or as “other furniture” in heading 9403. CBP examined the interplay of the chapter 39 note 2(x) and the chapter 94 note 1(a). CBP reconciled the two exclusionary notes by concluding that chapter note 1(a), chapter 94 applies to a narrow subset of goods- pneumatic or water mattresses, pillows or cushions. Essentially, the list of several very specific articles provides an exception to the general rule of classification under Chapter 94. In HQ H265674, airbeds were deemed to be pneumatic mattresses, which does fall within the narrow subset, and therefore, the airbeds were excluded from classification in chapter 94 and were classified in heading 3926, HTSUS.

When terms are not defined in the HTSUS or the EN's, they are construed in accordance with their common and commercial meanings, which are presumed to be the same. In determining the common meaning of a term in the tariff, courts may and do consult dictionaries, scientific authorities and other reliable sources of information....*Nippon Kogaku (USA), Inc. v. U.S.*, 673 F.2d 380 (C.C.P.A. 1982). In *Carl Zeiss, Inc. v. U.S.*, 195 F.3d 1375 (Fed. Cir. 1999), the Federal Circuit Court upheld the government's reliance on a dictionary definition of a compound optical microscope absent contrary legislative intent and where the tariff provision was an *eo nomine* provision, not a use provision.¹

¹ The court rejected the importer's argument that the article was designed, marketed and used as a surgical instrument so should be classified in a manner consistent with its commercial meaning.

The HTSUS or EN's do not define a "pneumatic" mattress, pillow or cushion. In HQ H265674, CBP examined various dictionary definitions which defined "pneumatic" as filled with compressed air or gas. The phrase "pneumatic or water" in chapter note 1(a), chapter 94 applies to mattresses, pillows or cushions of chapter 39. The article in this case is clearly not a mattress so it would only be precluded from classification in Chapter 94, HTSUS if it is a pneumatic or water pillow of chapter 39 or a pneumatic or water cushion of chapter 39, HTSUS. In this case, the kayak seat backs are not filled with compressed air or gas or filled with water. Therefore, the kayak seat backs in this case are not pneumatic pillows or cushions. This is consistent with other CBP rulings dealing with kayak seats: NY I83878, dated July 26, 2002, which classified kayak seats in subheading 9404.90.20, HTSUS; NY H87797, dated February 28, 2002, which classified a kayak seat of nylon with a foam padding in subheading 9404.90.20, HTSUS; and NY N284050, dated March 17, 2017, which classified a kayak seat with a gel padding in subheading 9404.90.20, HTSUS. Based on the above, we conclude that the kayak seat backs are not precluded from classification in chapter 94, HTSUS, by chapter note 1(a).

Heading 9404 covers articles of bedding and similar furnishings. For instance in HQ 956997, dated March 14, 1995, CBP classified cushions for aircraft flight attendant seats, with a synthetic leather or fabric cover and urethane foam padding in subheading 9404.90.20, HTSUS. The cushions were not bedding but were considered "similar furnishings." We find that the children and adult kayak seat backs are like the flight attendant seats and would be considered "similar furnishings." Therefore, the kayak seats are properly classified in subheading 9404.90.20, HTSUS, consistent with the classification of kayak seats in NY I83878, NY H87797, and NY N284050.

HOLDING:

Pursuant to GRIs 1 and 6, the kayak seat backs are classified in subheading 9404.90.20, HTSUS. The column one, general rate of duty is 6% 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 for at www.usitc.gov.

EFFECT ON OTHER RULINGS:

NY N181156 is modified in accordance with the above analysis.

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 THREE RULING LETTERS
AND MODIFICATION OF ONE RULING LETTER, AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE TARIFF CLASSIFICATION OF DORAMECTIN,
IVERMECTIN, ABAMECTIN TECHNICAL AND
MILBEMECTIN TECHNICAL**

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

ACTION: Notice of proposed revocation of three ruling letters and modification of one ruling letter, and proposed revocation of treatment relating to the tariff classification of Doramectin, Ivermectin, Abamectin Technical, and Milbemectin Technical.

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 Doramectin, Ivermectin and Abamectin Technical, and modify one ruling letter concerning tariff classification of Milbemectin Technical under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments on the correctness of the proposed actions are invited.

DATE: Comments must be received on or before January 10, 2020.

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

FOR FURTHER INFORMATION CONTACT: Alben Peters, Chemicals, Petroleum, Metals and Miscellaneous Articles Classification Branch, Regulations and Rulings, Office of Trade, at (202) 325–0321.

SUPPLEMENTARY INFORMATION:**BACKGROUND**

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

Pursuant to 19 U.S.C. § 1625(c)(1), this notice advises interested parties that CBP is proposing to revoke three ruling letters pertaining to the tariff classification of Doramectin, Ivermectin and Abamectin Technical, and to modify one ruling letter concerning the tariff classification of Milbemectin Technical. Although in this notice, CBP is specifically referring to New York Ruling Letter ("NY") 869250, dated February 6, 1992 (Attachment A), NY H85785, dated January 10, 2002 (Attachment B), NY K86757, dated July 26, 2004 (Attachment C), and NY H87465, dated January 24, 2002 (Attachment D), this notice also covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the four identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the comment period.

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

In NY 869250, CBP classified Doramectin in heading 2941, HTSUS, specifically in subheading 2941.90.50, HTSUS, which provides for

“Antibiotics: Other: Other: Other.” In NY H85785, NY K86757, and NY H87465, CBP classified Ivermectin, Abamectin Technical, and Milbemectin Technical, respectively, under heading 3824, specifically in subheading 3824.90.91, 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; residual products of the chemical or allied industries, not elsewhere specified or included: Other: Other: Other: Other: Other.” Doramectin and Ivermectin are listed in the Pharmaceutical Appendix to HTSUS 2019 and are therefore duty free.

CBP has reviewed NY 869250, NY H85785, NY K86757 and NY H87465, and has determined the ruling letters to be in error. It is now CBP’s position that the Doramectin from Japan in NY 869250 and the Ivermectin from China in NY H85785 are classified under heading 2932, HTSUS, specifically under subheading 2932.20.50, HTSUS, which provides for “Heterocyclic compounds with oxygen heteroatom(s) only: Lactones: Other: Other.” It is now CBP’s position that the Abamectin Technical from China in NY K86757 and the Milbemectin Technical from Japan in NY H87465 are classified in heading 3808, HTSUS, specifically in subheading 3808.99.9501, HTSUSA, which provides for as “Insecticides, rodenticides, fungicides, herbicides, antisprouting products and plant-growth regulators, disinfectants and similar products, put up in forms or packings for retail sale or as preparations or articles (for example, sulfur-treated bands, wicks and candles, and flypapers): Other: Other: Other: Other: Other.” The current column one, duty rate is 5% *ad valorem*. Abamectin Technical from China classified under subheading 3808.99.9501, HTSUSA, unless specifically excluded, are subject to the additional 25% *ad valorem* rate of duty, pursuant to section XXII, chapter 99, subchapter III, U.S. note 20(e), HTSUS.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY 869250, NY H85785 and NY K86757, and to modify NY H87465, and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H303359, set forth as Attachment E to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: November 26, 2019

ALLYSON R. MATTANAH
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachments

ATTACHMENT A

NY 869250

February 6, 1992
CLA-2-29:S:N:N1-F:238 869250
CATEGORY: Classification
TARIFF NO.: 2941.90.5000

MR. MICHAEL O'NEILL
O'NEILL & WHITAKER, INC.
1809 BALTIMORE AVENUE
KANSAS CITY, MO 64108

RE: The tariff classification of Doramectin, in bulk form, from Japan.

DEAR MR. O'NEILL:

In your letter dated November 20, 1991, on behalf of your client, Pfizer, Inc., you requested a tariff classification ruling.

The product in question, Doramectin (CAS number 117704-25-3), is an antibiotic used as an antiparasitic agent for cattle and swine. You state that it will be imported in bulk form.

The applicable subheading for Doramectin will be 2941.90.5000, Harmonized Tariff Schedule of the United States (HTS), which provides for antibiotics: other: other: other. The rate of duty will be 3.7 percent ad valorem.

This merchandise may be subject to the regulations of the Food and Drug Administration. You may contact them at 5600 Fishers Lane, Rockville, Maryland 20857, telephone number (202) 443-3380.

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

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

JEAN F. MAGUIRE
Area Director
New York Seaport

ATTACHMENT B

NY H85785

January 10, 2002

CLA-2-38:RR:NC:2:239 H85785

CATEGORY: Classification

TARIFF NO.: 3824.90.9150

MR. JOSEPH CHIVINI
AUSTIN CHEMICAL COMPANY
1565 BARCLAY BLVD.
BUFFALO GROVE, IL 60089

RE: The tariff classification of Ivermectin (CAS 70288-86-7) from China.

DEAR MR. CHIVINI:

In your letter dated September 27, 2001, you requested a tariff classification ruling for Ivermectin which is a mixture of (10E, 14E, 16E, 22Z)-(1R, 4S, 5'S, 6S, 6'R, 8R, 12S, 13S, 20R, 21R, 24S)-6'-[(S)-sec-butyl]-21, 24-dihydroxy-5', 11, 13, 22-tetramethyl-2-oxo-(3,7,19-trioxatetracyclo[15.6.1.1^{4,8}.0^{20,24}]pentacosa-10, 14, 16, 22-tetraene)-6-spiro-2'-(perhydropyran)-12-yl 2, 6-dideoxy-4-O-(2,6-dideoxy-3-O-methyl- α -L-arabino-hexopyranosyl)-3-O-methyl- α -L-arabino-hexopyranoside and (10E, 14E, 16E, 22Z)-(1R, 4S, 5'S, 6S, 6'R, 8R, 12S, 13S, 20R, 21R, 24S)-21, 24-dihydroxy-6'-isopropyl-5', 11, 13, 22-tetramethyl-2-oxo-(3, 7, 19-trioxatetracyclo[15.6.1.1^{4,8}.0^{20,24}]pentacosa-10, 14, 16, 22-tetraene)-6-spiro-2'-(perhydropyran)-12-yl 2, 6-dideoxy-4-O-(2,6-dideoxy-3-O-methyl- α -L-arabino-hexopyranosyl)-3-O-methyl- α -L-arabino-hexopyranoside. You have stated that this product will be used as a pharmaceutical intermediate and will be packaged in bulk form.

The applicable subheading will be 3824.90.9150, Harmonized Tariff Schedule of the United States (HTS), which provides 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; residual products of the chemical or allied industries, not elsewhere specified or included: other. The rate of duty will be 5 percent ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Andrew Stone at 646-733-3032.

Sincerely,

ROBERT B. SWIERUPSKI,

Director

National Commodity Specialist Division

ATTACHMENT C

NY K86757

July 26, 2004

CLA-2-38:RR:NC:2:239 K86757

CATEGORY: Classification

TARIFF NO.: 3824.90.9190

MR. JOHN BECH
NATIONS AG II
2901-12 RIVENDELL
KNOXVILLE, TN 37922

RE: The tariff classification of Abamectin Technical (CAS 71751-41-2) from China.

DEAR MR. BECH:

In your letter dated June 11, 2004, you requested a tariff classification ruling for Abamectin Technical which you have stated will be used as a material for formulation into end-use products that are used as miticides/insecticides for the control of pests in agronomic, turf, nursery, and ornamental crops. The chemical name is Avermectin B1; 5-O-demethylavermectin Ala and 5-0-demethyl-25-de(1-methylpropyl)-25-(1-methylethyl) avermectinA1a(4:1).

The applicable subheading will be 3824.90.9190, Harmonized Tariff Schedule of the United States (HTS), which provides 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. The rate of duty will be 5 percent ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Andrew Stone at 646-733-3032.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

ATTACHMENT D

NY H87465

January 24, 2002

CLA-2-38:RR:NC:2:238 H87465

CATEGORY: Classification

TARIFF NO.: 3824.90.9150; 3808.90.9500

MR. H. YAMADA

SUMITOMO CORPORATION OF AMERICA

600 THIRD AVENUE

NEW YORK, NY 10016-2001

RE: The tariff classification of Milbemectin Technical and Milbeknock® EC, both imported in bulk form, from Japan

DEAR MR. YAMADA:

In your letter dated January 15, 2002, you requested a tariff classification ruling.

The first product, Milbemectin Technical, consists of a natural (i.e., non-formulated), nonisomeric mixture composed of (by weight) approximately 30% milbemectin A³ (CAS-51596-10-2) and 70% milbemectin A₄ (CAS-51596-11-3). The CAS Registry name for milbemectin is (6R, 25R)-5-O-demethyl-28-deoxy-6, 28-epoxy-25-ethylmilbemycin B mixture with (6R, 25R)-5-O-demethyl-28-deoxy-6, 28-epoxy-25-methylmilbemycin B.

The second product, Milbeknock® EC, is a formulated (i.e., emulsifiable concentrate) miticide/insecticide containing milbemectin as the active ingredient.

The applicable subheading for Milbemectin Technical will be 3824.90.9150, Harmonized Tariff Schedule of the United States (HTS), 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; residual products of the chemical or allied industries, not elsewhere specified or included: Other: Other: Other: Other: Other." The rate of duty will be 5 percent ad valorem.

The applicable subheading for Milbeknock® EC will be 3808.90.9500, HTS, which provides for "Insecticides, ... , disinfectants and similar products, put up in forms or packings for retail sale or as preparations or articles (for example, sulfur-treated bands, wicks and candles, and flypapers): Other: Other: Other."

This merchandise may be subject to the requirements of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), which is administered by the U.S. Environmental Protection Agency, Office of Pesticide Programs. You may contact them at 401 M Street, S.W., Washington, DC 20460, telephone number (703) 305-7092.

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 Harvey Kuperstein at 646-733-3033.

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

ATTACHMENT E

HQ H303359

OT:RR:CTF:CPMMA H303359 APP

CATEGORY: Classification

TARIFF NO.: 2923.20.5050; 3808.99.9501;
9903.88.03

MR. MICHAEL O'NEILL
O'NEILL & WHITAKER, INC.
1809 BALTIMORE AVENUE
KANSAS CITY, MO 64108

RE: Reconsideration of NY 869250, NY H85785, NY K86757, and NY H87465; Tariff classification of Doramectin, Ivermectin, Abamectin Technical, and Milbemectin Technical

DEAR MR. O'NEILL:

This is to inform you that U.S. Customs and Border Protection ("CBP") has reconsidered New York Ruling Letter ("NY") 869250, dated February 6, 1992 (issued to Pfizer, Inc.); NY H85785, dated January 10, 2002 (issued to Austin Chemical Company); NY K86757, dated July 26, 2004 (issued to Nations Ag II); and NY H87465, dated January 24, 2002 (issued to Sumitomo Corporation of America), regarding the classification, under the Harmonized Tariff Schedule of the United States ("HTSUS"), of Doramectin, Ivermectin, Abamectin Technical, and Milbemectin Technical.

In NY 869250, CBP classified Doramectin under heading 2941, specifically under subheading 2941.90.50, HTSUS, free of duty, which provided for "Antibiotics: Other: Other: Other." In NY H85785, NY K86757, and NY H87465, CBP classified Ivermectin, Abamectin Technical, and Milbemectin Technical, respectively, under heading 3824, specifically under subheading 3824.90.91, HTSUS, at a duty rate of 5% *ad valorem*, which provided 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; residual products of the chemical or allied industries, not elsewhere specified or included: Other: Other: Other: Other." We have determined that NY 869250, NY H85785, NY K86757, and NY H87465 are in error. Therefore, for the reasons set forth below, we hereby revoke NY 869250, NY H85785 and NY K86757, and modify NY H87465.

FACTS:

The Doramectin from Japan in NY 869250 is described as: "[Chemical Abstract Number ("CAS")] 117704-25-3, ... used as an antiparasitic agent for cattle and swine ... it will be imported in bulk form." According to the USP Dictionary online, Doramectin's chemical name is known as: Avermectin A1a, 25-cyclohexyl-5-O-demethyl-25-de(1-methylpropyl)-; (2) (2aE, 4E, 8E)-(5'S, 6S, 6'R, 7S, 11R, 13S, 15S, 17aR, 20R, 20aR, 20bS)-6'-cyclohexyl-5', 6, 6', 7, 10, 11, 14, 15, 17a, 20, 20a, 20b-dodecahydro-20,20b-dihydroxy-5', 6, 8, 19-tetramethyl-17-oxospiro[11,15-methano-2H, 13H, 17H-furo[4, 3, 2-pq][2, 6] benzodioxacyclooctadecin-13, 2'-[2H]pyran]-7-yl 2, 6-dideoxy-4-O-(2, 6-dideoxy-3-O-methyl- α -L-arabino-hexopyranosyl)-3-O-methyl- α -L-arabino-hexopyranoside.

The Ivermectin (CAS No. 70288–86–7) from China in NY H85785 is described as: “a mixture of (10E, 14E, 16E, 22Z)-(1R, 4S, 5’S, 6S, 6’R, 8R, 12S, 13S, 20R, 21R, 24S)-6’-[(S)-sec-butyl]-21, 24-dihydroxy-5’, 11, 13, 22-tetramethyl-2-oxo-(3, 7, 19-trioxatetracyclo [15.6.1.1^{4,8,0}20,24] pentacosa-10, 14, 16, 22-tetraene)-6-spiro-2’-(perhydropyran)-12-yl 2, 6-dideoxy-4-O-(2, 6-dideoxy-3-O-methyl- α -L-arabino-hexopyranosyl)-3-O-methyl- α -L-arabino-hexopyranoside (10E, 14E, 16E, 22Z)-(1R, 4S, 5’S, 6S, 6’R, 8R, 12S, 13S, 20R, 21R, 24S)-21, 24-dihydroxy-6’-isopropyl-5’, 11, 13, 22-tetramethyl-2-oxo-(3, 7, 19-trioxatetracyclo[15.6.1.1^{4,8,0}20,24] pentacosa-10, 14, 16, 22-tetraene)-6-spiro-2’-(perhydropyran)-12-yl 2, 6-dideoxy-4-O-(2, 6-dideoxy-3-O-methyl- α -L-arabino-hexopyranosyl)-3-O-methyl- α -L-arabino-hexopyranoside ... this product will be used as a pharmaceutical intermediate and will be packaged in bulk form.”

The Abamectin Technical from China in NY K86757 is described as a product, “which ... will be used as a material for formulation into end-use products that are used as miticides/insecticides for the control of pests in agronomic, turf, nursery, and ornamental crops. The chemical name is Avermectin B1; 5-O-demethylavermectin Ala and 5-O-demethyl-25-de(1-methylpropyl)-25-(1-methylethyl) avermectin A1a(4:1).” Abamectin Technical is a mixture of more than **80% avermectin B1a and less than 20% avermectin B1b**, and will be mixed with water.

The Milbemectin Technical imported in bulk form from Japan in NY H87465 is described as consisting of “a natural (i.e., non-formulated), non-isomeric mixture composed of (by weight) approximately 30% milbemectin A3 (CAS-51596–10–2) and 70% milbemectin A4 (CAS-51596–11–3). The CAS Registry name for milbemectin is (6R,25R)-5-O-demethyl-28-deoxy-6,28-epoxy-25-ethylmilbemycin B mixture with (6R,25R)-5-O-demethyl-28-deoxy-6,28-epoxy-25-methylmilbemycin B.” Milbemectin is advertised as soluble in ethanol, methanol, **dimethylformamide**, or **dimethyl sulfoxide**, and having poor water solubility.¹

ISSUE:

1. Whether the Doramectin and the Ivermectin are classified in heading 2932, HTSUS, as heterocyclic compounds with oxygen hetero atoms only, or in heading 2941, HTSUS, as antibiotics, or in heading 3824, HTSUS, as chemical products.
2. Whether the Abamectin Technical and Milbemectin Technical are classified in heading 3808, HTSUS, as insecticides, or in heading 3824, HTSUS, as chemical products.

LAW AND ANALYSIS:

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

¹ See Milbemectin, <https://www.toku-e.com/Milbemectin-P3221.aspx> (last visited June 14, 2019).

level uses the same rules, *mutatis mutandis*, as classification at the heading level.

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

- 2932 Heterocyclic compounds with oxygen hetero-atom(s) only:
 2941 Antibiotics:
 3808 Insecticides, rodenticides, fungicides, herbicides, antisprouting products and plant-growth regulators, disinfectants and similar products, put up in forms or packings for retail sale or as preparations or articles (for example, sulfur-treated bands, wicks and candles, and flypapers):
 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:

* * * *

Note 2 to Section VI, HTSUS, states:

Subject to note 1 above, goods classifiable in heading ... 3808 by reason of being put up in measured doses or for retail sale are to be classified in those headings and in no other heading of the tariff schedule.

Additional U.S. note 2(a) to section VI, HTSUS, defines the term “aromatic” as “applied to any chemical compound refers to such compound containing one or more fused or unfused benzene rings.”

Note 1(a) to chapter 29, HTSUS, states as follows:

1. Except where the context otherwise requires, the headings of this chapter apply only to:
 - (a) Separate chemically defined organic compounds, whether or not containing impurities;

Note 7 to chapter 29, HTSUS, states:

Headings 2932, 2933 and 2934 do not include epoxides with a three-membered ring, ketone peroxides, cyclic polymers of aldehydes or of thioaldehydes, anhydrides of polybasic carboxylic acids, cyclic esters of polyhydric alcohols or phenols with polybasic acids, or imides of polybasic acids. These provisions apply only when the ring-position hetero-atoms are those resulting solely from the cyclizing function or functions here listed.

Note 1(a) to chapter 38, HTSUS, states:

This chapter does not cover:

- (a) Separate chemically defined elements or compounds with the exception of the following: ... (2) Insecticides, rodenticides, fungicides, herbicides, antisprouting products and plant-growth regulators, disinfectants and similar products put up as described in heading 3808[.]

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

The ENs to chapter 29 state, in relevant part:

The term “impurities” applies exclusively to substances whose presence in the single chemical compound results solely and directly from the

manufacturing process (including purification). These substances may result from any of the factors involved in the process and are principally the following:

- (a) Unconverted starting materials.
- (b) Impurities present in the starting materials.
- (c) Reagents used in the manufacturing process (including purification).
- (d) By-products.

EN 29.32 states, in relevant part, that:

The **heterocyclic compounds** covered by this heading are: ...

B) Lactones*.

These compounds may be considered as internal esters of carboxylic acids with alcohol or phenol function, formed by elimination of water. The molecules may contain one or more ester functions in a ring. They are known as mono-, di-, trilactones, etc., according to the number of ester functions present. However, cyclic esters of polyhydric alcohols with polybasic acids are **excluded** (see Note 7 to this Chapter).

Lactones are fairly stable compounds, but are characterized by the ease with which the lactone ring can be opened using an alkali

EN 29.41 states, in relevant part:

Antibiotics are substances secreted by living micro-organisms which have the effect of killing other micro-organisms or inhibiting their growth. They are used principally for their powerful inhibitory effect on pathogenic micro-organisms, particularly bacteria or fungi, or in some cases on neoplasms. They can be effective at a concentration of a few micrograms per ml in the blood.

Antibiotics may consist of a single substance or a group of related substances, their chemical structure may or may not be known or be chemically defined

This heading also includes chemically modified antibiotics used as such. These may be prepared by isolating ingredients produced by natural growth of the micro-organism and then modifying the structure by chemical reaction or by adding sidechain precursors to the growth-medium so that desired groups are incorporated into the molecule by the cell-processes (semi-synthetic penicillins); or by bio-synthesis (e.g., penicillins from selected amino-acids).

Natural antibiotics reproduced by synthesis (e.g., chloramphenicol) are classified in this heading, as are certain synthetic products closely related to natural antibiotics and used as such (e.g., thiamphenicol)

EN 38.08 states, in relevant part:

This heading covers a range of products ... intended to destroy pathogenic germs, insects (mosquitoes, moths, Colorado beetles, cockroaches, etc.), mosses and moulds, weeds, rodents, wild birds, etc. Products intended to repel pests or used for disinfecting seeds are also classified here.

These insecticides, disinfectants, herbicides, fungicides, etc., are applied by spraying, dusting, sprinkling, coating, impregnating, etc., or may ne-

cessitate combustion. They achieve their results by nerve-poisoning, by stomach-poisoning, by asphyxiation or by odour, etc ...

These products are classified here in the following cases only:

(2) When they have the character of preparations, whatever the presentation (e.g., as liquids, washes or powders). These preparations consist of suspensions or dispersions of the active product in water or in other liquids ... Intermediate preparations, requiring further compounding to produce the ready-for-use insecticides, fungicides, disinfectants, etc., are also classified here, **provided** they already possess insecticidal, fungicidal, etc., properties

EN 38.08 (I) defines “insecticides” as:

... products for killing insects, but also those having a repellent or attractant effect. The products may be in a variety of forms such as sprays or blocks (against moths), oils or sticks (against mosquitoes), powder (against ants), strips (against flies), cyanogen gas absorbed in diatomite or paperboard (against fleas and lice) The heading also includes products to control mites and ticks (acaricides), molluscs (molluscicides), nematodes (nematocides), rodents (rodenticides), birds (avicides), and other pests (e.g., lampreycides, predacides)

EN 38.24 states, in relevant part:

... The **chemical products** classified here are therefore products whose composition is not chemically defined, whether they are obtained as by-products of the manufacture of other substances ... or prepared directly.

The **chemical or other preparations** are either mixtures (of which emulsions and dispersions are special forms) or occasionally solutions The preparations classified here may be either wholly or partly of chemical products (this is generally the case) or wholly of natural constituents

1. Doramectin and Ivermectin

Ivermectin and its derivative, Doramectin, can only be classified in heading 3824 if they are not more specifically classifiable elsewhere in the HTSUS. See *Cargill, Inc. v. United States*, 318 F. Supp. 2d 1279, 1278–88 (CIT 2004) (characterizing heading 3824 as a basket provision). Accordingly, we will first consider whether the Doramectin and Ivermectin fall under the scope of headings 2932 and 2941, HTSUS. Only if they are not classifiable under one of these headings, we will then consider heading 3824, HTSUS.

Doramectin is a non-aromatic lactone containing only oxygen heteroatoms, which is a derivative of Ivermectin. Ivermectin is composed primarily of 2,2,3-dihydroavermectin B1a (CAS No. 71827–03–7) with lesser quantities of 2,2,3-dihydroavermectin B1b (CAS No. 70209–81–3). Specifically, the Ivermectin product is made of approximately 80% Ivermectin B1a and 20% Ivermectin B1b. Ivermectin is synthesized through microbial fermentation using the bacterium *Streptomyces avermitilis*. Both the Ivermectin B1a and Ivermectin B1b are produced by the bacteria in this process. The final product is therefore not a deliberate mixture of Ivermectin B1a and Ivermectin B1b; rather, both the Ivermectin B1a and Ivermectin B1b are the direct result of the fermentation of the *Streptomyces avermitilis*. The Ivermectin B1b is typically left in the final product during purification. Therefore, Ivermectin B1b falls within the scope of “impurities” as described in the ENs to chapter

29; specifically Ivermectin B1b is a byproduct. Consistent with note 1(a) to chapter 29, HTSUS, separate chemically defined organic compounds with impurities meet the terms of chapter 29. Ivermectin and its derivative Doramectin both meet this description and are properly classified within the chapter.²

Further, both Doramectin and Ivermectin are part of a class of compounds known as Avermectins, which are parasiticides used to treat primarily heartworm and mite infestations such as scabies.³ EN 29.41 defines “antibiotics” as “substances secreted by living micro-organisms, which have the effect of killing other micro-organisms or inhibiting their growth.” Doramectin and Ivermectin do not meet this definition because they are used to treat and control parasites, more specifically roundworms and cattle ticks, which are multicellular organisms generally visible to the naked eye, and not micro-organisms, which are unicellular and can be seen with a microscope. As non-aromatic lactones containing oxygen hetero-atoms, the Doramectin and Ivermectin are classifiable in heading 2932, HTSUS, specifically under subheading 2932.20.50, HTSUS.⁴

CBP has previously classified antiparasitic drugs in heading 2932, HTSUS. In Headquarters Ruling Letter (“HQ”) 956889, dated Jan. 2, 1996, CBP classified the antiparasitic drug Moxidectin, which is a Milbemycin, in heading 2932, HTSUS, specifically under subheading 2932.29.50, HTSUS. Avermectins are closely related to the Milbemycins.⁵ Doramectin and Ivermectin are part of compounds known as Avermectins, which are not specifically provided for in the HTSUS, and share a common macrocyclic lactone ring.⁶ Therefore, Doramectin and Ivermectin are classified in heading 2932, HTSUS, under subheading 2932.20.50, HTSUS, as non-aromatic lactone containing only oxygen hetero-atoms, and there is no need to resort to heading 3824, HTSUS.

2. Abamectin and Milbemectin Technical

Similar to Doramectin and Ivermectin, Abamectin and Milbemectin Technical can only be classified in heading 3824 if they are not more specifically classifiable elsewhere in the HTSUS. *See Cargill, Inc., supra*. Thus, we will first determine whether they fall under the scope of heading 3808, HTSUS.

Per EN 38.08, heading 3808 covers products that have the character of a preparation (suspensions or dispersions of a product in water or other liquid) in its condition as imported, or, at least, of an intermediate preparation with insecticidal properties. We find that the Abamectin Technical and Milbemectin Technical are intermediate preparations that already possess the insecticidal properties of the final commercial products and do not have the essential character of medicaments. Abamectin Technical is a mixture of

² This analysis is in agreement with the World Customs Organization, Harmonized System Committee Doc. NC1310E1b, Annex H/7, Classification of Ivermectin (INN) and Similar Products (Mar. 2008).

³ *See* Science Direct, Avermectin, <https://www.sciencedirect.com/topics/agricultural-and-biological-sciences/avermectin> (last visited June 14, 2019).

⁴ *See* Merck Manual: Veterinary Manual, Macrocyclic Lactones, <https://www.merckvetmanual.com/pharmacology/anthelmintics/macrocyclic-lactones> (last visited June 14, 2019).

⁵ *See supra* note 3, at 7.

⁶ We note that the subject Doramectin and Ivermectin are not classifiable under heading 3004, HTSUS, because they are imported in bulk form and are not put up in measured doses or in forms or packing for retail sale.

Avermectins containing more than **80% Avermectin B1a and less than 20% Avermectin B1b, and** will be used as a material for formulation into end-use products used as miticides/insecticides for the control of pests in agronomic, turf, nursery, and ornamental crops. It will ultimately be mixed with water. Milbemectin Technical is a non-formulated, nonisomeric mixture composed of 30% Milbemectin A3 and 70% Milbemectin A4, which possesses insecticidal properties, and is an insecticide used for crop protection. Milbemectin is advertised as soluble in ethanol, methanol, **dimethylformamide**, or **dimethyl sulfoxide**, and having poor water solubility. We further note that Abamectin Technical and Milbemectin Technical are registered as pesticides with the Environmental Protection Agency (“EPA”). As insecticides, both components are *eo nomine* provided for in heading 3808, HTSUS. Based upon all these factors, we find that the Abamectin Technical and Milbemectin Technical are intermediate preparations possessing the essential properties of an insecticide for tariff classification purposes.

CBP has consistently classified intermediate preparations with insecticidal properties in heading 3808, HTSUS. In HQ H235513, dated April 8, 2014, CBP classified a concentrated organophosphate insecticide to be sprayed directly by professional pest control handlers after dilution with water in heading 3808, HTSUS, as an insecticidal preparation. In HQ 965291, dated July 19, 2002, CBP classified a technical grade neem extract in the form of powder derived from neem kernels manufactured from neem seeds mixed with water and used to prepare ready-for-use formulations for pest management in heading 3808, HTSUS, as an intermediate preparation that possesses insecticidal properties. Just like the preparations in HQ H235513 and HQ 965291, the instant Abamectin Technical and Milbemectin Technical possess insecticidal properties. They are an intermediate preparation of heading 3808, HTSUS, because they will be mixed with water or alcohol to prepare the final formulation. Accordingly, the Abamectin Technical and Milbemectin Technical are both classifiable in heading 3808, HTSUS. Insofar as the Abamectin Technical and Milbemectin Technical are classifiable in heading 3808, HTSUS, per note 2 to section VI, HTSUS, they are not classifiable in other HTSUS headings, and resort to heading 3824, HTSUS, is unnecessary.

In addition, pursuant to section XXII, chapter 99, subchapter III, U.S. note 20(e), HTSUS, the Abamectin Technical from China is subject to additional 25% *ad valorem* duties under subheading 9903.88.03, as a product of China classified in subheading 3808.99.9501, HTSUS, which is enumerated in U.S. note 20(f) to subchapter III, HTSUS.

HOLDING:

By application of GRIs 1 and 6, the Doramectin from Japan in NY 869250 and the Ivermectin from China in NY H85785 are classified under heading 2932, HTSUS, specifically under subheading 2932.20.50, HTSUS, as “Heterocyclic compounds with oxygen hetero-atom(s) only: Lactones: Other: Other.” The current column one, duty rate is 3.7% *ad valorem*; Doramectin and Ivermectin are listed in the Pharmaceutical Appendix to HTSUS 2019 and are therefore duty free.

By application of GRIs 1 and 6, the Abamectin Technical from China in NY K86757 and the Milbemectin Technical from Japan in NY H87465 are classified in heading 3808, HTSUS, specifically in subheading 3808.99.95, HTSUS, as “Insecticides, rodenticides, fungicides, herbicides, antisprouting

products and plant-growth regulators, disinfectants and similar products, put up in forms or packings for retail sale or as preparations or articles (for example, sulfur-treated bands, wicks and candles, and flypapers): Other: Other: Other: Other.” The current column one, duty rate is 5% *ad valorem*.

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

Effective July 6, 2018, the Office of the United States Trade Representative imposed an additional tariff on certain products of China classified in the subheadings enumerated in section XXII, chapter 99, subchapter III, U.S. note 20(f). For additional information see “Notice of Action and Request for Public Comment Concerning Proposed Determination of Action Pursuant to Section 301: China’s Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation” (June 20, 2018, 83 F.R. 28710). Products of China that are provided for in subheading 9903.88.03 and classified in one of the subheadings enumerated in U.S. note 20(f) to subchapter III shall continue to be subject to antidumping, countervailing, or other duties, fees and charges that apply to such products, as well as to those imposed by subheading 9903.88.03, HTSUS.

Products of China classified under subheading 3808.99.95, HTSUS, unless specifically excluded, are subject to the additional 25% *ad valorem* rate of duty. At the time of importation, the importer must report the Chapter 99 subheading, *i.e.*, 9903.88.03, HTSUS, in addition to subheading 3808.99.95, HTSUS, listed above.

The tariff is subject to periodic amendment, so the importer should exercise reasonable care in monitoring the status of goods covered by the Notice cited above and the applicable Chapter 99 subheading.

EFFECT ON OTHER RULINGS:

NY 869250, dated February 6, 1992; NY H85785, dated January 10, 2002; and NY K86757, dated July 26, 2004, are hereby revoked.

NY H87465, dated January 24, 2002, is hereby modified, with respect to the Milbemectin Technical.

Sincerely,

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Cc: Mr. Joseph Chivini
Austin Chemical Company
1565 Barclay Blvd.
Buffalo Grove, IL 60089

Mr. John Bech
Nations Ag II
2901–12 Rivendell
Knoxville, TN 37922

Mr. H. Yamada
Sumitomo Corporation of America
600 Third Avenue
New York, NY 10016–2001

**PROPOSED REVOCATION OF SIX RULING LETTERS,
MODIFICATION OF ONE RULING LETTER, AND
REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF RIGID PLASTIC COOLERS**

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

ACTION: Notice of proposed revocation of six ruling letters, modification of one ruling letter, and proposed revocation of treatment relating to the tariff classification of rigid plastic coolers.

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 six ruling letters and modify one ruling letter concerning tariff classification of rigid plastic coolers under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments on the correctness of the proposed actions are invited.

DATE: Comments must be received on or before January 10, 2020.

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

FOR FURTHER INFORMATION CONTACT: Marina Mekheil, Chemicals, Petroleum, Metals and Miscellaneous Classification Branch, Regulations and Rulings, Office of Trade, at (202) 325-0974.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with information concerning the trade community's responsibilities and rights under the customs and

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

Pursuant to 19 U.S.C. § 1625(c)(1), this notice advises interested parties that CBP is proposing to revoke 6 ruling letters and modify one ruling letter pertaining to the tariff classification of rigid plastic coolers. Although in this notice, CBP is specifically referring to New York Ruling Letter (“NY”) N285560, dated May 2, 2017 (Attachment A), Headquarters Ruling Letter (“HQ”) 085323, dated September 14, 1984 (Attachment B), NY N024773, dated April 11, 2008 (Attachment C), NY N259674, dated December 12, 2014 (Attachment D), NY N262814, dated April 9, 2015 (Attachment E), NY N263691, dated April 29, 2015 (Attachment F), and NY N276904, dated July 22, 2016 (Attachment G), this notice also covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the seven identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the comment period.

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

In NY N285560, NY N259674, NY N262814, NY N263691, and NY N276904, CBP classified rigid plastic coolers in heading 9403, HTSUS, specifically in subheading 9403.70.40, HTSUS, which provides for “Other furniture and parts thereof: Furniture of plastics: Of reinforced or laminated plastics,” and 9403.70.80, HTSUS, which provides for “Other furniture and parts thereof: Furniture of plastics: Other.” In HQ 085323, CBP classified a rigid plastic cooler in heading 3923, HTSUS, specifically in subheading 3923.10.90, HTSUS, which

provides for “Articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastic: Boxes, cases, crates, and similar articles: Other.” In NY N024773, CBP classified a rigid plastic cooler in heading 3924, HTSUS, specifically in subheading 3924.10.40, HTSUS, which provides for “Tableware, kitchenware...of plastics: Tableware and kitchenware: Other.”

CBP has reviewed NY N285560, HQ 085323, NY N024773, NY N259674, NY N262814, NY N263691, and NY N276904 and has determined the ruling letters to be in error. It is now CBP’s position that rigid plastic coolers are properly classified, in heading 4202, HTSUS, specifically in subheading 4202.12.21, HTSUS, which provides for “Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers: With outer surface of plastics or of textile materials: With outer surface of plastics: Trunks, suitcases, vanity cases and similar containers: Structured, rigid on all sides.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to modify NY N285560, revoke HQ 085323, NY N024773, NY N259674, NY N262814, NY N263691, and NY N276904, and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed HQ H305292, set forth as Attachment H 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: November 26, 219

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

ATTACHMENT A

N285560

May 2, 2017

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

CATEGORY: Classification

TARIFF NO.: 9403.70.4031; 9403.70.8031;
8302.49.6085

SAMANTHA JEAN GAGLIO
CUSTOMS COMPLIANCE MANAGER
LIFETIME PRODUCTS
FREEMPORT CENTER, BUILDING D-12
CLEARFIELD, UT 84016

RE: The tariff classification of a cooler, and two components of the cooler when entered separately, from China.

DEAR Ms. GAGLIO:

In your letter dated April 20, 2017, you requested a tariff classification ruling. A photo of the cooler, and two schematics, one for each of the components, were provided.

The cooler is the Lifetime “50 Quart Cooler.” The outer-body of the cooler and the lid are composed of High-density Polyethylene (HDPE) and the liner is composed of Polypropylene filled with Polyurethane foam. Upon further assembly in the United States, this cooler will be able to be locked via a padlock and will contain a device to open bottles.

The first component of the “Lifetime 50 Quart Cooler” to be entered separately from that of the cooler, is the Lifetime part number 1183003, “Bracket, Lock Plate Backing,” and the second component of the “Lifetime 50 Quart Cooler” to be entered separately from that of the cooler, is the Lifetime part number 1182875, “Bottle Opener, Cooler 55.” Part number 1183003, the “Bracket, Lock Plate Backing” is a reinforcing plate made of pre-galvanized steel. Part number 1182875, the “Bottle Opener, Cooler 55” is a stainless steel plate that serves two functions; it provides an aperture through which the shackle of a padlock (not included) fastens and it serves as a bottle opener.

Classification under the Harmonized Tariff Schedule of the United States (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.

When interpreting and implementing the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, while neither legally binding nor dispositive, provide a guiding commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. CBP believes the ENs should always be consulted. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

We note that the General ENs to Chapter 94 of the HTSUS, state, in relevant part, with regard to the meaning of furniture, at (A): For the purposes of this Chapter, the term “furniture” means: 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 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 included in this category.

Further provided, the ENs to the HTSUS, heading 9403, states in pertinent part: This heading covers furniture and parts thereof, not covered by the previous headings. It includes furniture for general use (e.g., cupboards, show-cases, tables, telephone stands, writing-desks, escritoirs, book-cases, and other shelved furniture (including single shelves presented with supports for fixing them to the wall), etc.), and also furniture for special uses. A further review of the ENs to heading 9403 indicates in pertinent part that ice-boxes, ice-chests and the like, and also insulated cabinets not equipped or designed to contain an active refrigerating element but insulated simply by glass fibre, cork, wool, etc., remain classified within this heading. Accordingly, the Lifetime “50 Quart Cooler” is classified in heading 9403, HTSUS.

As for Lifetime part number 1183003, the “Bracket, Lock Plate Backing” and Lifetime part number 1182875, the “Bottle Opener, Cooler 55,” Legal Note 1 (d) to Chapter 94, HTSUS, excludes “Parts of general use as defined in Note 2 to Section XV of base metal (Section XV)” Consequently, the two components of the “Lifetime 50 Quart Cooler” are excluded from being classified in Chapter 94, HTSUS with its heading of 9403, HTSUS.

The applicable subheading for the Lifetime “50 Quart Cooler” if made of reinforced or laminated plastics, will be 9403.70.4031, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Other furniture and parts thereof: Furniture of plastics: Of reinforced or laminated plastics: Other.” The rate of duty will be free.

The applicable subheading for the Lifetime “50 Quart Cooler” if not made of reinforced or laminated plastics, will be 9403.70.8031, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Other furniture and parts thereof: Furniture of plastics: Other: Other.” The rate of duty will be free.

The applicable subheading for Lifetime part number 1183003, the “Bracket, Lock Plate Backing” and Lifetime part number 1182875, the “Bottle Opener, Cooler 55,” will be 8302.49.6085, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Base metal mountings, fittings and similar articles suitable for furniture, doors, staircases, windows, blinds, coachwork, saddlery, trunks, chests, caskets or the like: Other mountings, fittings and similar articles, and parts thereof: Other: Other: Of iron or steel, of aluminum or of zinc: Other: Other.” The rate of duty will be 5.7% ad valorem.

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

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

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

Sincerely,

STEVEN A. MACK

Director

National Commodity Specialist Division

ATTACHMENT B

HQ 085323

September 14, 1989
CLA-2:CO:R:C:G 085323 SR
CATEGORY: Classification
TARIFF NO.: 3923.10.0000

MS. MELINIE PROSK
BILL WHITE, INC.
5959 WEST CENTURY BLVD.,
SUITE 1422
LOS ANGELES, CA 90045-6589

RE: Picnic cooler

DEAR MS. PROSK:

This is in reference to your letter dated July 21, 1989, requesting the classification of the "Picnic Pak Cooler" under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). A sample produced in Japan was submitted.

FACTS:

The merchandise at issue consists of a moulded plastic insulated picnic cooler which contains special compartments and containers to preserve and carry food. The cooler measures approximately 8 1/2 inches wide by 12 1/2 inches deep by 10 1/2 inches high and is carried by means of a plastic handle. The cooler contains one central compartment for the preserving and storing of food and beverages. There is a special compartment built into the front of the cooler which contains an opener, a knife, two spoons and two forks.

ISSUE:

What is the classification of the "Picnic Pak Cooler"?

LAW AND ANALYSIS:

Classification of goods under the HTSUSA is in accordance with the General Rules of Interpretation (GRI), taken in order.

GRI 3(b) provides that goods put up in sets for retail sale shall be classified as if they consisted of the material or component which gives them their essential character. The Explanatory Notes provide the official interpretation of the tariff at the international level. The Explanatory Notes to GRI 3(b) define goods put up in sets for retail sale to mean goods which consist of at least two different articles which are prima facie, classifiable in different headings, consist of products or articles put up together to meet a particular need or carry out a specific activity, and are put up in a manner suitable for sale directly to users without repacking. The picnic cooler with containers and utensils meets this definition of a set. Each of the separate items that are included with the cooler are prima facie classifiable in different headings. They all are intended for use on a picnic and they come packaged together.

The essential character of the item is imparted by the cooler. It is the bulk of the article and plays the main role. It serves to hold all the other components of the set and insulates any food or beverages stored within. The cooler is classifiable under heading 3923, HTSUSA, which provides for articles for the conveyance or packing of goods, of plastics. The cooler is used to store food

and to convey it to a picnic.

HRL 083362 dated July 21, 1989, dealt with a similar picnic cooler. This cooler was classified as a set under heading 3923, HTSUSA, as articles for the conveyance or packing of goods, of plastics. This cooler, like the cooler at issue, is purchased empty and filled by the consumer and are used to transport food and beverages.

HOLDING:

The merchandise at issue is classifiable under subheading 3923.10.0000, HTSUSA, which provides for articles for the conveyance or packing of goods, of plastics, boxes, cases, crates, and similar articles. The rate of duty is 3 percent ad valorem under the General duty rate column.

Sincerely,

JOHN DURANT,

Director

Commercial Rulings Division

ATTACHMENT C

N024773

April 11, 2008

CLA-2-39:OT:RR:E:NC:N2:222

CATEGORY: Classification

TARIFF NO.: 3924.10.4000

MR. JAMES L. K. DAHLBERG
BIG CHILI COOLERS
77-6238 C MAMALAHOA HIGHWAY
HOLUALOA, HI 96725

RE: The tariff classification of plastic rigid coolers from Thailand

DEAR MR. DAHLBERG:

In your letter dated March 14, 2008 you requested a tariff classification ruling.

The submitted request identifies items described as rigid plastic coolers. They are made of polyurethane (PU) and polyethylene (PE) plastic materials. The walls, lid and bottom are approximately one and a half inch thick solid plastic. The only other materials used in the construction of the coolers are rope, which is used to make the handles of the larger coolers, and stainless steel, which is used to make the hinges and clasps.

These imported coolers will range in volume capacity from 40 liters to 320 liters. The only other difference between the coolers is the inclusion of rope handles with the larger coolers, to make those coolers easier to pick up. The coolers that don't have rope handles merely have depressed area on the sides, to facilitate grabbing and lifting by hand. These coolers are intended to be used primarily by consumers to keep their food and beverages cold. They can also be used by fishermen or river rafting companies to keep their catch cold. These coolers are of a class or kind of merchandise principally used around home or picnic tables, to maintain food or beverage at a desired temperature over time.

The applicable subheading for the rigid plastic coolers will be 3924.10.4000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for tableware, kitchenware...of plastics: tableware and kitchenware: other. The duty rate will be 3.4 percent ad valorem.

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

Articles classifiable under subheading 3924.10.4000, HTSUS, which are products of Thailand may be entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations. The GSP is subject to modification and periodic suspension, which may affect the status of your transaction at the time of entry for consumption or withdrawal from warehouse. To obtain current information on GSP, check our Web site at www.cbp.gov and search for the term "GSP".

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 Gary Kalus at 646-733-3055.

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

ATTACHMENT D

N259674

December 12, 2014

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

CATEGORY: Classification

TARIFF NO.: 9403.70.4031; 9403.70.8031

MATTHEW J. BASILE

VICE PRESIDENT

STAR ASIA CUSTOMS TRADE & SECURITY, INC.

208 CHURCH STREET

DECATUR, GA 30030

RE: The tariff classification of hard sided coolers from China.

DEAR MR. BASILE:

In your letter dated November 25, 2014, you requested on behalf of Phenix Direct LLC, a tariff classification ruling. Illustrative literature was provided. As no supporting documents were furnished on principal use, whether household or other than household, this ruling will consider the coolers not being chiefly used within one's home and its property.

Item numbers SY-G1800-C and SY-G2800-C are both hard sided coolers on wheels, having a telescopic handle. Both coolers consist of an outer case made of PE (Polyethylene), a liner made of PP (Polypropylene), and an insulated area made of PU (Polyurethane) foam. Item number SY-G1800-C has an 18 liter capacity and can hold 24 cans plus ice and item number SY-G2800-C has a 24 liter capacity and can hold 36 cans plus ice. Both item numbers are available in red, orange, blue, green or custom.

You suggest that the proper classification for the hard sided coolers is subheading 3924.90.5650 of the Harmonized Tariff Schedule of the United States (HTSUS), the provision for "Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastic."

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) may be utilized. The ENs, although not dispositive, nor legally binding, provide a commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

A review of the ENs for heading 9403, HTSUS, the provision for other furniture and parts thereof, indicates in pertinent part, that ice-boxes, ice-chests and the like, and also insulated cabinets not equipped or designed to contain an active refrigerating element but insulated simply by glass fibre, cork, wool, etc., remain classified within this heading. See New York Ruling Letter, N131855 dated November 30, 2010, in which it was determined that a floor-standing wooden cooler was properly classified in heading 9403, HTSUS.

The applicable subheading for the hard sided coolers on wheels, having a telescopic handle, if made of reinforced or laminated plastics, will be 9403.70.4031, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Other furniture and parts thereof: Furniture of plastics: Of reinforced or laminated plastics; Other." The rate of duty will be free.

The applicable subheading for the hard sided coolers on wheels, having a telescopic handle, if not made of reinforced or laminated plastics, will be

9403.70.8031, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Other furniture and parts thereof: Furniture of plastics: 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 Neil H. Levy at E-mail address: neil.h.levy@cbp.dhs.gov.

Sincerely,

GWENN KLEIN KIRSCHNER

Director

National Commodity Specialist Division

ATTACHMENT E

N262814

April 9, 2015

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

CATEGORY: Classification

TARIFF NO.: 9403.70.8031

CATHY CHAFIN, PRESIDENT
WATERS SHIPPING COMPANY
2307 BURNETT BLVD.
WILMINGTON, NC 28401

RE: The tariff classification of hard-sided coolers from China.

DEAR Ms. CHAFIN:

In your letter dated March 13, 2015, on behalf of Big Rock Sports LLC, you requested a tariff classification ruling. Photos and descriptive literature were provided.

The merchandise concerned is identified as the 30L, 50L and 80L, "Calcutta Coolers." The coolers are available in three sizes: 30 liters measuring 24¼ inches by 14½ inches by 16 inches, 50 liters measuring 26½ inches by 16½ inches by 18 inches, and 80 liters measuring 30 inches by 19 inches by 21 inches. For each cooler, the "exterior body and lid" are formed by rotomolded construction in the one piece, and has a full lid gasket, rubber latches to create a secure lid seal, dual drain plugs, padlock holes on both corners, and non-marking and non-skid rubber feet. Polyurethane foam insulation fills the space between the interior and exterior walls. These coolers do not have exterior handles, but rather built-in (molded) side slots by which the coolers can be gripped. It is stated that, these coolers are designed to be lifted/carried, or set on the floor or any temporary location.

In understanding the language of the Harmonized Tariff Schedule of the United States (HTSUS), the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) may be utilized. The ENs, although not dispositive, nor legally binding, provide a commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

A review of the ENs for heading 9403, HTSUS, the provision for "Other furniture and parts thereof," indicate in pertinent part that ice-boxes, ice-chests and the like, and also insulated cabinets not equipped or designed to contain an active refrigerating element but insulated simply by glass fibre, cork, wool, etc., remain classified within this heading.

The applicable subheading for the Calcutta Coolers will be 9403.70.8031, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Other furniture and parts thereof: Furniture of plastics: 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 Neil H. Levy at E-Mail address: neil.h.levy@cbp.dhs.gov.

Sincerely,

GWENN KLEIN KIRSCHNER

Director

National Commodity Specialist Division

ATTACHMENT F

N263691

April 29, 2015

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

CATEGORY: Classification

TARIFF NO.: 9403.70.4031; 9403.70.8031

LISA M. MADRID
IMPORT MANAGER
SAVING SHIPPING AND FORWARDING USA, INC.
550 E. DEVON AVENUE, SUITE 100
ITASCA, IL 60143

RE: The tariff classification of a cooler from China.

DEAR Ms. MADRID:

In your letter dated April 9, 2015, on behalf of CM Global, you requested a tariff classification ruling. Illustrative literature was provided.

The merchandise concerned is identified as the Nomad – Remote Control Cooler. The Nomad – Remote Control Cooler is a fully functional cooler. The Nomad – Remote Control Cooler is predominately made from injection molded high impact plastic, has foam insulation within the body and lid, and an 18 quart capacity. The Nomad – Remote Control Cooler has built-in handles under the front and rear bumpers that allow for easy carrying of the cooler. The Nomad – Remote Control Cooler features: a central drain plug that allows for quick, easy removal of water from the cooler body; a 2 cup holder; a built-in bottle opener; LED lights; a Bluetooth sound system, a USB charging station, a rechargeable battery; and moves forward, reverse, left or right via remote control. This article measures approximately 26-inches long by 16-inches wide by 16-inches high.

When interpreting and implementing the Harmonized Tariff Schedule of the United States (HTSUS), the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, while neither legally binding nor dispositive, provide a guiding commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. CBP believes the ENs should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

We note that the General ENs to Chapter 94 of the HTSUS, state, in relevant part, with regard to the meaning of furniture, at (A): For the purposes of this Chapter, the term “furniture” means: 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 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 included in this category.

Further provided, the ENs to the HTSUS, heading 9403, states in pertinent part: This heading covers furniture and parts thereof, not covered by the

previous headings. It includes furniture for general use (e.g., cupboards, show-cases, tables, telephone stands, writing-desks, escritoirs, book-cases, and other shelved furniture (including single shelves presented with supports for fixing them to the wall), etc.), and also furniture for special uses. A further review of the ENs to heading 9403 indicates in pertinent part that ice-boxes, ice-chests and the like, and also insulated cabinets not equipped or designed to contain an active refrigerating element but insulated simply by glass fibre, cork, wool, etc., remain classified within this heading. Emphasis must be placed to the aforementioned paragraph, in that the Nomad – Remote Control Cooler cannot be classified in a more specific heading of the HTSUS, otherwise the good is not classified within Chapter 94 with its heading of 9403, HTSUS.

The Nomad – Remote Control Cooler is a combination article composed of different components, and is therefore considered a composite good. Consequently, the General Rules of Interpretation (GRIs) to the HTSUS, at GRI 3 (b), govern the classification of the merchandise concerned. Regarding the essential character of the Nomad – Remote Control Cooler, the Explanatory Notes (ENs) to the HTSUS, at GRI 3 (b) (VIII), state that “the factor which determines essential character will vary between different kinds of goods. It may for example, be determined by the nature of the materials or components, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.” When the essential character of a composite good can be determined, the whole product is classified as if it consisted only of the material or component that imparts the essential character to the composite good.

Review of the illustrative literature indicates additional functionality provided to the Nomad – Remote Control Cooler by means of its components, such as the LED lights; the Bluetooth sound system, the USB charging station, the rechargeable battery; and the remote control that allows the cooler to move forward, reverse, left or right, yet it still does not change the fact that we have a fully functioning insulated cooler, not equipped or designed to contain an active refrigerating element. None of the components that provide additional functionality to the Nomad – Remote Control Cooler define its essential character, nor are there any other headings in the HTSUS that would be more specific in regard to this combination article. It is the entire cooler body made of plastic and insulated with foam that is indispensable to the identity of the good as an ice-chest and to the keeping of refreshments chilled. As such, the Nomad – Remote Control Cooler is classified in heading 9403, HTSUS.

The applicable subheading for the Nomad – Remote Control Cooler Coolest Cooler, if made of reinforced or laminated plastics, will be 9403.70.4031, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Other furniture and parts thereof: Furniture of plastics: Of reinforced or laminated plastics; Other.” The rate of duty will be free.

The applicable subheading for the Nomad – Remote Control Cooler, if not made of reinforced or laminated plastics, will be 9403.70.8031, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Other furniture and parts thereof: Furniture of plastics: 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 Neil H. Levy at E-mail address: neil.h.levy@cbp.dhs.gov.

Sincerely,

GWENN KLEIN KIRSCHNER

Director

National Commodity Specialist Division

ATTACHMENT G

N276904

July 22, 2016

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

CATEGORY: Classification

TARIFF NO.: 9403.70.4031; 9403.70.8031

CHRIS KUEHLER

DIRECTOR

RUSSEL A. FARROW (U.S.) INC.

431 ISOM ROAD, SUITE 107

SAN ANTONIO, TX 78216

RE: The tariff classification of coolers from China.

DEAR MR. KUEHLER:

In your letter dated June 22, 2016, on behalf of HEB Grocery Company, LP, you requested a tariff classification ruling. Photos were provided for the 20, 38, 75 and 125 quart coolers and illustrative literature was provided for the 20 and 38 quart coolers.

The merchandise concerned is identified as the “Kodi Cooler 20 QT,” the “Kodi Cooler 38 QT,” the “Kodi Cooler 75 QT,” and the “Kodi Cooler 125 QT.” The coolers are used for the purposes of keeping beverages and food cold. The primarily, floor or ground standing coolers are constructed from seamless roto-molded plastic, of which the outer and inner walls are composed of 2-inch thick Linear Low-density Polyethylene (LLDPE), packed with more than 2-inches of Polyurethane (PU) foam between the walls. All of the coolers include a vacuum relief valve, drain plug, two rubber latches for closure, Polyvinyl-chloride (PVC) feet, PVC lid gasket, and aluminum hinges. Further, all of the coolers appear to have a patent pending “Kodi Liftease” release button, allowing the air-vacuum of the closed coolers to be released, thereby eliminating the struggle to open the lid of the coolers. These coolers are available in white, brown, grey and aqua colors.

When interpreting and implementing the Harmonized Tariff Schedule of the United States (HTSUS), the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, while neither legally binding nor dispositive, provide a guiding commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. CBP believes the ENs should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

We note that the General ENs to Chapter 94 of the HTSUS, state, in relevant part, with regard to the meaning of furniture, at (A): For the purposes of this Chapter, the term “furniture” means: 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 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 included in this

category.

Further provided, the ENs to the HTSUS, heading 9403, states in pertinent part: This heading covers furniture and parts thereof, not covered by the previous headings. It includes furniture for general use (e.g., cupboards, show-cases, tables, telephone stands, writing-desks, escritoirs, book-cases, and other shelved furniture (including single shelves presented with supports for fixing them to the wall), etc.), and also furniture for special uses. A further review of the ENs to heading 9403 indicates in pertinent part that ice-boxes, ice-chests and the like, and also insulated cabinets not equipped or designed to contain an active refrigerating element but insulated simply by glass fibre, cork, wool, etc., remain classified within this heading. As such, the merchandise concerned is classified in heading 9403, HTSUS.

The applicable subheading for the “Kodi Cooler 20 QT,” the “Kodi Cooler 38 QT,” the “Kodi Cooler 75 QT,” and the “Kodi Cooler 125 QT,” if made of reinforced or laminated plastics, will be 9403.70.4031, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Other furniture and parts thereof: Furniture of plastics: Of reinforced or laminated plastics; Other.” The rate of duty will be free.

The applicable subheading for the “Kodi Cooler 20 QT,” the “Kodi Cooler 38 QT,” the “Kodi Cooler 75 QT,” and the “Kodi Cooler 125 QT,” if not made of reinforced or laminated plastics, will be 9403.70.8031, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Other furniture and parts thereof: Furniture of plastics: 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 <https://hts.usitc.gov/current>.

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

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

Sincerely,

STEVEN A. MACK

Director

National Commodity Specialist Division

ATTACHMENT H

HQ H305292
OT:RR:CTF:CPMM
H305292MMM
CATEGORY: Classification
TARIFF NO.: 4202.12.2120

SAMANTHA JEAN GAGLIO
CUSTOMS COMPLIANCE MANAGER
LIFETIME PRODUCTS
FREEMPORT CENTER, BUILDING D-12
CLEARFIELD, UT 84016

RE: Revocation of NY N285560, HQ 085323, NY N024773, NY N259674, NY N262814, NY N263691, and NY N276904; Classification of rigid plastic coolers

DEAR Ms. GAGLIO,

This is in reference to the New York Ruling Letter (NY) N285560, issued to you by U.S. Customs and Border Protection (CBP) on May 2, 2017, concerning classification of a cooler and two components of the cooler under the Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed your ruling, and determined that it is incorrect, and for the reasons set forth below, are modifying your ruling in regard to the cooler.

We have also reviewed the following rulings: HQ 085323, dated September 14, 1984, NY N024773, dated April 11, 2008, NY N259674, dated December 12, 2014, NY N262814, dated April 9, 2015, NY N263691, dated April 29, 2015, and NY N276904, dated July 22, 2016, and determined that they are also incorrect, and for the reasons set forth below, we are revoking those rulings.

FACTS:

In NY N259674, N262814, N263691, N276904, and N285560, CBP ruled on the classification of hard-sided coolers made of molded plastic and insulated by polyurethane foam. The use of the subject merchandise is to temporarily hold beverages and foods together with ice to keep them cold.

CBP classified the coolers in heading 9403, citing to EN 94.03. The coolers subject to the above rulings were considered ice-boxes and ice-chests because they contained no active refrigerating element and were insulated by polyurethane foam.

In HQ 085323, CBP concluded that the classification of a molded plastic insulated cooler was heading 3923 of the HTSUS, as an article for the conveyance or packing of goods, of plastics. The cooler contained a compartment in the front which contained an opener, a knife, two spoons, and two forks. CBP found that the essential character of the cooler and utensils was the cooler.

Additionally, NY N024773 concluded that a similar plastic cooler was classified under heading 3924, as tableware, kitchenware...of plastics.

ISSUE:

Whether the subject rigid plastic coolers are classified in heading 3923, as articles for the conveyance or packing of goods, in heading 3924, as tableware, kitchenware, [or] other household articles of plastics, in heading 4202

as trunks, suitcases...and similar containers, or in heading 9403, as other furniture.

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. GRI 2(a) provides, in relevant part, that “[a]ny reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as entered, the incomplete or unfinished articles has the essential character of the complete or finished article.”

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 2018 HTSUS provisions under consideration are as follows:

3923	Articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics
3924	Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics
4202	Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper
9403	Other furniture and parts thereof:

Chapter 39, note 2(m) excludes “...trunks, suitcases, handbags or other containers of heading 42.02.

The General Explanatory Notes to Chapter 94 states that “furniture” means:

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.

The EN to heading 9403, states:

[I]ce-boxes, ice-chests and the like, and also insulated cabinets not equipped or designed to contain an active refrigerating element but insulated simply by glass fibre, cork, wool, etc., remain classified in this heading.

We begin our analysis with GRI 1. Under note 2(m) to Chapter 39, if the merchandise is described as a container of 4202, it is excluded from classification in either heading 3923 or heading 3924.

Heading 4202 applies to Trunks, suitcases, vanity cases, attaché cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers. The Federal Circuit, in *Totes, Inc. v. United States*, applying the rule of *ejusdem generis*, found that imported merchandise are "of the same kind" as the enumerated articles in 4202 when they are "containers...used to organize, store, and protect specific items."¹ The Federal Circuit has stated that the appropriate analysis of *ejusdem generis* is as follows:

Under the rule of *ejusdem generis*, which means "of the same kind," where an enumeration of specific things is followed by a general word or phrase, the general word or phrase is held to refer to things of the same kind as those specified. As applicable to classification cases, *ejusdem generis* requires that the imported merchandise possess the essential characteristics or purposes that unite the articles enumerated *eo nomine* [by name] in order to be classified under the general terms.

The subject merchandise is "of the same kind" as the enumerated articles, as it used by consumers to store, organize, and protect (through insulation) food and beverages, while travelling. Additionally, coolers and the enumerated articles share physical characteristics; they are rectangular containers with hinged tops and a single compartment for storing specific items, such as food, beverages, clothes, a specific musical instrument, etc. Also, similar to the enumerated articles, when coolers are of a larger size, they usually include handles to allow for ease when traveling.

In *SGI, Inc. v. United States*, the Federal Circuit classified soft-sided vinyl insulated coolers with handles under Heading 3924 over Heading 4202, focusing on the involvement of food and beverages.² The Federal Circuit found that although soft-sided vinyl insulated bags were designed to protect, store, and carry a wide-range of products, including consumable goods, that the focus of the analysis should be on whether the *eo nomine* exemplars found in 4202 carried food and beverages.³ At the time of SGI, there were no such examples, however, the second part of 4202 heading now includes "insulated

¹ 69 F. 3d 495, 498 (Fed. Cir. 1995).

² 122 F.3d 1468, 1472–1473 (Fed. Cir. 1997)

³ *Id.* at 1470.

food or beverage bags.”⁴ Additionally, the Federal Circuit also relied on the EN to Heading 3924, which specifically mentioned “luncheon boxes” as an example of “other household articles.”⁵ The EN to Heading 3924 no longer includes this example.

Furthermore, since the merchandise is classifiable in heading 4202 as a container, it cannot be classified in Chapter 39.

The merchandise is not classifiable as furniture in heading 9403. The courts have construed “furniture” to mean articles “for the use, convenience, and comfort of the house dweller and not subsidiary articles for ornamentation alone.”⁶ Furthermore, the courts have distinguished “furniture” from articles that are “subsidiary adjuncts and appendages designed for the ornamentation of a dwelling or business place, or which are of comparatively minor importance so far as use, comfort, and convenience are concerned.”⁷

Although a cooler is a movable article with a utilitarian purpose, as it is useful to those travelling with food and beverages, it lacks the characteristics of furniture found as examples in Chapter 94 and is not likely to equip a private dwelling. It may be stored in a private dwelling, but it would serve its purpose outside of the dwelling—this is especially illustrated by the coolers that include drain plugs, which would allow users to drain melted ice. Additionally, it is not used for comfort and convenience in the home.

We note that the merchandise in Ruling NY R01732, which classified a cooler under 9403, is distinguishable. In that ruling the container was described as follows:

[M]ade of a steel container that mounts to a steel leg structure with rolling plastic castors attached to the bottom of the four legs. The container has a lid that hinges in the middle allowing consumers access from two sides of the container. Both the steel container and lid are insulated with Styrofoam. It can be used both indoors and outdoors to keep beverages cold by placing ice within.

The merchandise in R01732 is more akin to furniture and dissimilar to the plastic coolers, as it can be utilized indoors, includes legs, and is made of steel. This product can be displayed in the house or outside as furniture and serves a utilitarian purpose, unlike the plastic coolers, which tend to be stored in a private dwelling, office, etc., until needed. Rigid plastic coolers cannot be classified under 9403 as furniture.

HOLDING:

By application of GRI 1, and in the case of the merchandise described in HQ 085323, by GRI 3(b), the subject rigid plastic coolers, are classified in heading 4202, HTSUS, specifically in subheading 4202.12.2120, HTSUSA (Annotated), which provides for: “Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers: With

⁴ See generally *Mitsubishi Int'l Corp. v. United States*, 182 F.3d 884, 886 (Fed. Cir. 1999) (a previous specificity analysis does not apply to classifications made under differing language of a more recently enacted HTSUS.)

⁵ 122 F.3d at 1473.

⁶ *Pomeroy Collection, Ltd. v. United States*, 893 F. Supp. 2d 1269, 1284 (Ct. Int'l Trade 2013) (citing *Furniture Import Corp. v. United States*, 56 Cust. Ct. 125, 133, C.D. 2619 (1966)).

⁷ *Id.*

outer surface of plastics or of textile materials: With outer surface of plastics: Trunks, suitcases, vanity cases and similar containers: Structured, rigid on all sides.” The 2018 column one general rate of duty for subheading 4202.12.2120, HTSUSA, is 20% *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 N285560, dated May 2, 2017, is hereby MODIFIED in accordance with the above analysis.

Headquarters Ruling Letter 085323, dated September 14, 1984, and New York Ruling Letters N024773, dated April 11, 2008, N259674, dated December 12, 2014, N262814, dated April 9, 2015, N263691, dated April 29, 2015, and N276904, dated July 22, 2016, are hereby REVOKED in accordance with the above analysis.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

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19 CFR PART 177**MODIFICATION AND REVOCATION OF RULING LETTERS
RELATING TO CBP'S APPLICATION OF THE JONES ACT
TO THE TRANSPORTATION OF CERTAIN MERCHANDISE
AND EQUIPMENT BETWEEN COASTWISE POINTS**

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

ACTION: Notice of modification and revocation of headquarters' ruling letters relating to U.S. Customs and Border Protection's ("CBP") application of the coastwise laws to certain merchandise and vessel equipment that are transported between coastwise points.

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 CBP is modifying or revoking several administrative rulings in which it had determined that certain articles transported between coastwise points are vessel equipment pursuant to Treasury Decision ("T.D.") 49815(4). In addition, CBP is further modifying Headquarters Ruling Letter (HQ) 101925 (Oct. 7, 1976) to make that ruling more consistent with federal statutes and regulations that were amended or promulgated after HQ 101925 was issued, and to clarify the proper reasoning underlying the conclusions reached regarding the subjects covered in the ruling. CBP is also revoking its rulings that have determined that a non-coastwise-qualified vessel engaging in offshore lifting operations would violate the Jones Act, 46 U.S.C. § 55102, when it moves a short distance to avoid collision with a surface or subsea structure.

Similarly, CBP is modifying or revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 53, No. 38, on October 23, 2019. CBP received 37 comments in response to that notice, including two from commenters who had previously received rulings subject to the notice.

EFFECTIVE DATE: This action is effective for merchandise transported on or after February 17, 2020.

FOR FURTHER INFORMATION CONTACT: Chief, Cargo Security, Carriers, and Restricted Merchandise Branch, at (202) 325-0030.

SUPPLEMENTARY INFORMATION:**BACKGROUND**

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

Although CBP has previously proposed revoking or modifying several of the letter rulings discussed in this notice, we note that the scope of the instant notice differs from the prior notices. Most recently, CBP proposed in the *Customs Bulletin*, Vol. 51, No. 3, January 18, 2017, to modify HQ 101925 (Oct. 7, 1976) to make it more consistent with certain federal statutes amended after it was issued, and to revoke or modify several rulings determining that certain articles transported between coastwise points are "vessel equipment" pursuant to T.D. 49815(4) (the "2017 Notice"). Subsequently, in the *Customs Bulletin*, Vol. 51, No. 19, May 10, 2017, based on many substantive comments supporting and opposing the proposed action, CBP withdrew the 2017 Notice to reconsider the proposed action. Specifically, the 2017 Notice proposed to revoke or modify the following ruling letters that are not covered by the instant notice, and therefore remain in force: HQ 105644 (June 7, 1982); HQ 108223 (Mar. 13, 1986); HQ 110402 (Aug. 18, 1989); HQ 111889 (Feb. 11, 1992); HQ 111892 (Sept. 16, 1991); HQ 112218 (July 22, 1992); HQ 113838 (Feb. 25, 1997); HQ 114305 (Mar. 31, 1998); HQ 115218 (Nov. 30, 2000); HQ 115333 (Apr. 27, 2001); HQ 115381 (June 15, 2001); HQ H029417 (June 5, 2008); and HQ H032757 (July 28, 2008). Of note, ruling letters HQ 112218 (July 22, 1992) and HQ 113137 (June 27, 1994), cited in the 2017 Notice, pertain to cement, chemicals, and other consumable materials, and remain in force. Furthermore, unlike in the 2017 Notice, CBP is now revoking three letter rulings interpreting the extent to which incidental movements constitute "transportation" with respect to offshore lifting operations.

More specifically, pursuant to 19 U.S.C. § 1625(c)(1), this notice advises interested parties that CBP is modifying HQ 101925 (Oct. 7,

1976) to make that ruling more consistent with federal statutes that were amended after HQ 101925 was issued, and is modifying or revoking certain rulings that have determined articles transported between coastwise points are vessel equipment pursuant to T.D. 49815(4).¹ In addition, this notice advises interested parties that CBP is revoking three rulings analyzing whether a non-coastwise-qualified lifting vessel would violate the Jones Act, 46 U.S.C. § 55102, when it moves a short distance to avoid collision with a surface or subsea structure when installing an offshore platform's topside.

Although in this notice CBP specifically refers to the revocation and modification of the ruling letters listed below, this notice covers any rulings raising the subject issues that may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to those identified. No further rulings have been found. Any person involved in substantially identical transactions should have advised CBP during the comment period. A party'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 party or its agents for coastwise transportation of merchandise occurring subsequent to the effective date of this notice.

In light of the current regulations on general ruling practice set forth in 19 CFR § 177, *et seq.*, “[i]t is in the interest of the sound administration of the Customs and related laws that persons engaging in any transaction affected by those laws fully understand the consequences of the transaction prior to its consummation.” *See* 19 CFR § 177.1(a)(1). Notably, rulings issued by CBP are not regulations, but rather are written statements that interpret and apply the provisions of the Customs and related laws to the specific set of facts presented by the ruling requester. *See* 19 CFR § 177.1(d)(1). Not only are rulings instructive for the ruling requesters engaging in their specific transactions, but they also provide guidance for CBP field offices relating to these ruling requesters' specific transactions. *See* 19 CFR § 177.11. Therefore, it is in the interest of CBP to issue rulings that will provide guidance not only to the ruling requesters regarding their specific transactions, but also to the individuals in the field that have to enforce these rulings. Accordingly, “[i]n the absence of a change of practice or other modification or revocation which affects

¹ The terms “revocation” and “modification” reference related, but distinct, concepts. As outlined in 19 U.S.C. § 1625(c)(2) and 19 CFR 177.12, both revocation and modification have the effect of altering the treatment previously accorded by CBP. In revoking a ruling, CBP withdraws the entirety of a ruling based on the rationale outlined in the requisite notice and comment process. In modifying a ruling, CBP leaves the ruling in place but revises specific aspects of the ruling, with the changes outlined in the requisite notice and comment process.

the principle of the ruling set forth in the ruling letter, that principle may be cited as authority in the disposition of transactions involving the same circumstances.” 19 CFR § 177.9(a). However, “no other person should rely on the ruling letter[s] or assume that the principles of [those] ruling[s] will be applied in connection with any transactions other than the one[s] described in [those] letter[s].” See 19 CFR § 177.9(c). As such, subsequent CBP rulings may vary as technological changes or other factors alter CBP’s analysis of a given scenario. Thus, if a party seeks clarity regarding a prospective transaction, a ruling request may be submitted for consideration following the instructions found in 19 CFR § 177.2. Requests must “contain a complete statement of all relevant facts relating to the transaction.” 19 CFR § 177.2(b)(1).

Importantly, none of the interpretations set forth herein, or in any other administrative ruling or decision, may be used to circumvent the lawful application of the Jones Act. A party cannot artificially structure or describe activities in an effort to avail itself of the interpretive doctrines in such a way that CBP does not intend for the doctrines to apply. The requirements and restrictions of the Jones Act may no more “be escaped by resort to disguise or artifice” than in any other area of Customs law.²

Vessel Equipment

Based on our research, the definition of “vessel equipment” that CBP has used in its coastwise trade rulings, has been based, in part, on T.D. 49815(4) (Mar. 13, 1939), which interprets section 309 of the Tariff Act of 1930, codified at 19 U.S.C. § 1309. Section 309 provides for the duty-free withdrawal of supplies and equipment for certain vessels and aircraft.

The term “equipment”, as used in section 309, as amended, includes *portable articles necessary and appropriate for the navigation, operation or maintenance of the vessel and for the comfort and safety of the persons on board*. It does not comprehend consumable supplies either for the vessel and its appurtenances or for the passengers and the crew. The following articles, for example, have been held to constitute equipment: rope, sail, table linens, bedding, china, table silverware, cutlery, bolts and nuts.

T.D. 49815(4) (Mar. 13, 1939) (emphasis added).

² See *United States v. Citroen*, 223 U.S. 407, 415 (1912); *Heartland By-Products, Inc. v. United States*, 264 F.3d 1126, 1138-39 (Fed. Cir. 2001) (Friedman, J., concurring).

Beginning with HQ 101925 (Oct. 7, 1976) (amended at Attachment A), several CBP rulings analyzing the status of various items as “vessel equipment” departed from the language in T.D. 49815(4) in such a manner that the original meaning was expanded and, thus, used out of context. Although periodically citing the above italicized language in its rulings, CBP also analyzed whether the use of the item in question possessed a nexus to the “mission of the vessel.” *See, e.g.*, HQ 101925 (Oct. 7, 1976) (“necessary for the accomplishment of the mission of the vessel”); HQ 113841 (Feb. 28, 1997) (“essential to the mission of the vessel”); HQ 114435 (Aug. 6, 1998) (“necessary for the accomplishment of the mission of the vessel”); HQ 8004242 (Dec. 22, 2006) (“necessary for the accomplishment of the vessel’s mission”); HQ 115487 (Nov. 20, 2001) (“necessary to the accomplishment of the mission of the vessel”); HQ 115938 (Apr. 1, 2003) (“fundamental to the vessel’s operation”); and HQ 116078 (Feb. 11, 2004) (“used by a vessel in the course of its business”). In addition, several rulings further expanded the analysis of what constitutes “vessel equipment” to analyze whether an item is used “on or from” the transporting vessel as a determinative factor. *See, e.g.*, HQ 108442 (Aug. 13, 1986).

In applying T.D. 49815(4) to 46 U.S.C. § 55102 in these rulings, CBP reasoned that if the article was used in the activity in which the vessel was about to engage, *e.g.*, “in furtherance of the mission,” “fundamental to the operation of the vessel,” etc., the article would be considered vessel equipment. As such, although T.D. 49815(4) formed the underlying criteria, its original meaning was expanded by the phrases quoted above and, thus, used out of context, with the expanded reading applied as the rule in these cases. Such an application, however, is less consistent with the more narrow meaning of “vessel equipment” contemplated by T.D. 49815(4).

CBP is therefore modifying the line of rulings beginning with HQ 101925 to limit the concepts that contributed to the overbroad interpretation of what constitutes “vessel equipment.” Specifically, CBP is amending HQ 101925 to interpret “vessel equipment” to include all articles or physical resources serving to equip the vessel, including the implements used in the vessel’s operation or activity.³ As specified in T.D. 49815(4), the scope of vessel equipment includes items which are “necessary and appropriate for the navigation, operation or maintenance of a vessel and for the comfort and safety of the persons on board.” Items considered “necessary and appropriate for the operation of the vessel” are those items that are integral to the function of the vessel and are carried by the vessel. These items may include

³ *See* “equipment,” at Merriam-Webster.com. Retrieved Dec. 9, 2019, from <https://www.merriam-webster.com/dictionary/equipment>.

those items that aid in the installation, inspection, repair, maintenance, surveying, positioning, modification, construction, decommissioning, drilling, completion, workover, abandonment or other similar activities or operations of wells, seafloor or subsea infrastructure, flow lines, and surface production facilities. CBP also emphasizes that the fact that an item is returned to and departs with the vessel after an operation is completed, and is not left behind on the seabed, is a factor that weighs in favor of an item being classified as vessel equipment, but is not a sole determinative factor.

Several comments support the modifications to the scope of “vessel equipment.” Other comments note that by including the illustrative list of functions for which vessel equipment could be used (*e.g.*, installation, inspection, repair), CBP suggests that any item used for these functions would now be considered “vessel equipment,” resulting in fewer, if any, submissions of ruling requests to CBP. CBP does not intend such a suggestion. Rather, by including the list of functions, however, CBP is providing the industry with examples of items that may constitute “vessel equipment” and informing the industry of factors that CBP may consider when determining whether an article is “vessel equipment.” CBP anticipates that, based on the comments to this notice, affected parties who seek greater certainty regarding their specific operations will be aided in their evaluation by virtue of the modifications set forth in this notice. However, recognizing the complexity and diversity of vessel industry operations, emerging technologies, and associated issues, CBP contemplates that these parties, rather than relying solely on these modifications, will seek clarification by submitting ruling requests pursuant to 19 CFR § 177.2.

Other comments request that CBP provide more specific guidance and/or examples of what constitutes “vessel equipment” under the modifications set forth in this notice. In developing this notice, CBP determined that the modified language provides greater clarity while aligning more appropriately with the plain meaning of the term “equipment” in order to eliminate the previously overbroad interpretations. As such, CBP does not consider providing more examples to be beneficial. Rather, CBP recognizes that affected parties can request a ruling to seek greater certainty regarding whether the specific items used in their operations constitute “vessel equipment.” Accordingly, any future interpretations by CBP of what items constitute “vessel equipment” will be in response to ruling requests based on specific transactions submitted pursuant to 19 CFR § 177.2.

Another comment suggests that CBP should interpret “vessel equipment” to include only that which is “owned by the vessel and

remains with the vessel after charter.” The comment’s proposed definition contravenes the interpretation outlined in T.D. 49815(4), which pertains to articles “necessary and appropriate for the navigation, *operation* or maintenance of the vessel” (Emphasis added). Specifically, the comment’s suggested definition would limit what constitutes “vessel equipment” beyond the framework established in T.D. 49815(4) by introducing an “ownership” requirement. As a result, this comment, including the suggested analysis of whether an item is “owned by the vessel,” is outside the scope of the rulings we are revoking or modifying by this notice.

Other comments suggest that CBP’s interpretation of “vessel equipment” set forth in this notice is overly broad and should instead utilize the approach to vessel equipment enunciated in T.D. 49815(4). Another comment noted that CBP has departed from the T.D. 49815(4) analysis and that “vessel equipment” does not include articles utilized to perform non-navigation functions. The modifications to the scope of “vessel equipment” do not contravene or overextend CBP’s approach in T.D. 49815(4). Rather, T.D. 49815(4) states that “equipment” includes articles “necessary and appropriate for the navigation, *operation or maintenance* of the vessel” (Emphasis added). As noted above, the plain meaning of the term “equipment” includes “implements used in an *operation or activity*.” (Emphasis added).⁴

Several comments seek clarification regarding the impact of the modifications and revocations of rulings related to “vessel equipment” on existing pipe/cable laying or drilling rulings.⁵ One comment urges CBP to limit the scope of the “paid out, not unladen” principle to “paid out material” and exclude items attached to “paid out material.”⁶ The holdings in those rulings are outside the scope of this notice. As stated in the October 23, 2019 Notice of Proposed Modification and Revocation, CBP specifically is not altering its rulings concerning the “paid out, not unladen” analysis. That analysis is unaffected by this notice, and thus, comments requesting CBP to alter the “paid out, not unladen” analysis are outside the scope of this notice, and this final

⁴ See “*equipment*,” at Merriam-Webster.com. Retrieved Dec. 9, 2019, from <https://www.merriam-webster.com/dictionary/equipment>.

⁵ See, e.g., HQ 112218 (July 22, 1992); HQ 113137 (June 27, 1994) (pertaining to cement, chemicals, and other consumable materials).

⁶ CBP has previously held that the use of a vessel in laying pipe is not coastwise trade, “even when the pipe is laid between two points in the United States embraced within the coastwise laws” because the material “is not landed but only paid out in the course of the pipelaying operation.” HQ 101925 (Oct. 7, 1976).

notice will not alter that doctrine. To the extent any entity requires clarification of any future activity in this regard, it can request a ruling from CBP.

Finally, a commenter has asked CBP to clarify whether the revocation of HQ H004242 (Dec. 22, 2006), outlined below, extends to that ruling's holding that "removal of debris from the [Outer Continental Shelf] ocean floor and its transportation to, and unloading at, a United States port would not violate 46 U.S.C. § 55102 or 46 U.S.C. § 80104." CBP has decided to revoke this ruling based on its analysis of whether certain items qualify as "vessel equipment" based on the mission of the vessel. Any discussion of the agency's interpretation of what constitutes a coastwise point on the Outer Continental Shelf is outside the scope of the present notice and is not impacted by the revocation of this ruling.

Accordingly, CBP is modifying the following rulings to the extent they are contrary to the guidance set forth in this notice. In addition, attached to this notice are the final versions of the modified rulings, which illustrate CBP's modifications and rationale.

Ruling Number	Summary of Modification	Corresponding Attachments
HQ 101925 (Oct. 7, 1976)	Limit the concepts that contributed to the overbroad definition of "vessel equipment" and the inappropriate conjoining of coastwise-trade-covered activity with non-coastwise-trade-covered activity	Attachment A
HQ 108442 (Aug. 13, 1986)	Remove analysis of whether work performed on or from a vessel is determinative of whether an item is merchandise or vessel equipment.	Attachment B
HQ 113841 (Feb. 28, 1997)	Remove the analysis of "mission of the vessel" to determine whether an item constitutes merchandise or vessel equipment.	Attachment C
HQ 114435 (Aug. 6, 1998)	Remove analysis of whether certain objects are "necessary for the accomplishment of the mission of the vessel" or "essential to the completion of the mission of the vessel."	Attachment D

Ruling Number	Summary of Modification	Corresponding Attachments
HQ 115185 (Nov. 20, 2000)	Remove the analysis of whether the subject items would be used to perform work from the vessel.	Attachment E
HQ 115487 (Nov. 20, 2001)	Remove analysis of whether it is the “mission of the vessel” to install the subject items.	Attachment F
HQ 115771 (Aug 19, 2002)	Remove analysis of whether the subject items are “necessary for the accomplishment of the mission of the vessel, and usually carried on board as a matter of course”	Attachment G
HQ 116078 (Feb. 11, 2004)	Remove references to other rulings improperly applying the “mission of the vessel” rationale.	Attachment H

In addition, CBP is revoking the following rulings because they are contrary to the guidance set forth in this notice:

HQ 115218 (Nov. 30, 2000)

HQ 115311 (May 10, 2001)

HQ 115522 (Dec. 3, 2001)

HQ 115938 (Apr. 1, 2003)

HQ H004242 (Dec. 22, 2006)

Additional Modifications Arising from HQ 101925 (Oct. 7, 1976)

HQ 101925 was issued to a Texas marine construction company and was based on facts provided by the company regarding its proposed use of a foreign-built barge. In addition to the ruling’s overbroad approach to vessel equipment described above, several of the holdings in HQ 101925 are no longer applicable due to amendments to 46 U.S.C. § 55102 (formerly 46 U.S.C. App. 883), the Outer Continental Shelf Lands Act,⁷ and 19 CFR § 4.80b(a). Accordingly, CBP is resolving these issues by modifying HQ 101925 as outlined in the modified version of the ruling (Attachment B); the modification does not have retroactive applicability to any transactions already completed by the ruling requestor.

⁷ Pub. L. 95-372, Title II, sec. 203 (Sept. 19, 1978), codified at 43 U.S.C. § 1333.

First, CBP ruled that the use of a work barge in repairing pipe is not a use in coastwise trade because there is “no distinction between repairing pipe and the laying of new pipe.” CBP is modifying this holding because it is overbroad. Although it is possible that the subject pipe repair operations could violate the Jones Act, no violation would occur if the materials used are “paid out, not unladen” or if the materials involved qualify as “vessel equipment” under the analysis provided above.

Second, CBP determined that the installation of anticorrosive anodes on offshore or subsea structures must be accomplished by a coastwise-qualified vessel “since the installation of a preventative substance is an intrinsically foreseeable operation.” CBP is removing the reference to “foreseeability” because the analysis of whether the use of an item is foreseeable or unforeseeable is irrelevant under the Jones Act.

Third, CBP considered whether a transportation was “incidental” to the activity in which the vessel ultimately would engage (*i.e.*, pipe repair), to determine whether the transportation of the item to be installed at a coastwise point was covered by the Jones Act. CBP is removing the concept of whether the transportation is “incidental” because the inquiry into whether the transportation is incidental to the vessel’s subsequent activity of using the item in an installation or repair is irrelevant.

Fourth, CBP ruled that a non-coastwise-qualified vessel could transport and subsequently unlade at a coastwise point items of “*de minimis*” value normally carried aboard the vessel as supplies. However, Public Law 100-329 (100 Stat. 508; effective June 7, 1988) amended the Jones Act to make clear that the term “merchandise” includes “valueless material.” *See* 46 U.S.C. § 55102(a)(2). As such, CBP is amending HQ 101925 to clarify that there is no basis for a *de minimis* value rule in determining whether an item is merchandise under the Jones Act.

Fifth, CBP ruled that a non-coastwise-qualified vessel could carry items normally carried onboard a vessel as supplies to conduct “unforeseen” repairs to offshore or subsea structures. Once again, CBP is removing the reference to “foreseeability” because the analysis of whether the use of an item is foreseeable or unforeseeable is irrelevant under the Jones Act.

Sixth, and finally, CBP ruled that a non-coastwise-qualified vessel could transport damaged or replacement pipe if the transportation was “incidental” to a pipeline repair operation. Once again, CBP is

removing the reference to this concept because the inquiry into whether the transportation is incidental to the vessel's subsequent activity is irrelevant.

Further, pursuant to 19 U.S.C. § 1625(c)(2), CBP intends by this notice to revoke or modify any treatment previously accorded by CBP to substantially identical transactions.

Lifting Operations

CBP previously held that the movement by lifting of a topside by a dynamically-positioned, non-coastwise-qualified vessel to a coastwise point, subsequent to receiving the topside from a coastwise-qualified vessel that previously laded the topside at a coastwise point, constitutes a violation of the Jones Act. Specifically, HQ H225102 (Sept. 21, 2012) and HQ H235242 (Nov. 15, 2012) (reconsidering HQ H225102) found that a company's proposal to use a dynamically-positioned, non-coastwise-qualified vessel to lift and reposition a topside to a single point anchor reservoir ("SPAR") would violate 46 U.S.C. § 55102 when, after receiving the topside, the non-coastwise-qualified vessel would move a short distance away under its own power to avoid coming into contact with the SPAR before returning to its pivot point to complete the topside installation. *See also*, HQ H242466 (July 3, 2013) (involving the same proposed topside installation and incorporating the same analysis but finding no violation where the vessel pivots on its central axis while lifting merchandise).

In finding a violation of 46 U.S.C. § 55102, CBP relied on several prior rulings in which it held that the use of a non-coastwise-qualified crane vessel to load and unload cargo or construct or dismantle a marine structure is not coastwise trade and does not violate the coastwise laws, provided that any movement of merchandise is effected exclusively by the crane and not by any movement of the vessel, except for necessary movement which is incidental to a lifting operation while it is taking place. *See, e.g.*, HQ 116111 (Jan. 30, 2004); HQ 116680 (June 29, 2006) (involving incidental "jostling movements that may occur due to wave action, the movement of the arm of the crane, or the like"). In this vein, CBP has held that a pivoting motion by a non-coastwise-qualified vessel on its central axis does not constitute transportation of merchandise within the meaning of 46 U.S.C. § 55102. *See, e.g.*, HQ 115985 (May 21, 2003) (analyzing the stationary movement of foreign-flagged vessel on its central axis) and HQ 111684 (June 26, 1991) (analyzing the 90-degree rotation of a non-coastwise-qualified barge on its axis). CBP has also held, however, that rotation on a fulcrum (*i.e.*, a swinging motion in which the center of the vessel shifts) by a non-coastwise-qualified crane vessel

to create a more “favorable angle” would not be necessary or incidental to the lifting operation, and would therefore constitute transportation of merchandise in violation of 46 U.S.C. § 55102. HQ 115881 (Apr. 21, 2003); *see also* HQ 116191 (Apr. 15, 2004). CBP has further held that the lateral movement of a non-coastwise-qualified floating crane/barge that is necessary for the vessel to lift and place its load would similarly constitute coastwise trade within the definition of 46 U.S.C. § 55102. HQ 115630 (Mar. 25, 2002).

In applying these rulings to the proposed movement of the topside by the non-coastwise-qualified lift vessel in HQ H225102 and HQ H235242, CBP reasoned that the proposed operation differed from prior rulings that permitted incidental movement because the vessel would depart from its central axis. *See, e.g.*, HQ H235242 (Nov. 15, 2012) (referencing HQ 115985 (May 21, 2003)). It was on this basis that CBP found that the proposed lateral movement of the vessel would violate 46 U.S.C. § 55102 because such movement would not be incidental. *See* HQ 116191 (Apr. 15, 2004). CBP now believes that such an interpretation is overly restrictive and does not accurately reflect the concept of coastwise transportation under the Jones Act.

As such, CBP is adopting a revised interpretation of offshore “lifting operations” to clarify that certain lateral movements do not constitute transportation under the Jones Act. The term offshore “lifting operations” includes the lifting by cranes, winches, lifting beams, or other similar activities or operations, from the time that the lifting activity begins when unloading from a vessel or removing offshore facilities or subsea infrastructure until the time that the lifting activities can be safely terminated in relation to the unloading, installation, or removal of offshore facilities or subsea infrastructure. Lifting operations encompass the initial vertical movement of an item from a lower position to a higher position,⁸ and any additional vertical or lateral movement necessary (including incidental movement while lifted items are temporarily placed on the deck of the lifting vessel as necessary for the safety of certain lifted items, as well as surface and subsea infrastructure, and the vessels and mariners involved) to safely place into position or remove an item from the vicinity of an existing structure, facility or installation. Offshore lifting operations are distinct from transportation subject to the Jones Act in that any lateral movement of the vessel or the item in the vicinity of the structure or facility where the item is being positioned or removed is merely subordinate to and a direct consequence of the lifting operations. Safety and practical concerns, including the physical demands

⁸ *See* “lift,” at Merriam-Webster.com. Retrieved Dec. 9, 2019, from <https://www.merriam-webster.com/dictionary/lift>.

of the lifting operations, the mitigation of risk to human life and health, and the avoidance of damage to the surface and subsea infrastructure in the lift operations area,⁹ allow for necessary lateral movement in the lift operations area, which does not constitute transportation. The term “transportation” for purposes of Jones Act enforcement is the conveyance of merchandise between points in the United States to which the coastwise laws apply.¹⁰ Thus, the movement of component parts or materials to and from the point or place at which the lifting operations are conducted constitutes transportation and therefore is subject to the Jones Act and must be conducted by a coastwise-qualified vessel.

Several comments support the proposed guidance set forth in the notice regarding offshore “lifting operations” while other comments seek clarification on whether the interpretation of “lifting operation” applies to all offshore lifting operations or only to “heavy lift” operations. The weight of a lift is not directly relevant to the determination of whether the lifting vessel’s lateral movement constitutes lifting or transportation, although it may be a pertinent factor in determining whether the lateral movement of a vessel is necessary to complete the lift.

Several comments stated that CBP’s interpretation of “lifting operations” contravenes the language in 46 U.S.C. § 55102, which states that non-coastwise-qualified vessels “may not provide *any part* of the transportation of merchandise” between coastwise points. (Emphasis added.) As noted above, the lateral movement required for “lifting operations” is not “transportation” within the meaning of the Jones Act. Unlike point-to-point movement contemplated in the statute, any lateral movement of a vessel or item in the immediate vicinity of the structure or facility where an item is being positioned or removed is merely subordinate to, and a direct consequence of, the lifting operations.

Several comments also assert that CBP’s interpretation of transportation is creating a non-statutory exemption from the Jones Act, and, furthermore, that there is no basis in the law for defining “transportation” based on safety and practical concerns. This notice does not define “transportation”; rather, it interprets the scope of the term “transportation” within the meaning of the Jones Act and based on facts, including safety and practical concerns, that were presented to

⁹ See 30 CFR § 250.714. To illustrate the need to address these safety and practical concerns, a party might point to a dropped objects plan required by the Bureau of Safety and Environmental Enforcement for oil and gas operations in the Outer Continental Shelf as a benchmark that demonstrates its compliance with federal safety regulations and industry best practices.

¹⁰ See 46 U.S.C. § 55102(b).

CBP when HQ H225102 (Sept. 24, 2012), HQ H235242 (Nov. 15, 2012), and HQ H242466 (July 3, 2013) were issued. Notably, CBP rulings are not regulations, but rather are written statements that interpret and apply the provisions of the Customs and related laws to the specific set of facts presented by the ruling requester. *See* 19 CFR § 177.1(d)(1).

Several comments sought clarification regarding the impact of CBP's proposed actions on the development of offshore wind energy facilities. Any future interpretations by CBP of which articles constitute "vessel equipment," whether in the context of the development of wind energy facilities or other activities, will be in response to ruling requests based on specific transactions submitted pursuant to 19 CFR § 177 .2.

In conclusion, CBP is revoking the following rulings to the extent that they are contrary to the guidance set forth in this notice and to the extent that the transactions are past and concluded:

HQ H225102 (Sept. 24, 2012)

HQ H235242 (Nov. 15, 2012)

HQ H242466 (July 3, 2013)

Furthermore, the holdings within any rulings that preceded these revoked rulings which determined that the lateral movement of an offshore non-coastwise-qualified floating crane/barge that is necessary for the vessel to safely lift into position or remove an item would constitute coastwise trade, are modified to the extent that they are contrary to the guidance set forth in this notice (*i.e.*, to the extent that the underlying facts contemplated lateral movements necessary for safety and practical concerns). CBP is not, however, revoking or modifying its previous rulings upon which these three revoked rulings relied where it was held that the use of a non-coastwise-qualified crane vessel to load and unload cargo or construct or dismantle a marine structure is not coastwise trade and does not violate the coastwise laws, provided that any movement of merchandise is effected exclusively by the crane and not by any movement of the vessel, except for necessary movement which is incidental to a lifting operation while it is taking place. *See, e.g.*, HQ 116111 (Jan. 30, 2004); HQ 116680 (June 29, 2006) (involving incidental "jostling movements that may occur due to wave action, the movement of the arm of the crane, or the like").

Based on the foregoing, pursuant to 19 U.S.C. § 1625(c)(1), CBP is modifying or revoking the above-mentioned rulings to clarify what constitutes vessel equipment pursuant to the Jones Act, 46 U.S.C. § 55102. CBP is also revoking the three rulings related to offshore

lifting operations as described above. 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: December 18, 2019

CRAIG T. CLARK
Director
Border Security and
Trade Compliance Division

Attachments

Attachment A

OCT 7 1976

VES-3-06-R:CD:C
101925 NL

Mr. J. R. Sellers
Vice President – Marine Construction
Oceaneering International, Inc.
9219 Katy Freeway
Houston, Texas 77024

Dear Mr. Sellers:

In your letter of December 2, 1975, you request advice concerning the proposed operation of a diving support work barge in United States waters. You state that the barge will be constructed in a foreign shipyard, towed to the United States and then used primarily in support of Oceaneering International's diving operations in the construction, maintenance, repair and inspection of offshore petroleum-related facilities.

While there is no requirement in the laws administered by the Customs Service to the effect that such vessel need obtain American registry in order to operate in United States waters, whether or not such registry can be obtained is a question which should be addressed to the Merchant Vessel Documentation Division, United States Coast Guard. It is clear, though, that a foreign-built vessel may not engage in the coastwise trade of the United States. Generally speaking, coastwise trade involves the transportation of passengers or merchandise between points in the United States embraced within the coastwise laws. All points within and the territorial waters surrounding the United States and nearly all the territories and possessions thereof are embraced within those laws.

Title 46, United States Code, section 883, prohibits (with certain exceptions not relevant here) the transportation of merchandise between points in the United States in a foreign-flag vessel, a foreign-built vessel, or a vessel which at one time has been under foreign flag or ownership. Section 289 of title 46 prohibits the transportation of passengers between points in the United States on a foreign vessel.

However, not every movement between points in the United States is deemed to be a transportation within the meaning of the coastwise laws. We will advise you of the permissibility of the proposed operations in United States waters by this foreign-built diving support work barge in the order in which you presented them. It is suggested, though, that the appropriate office of the Coast Guard be contacted in order to ascertain whether any laws or regulations administered by that agency, other than those relating to vessel documentation, would be applicable in this matter.

(1) The Customs Service has held that the sole use of a vessel in laying pipe is not a use in the coastwise trade of the United States, even when the pipe is laid between two points in the United States embraced within the coastwise laws. Further, since the use of a vessel in pipelaying is not a use in the coastwise trade, a foreign-built vessel may carry the pipe which it is to lay between such points. It is the fact that the pipe is not landed but only paid out in the course of the pipelaying operation which makes such operation permissible.

However, the transportation of pipe by any vessel other than a pipelaying vessel to a pipelaying location at a point within United States territorial waters would be considered coastwise trade and would therefore have to be accomplished by a vessel meeting the statutory requirements entitling it to engage in such trade.

(2) The Customs Service is of the opinion that pipe repair operations conducted by a foreign-flag vessel could violate the Jones Act, but not if the materials used are "paid out, not unladen," or if the materials involved qualify as vessel equipment. Customs lacks sufficient facts to determine whether the pipe repair operations at issue violate the Jones Act.

(3) The installation of anodes on a subsea pipeline or offshore drilling platform must be accomplished by a vessel entitled to engage in the coastwise trade because such items constitute merchandise.

(4) The transportation of pipeline burial tools by the work barge for use by the crew of the work barge to accomplish the pipelaying operations is not an activity prohibited by the coastwise laws since such tools are considered to be part of the legitimate equipment of that vessel.

(5) Customs lacks sufficient facts to determine whether the use of the vessel in the installation of pipeline connectors to offshore drilling platforms and subsea wellheads is a use in the coastwise trade. Pipe repair operations conducted by a foreign-flag vessel could violate the Jones Act, but not if the materials used are "paid out, not unladen," or if the materials involved qualify as vessel equipment.

(6) The Customs Service lack sufficient facts to determine whether the sole use of a vessel in effecting underwater repairs to offshore or subsea structures is considered a use in coastwise trade. Whether items are tools (and as such, vessel equipment used by the vessel's crew) or merchandise depends upon the nature of the item and the facts associated with the operation of the vessel.

Crewmembers, including technicians and divers, necessary in the vessel's inspection, installation, and repair operations, are not considered passengers, nor are construction personnel who are on the barge in connection with its business. However, persons transported on the barge between points embraced within the coastwise laws who are not connected with the operation, navigation, ownership, or business of the barge are considered passengers within the meaning of the

coastwise laws. Legitimate equipment and stores of the barge for its use are not considered merchandise within the meaning of section 883. However, articles transported on the barge between points embraced within the coastwise laws which are not legitimate stores and equipment of the barge, other than pipe laden on board to be paid out in the course of operations, pipeline connectors, pipeline repair materials, and the other repair materials specified above, are subject to forfeiture under section 883.

It should be emphasized that the transportation of persons or materials as described above takes on a wholly different character if it results in the delivery of such persons or materials to a subsea or offshore structure, such as a drilling platform, for use by such structure. For example, while the transportation of repair materials by the work barge for use by its crew in effecting repairs on or from the barge, or in its service capacity underwater, is not prohibited by the coastwise laws, the delivery of such materials or persons to an offshore drilling platform to effect repairs thereon would be a transportation of something other than the legitimate equipment or crew of the work barge, and as such, would have to be accomplished by a vessel entitled to engage in the coastwise trade.

(7) The use of a vessel in the transportation of "salvaged" materials from offshore drilling platforms or pipelines in United States waters, other than pipe being retrieved incidental to a pipeline repair operation, would be deemed a use in the coastwise trade, and would therefore have to be accomplished by a vessel entitled to engage in the coastwise trade.

(8) The use of a vessel in the transportation of machinery or production equipment to an offshore production platform would be deemed a use in the coastwise trade, and would therefore have to be accomplished by a vessel entitled to engage in the coastwise trade. However, the sole use of the diving support work barge in lifting and depositing heavy loads at a fixed site in the territorial waters of the United States is not considered coastwise trade and such activity would not be prohibited by the coastwise laws.

(9) As was just stated, with regard to the transportation of machinery or production equipment to an offshore production platform, the movement of workover rigs from one production platform to another would be considered to be coastwise transportation, but the mere lifting and depositing of such rigs by the crane of the work barge, for transportation on a vessel entitled to engage in the coastwise trade, would not of itself be considered a use in the coastwise trade.

(10) Customs lack sufficient facts to determine whether the use of a vessel in the transportation of a wellhead assembly to a location on the seabed within United States waters would be deemed a use in the coastwise trade. Whether items are tools (and as such, vessel equipment used by the vessel's crew) or merchandise depends upon the nature of the item and the facts associated with the operation of the vessel.

The laws on entrance and clearance of vessels are applicable to movements of the diving support work barge to, from and between points in United States waters, with specific requirements depending on whether the vessel is under United States or foreign flag. We will be happy to discuss such requirements when we are made aware of the intended flag of registry of the work barge.

You state that the work barge will be supplied by crewboat or helicopter. Further information about the helicopters, especially their registry, is required before we can rule on the applicability of the air cabotage law (49 U.S.C. 1508(b)). The navigation laws, on the other hand, are fully applicable to supply vessels operating within United States territorial waters. Accordingly, a supply vessel which transports supplies, equipment, etc., or crewmembers between points embraced within the coastwise laws of the United States (including the work barge when located at a point within United States waters) would be considered as operating in the coastwise trade and would have to meet the statutory requirements entitling it to engage in such trade.

Finally, General Headnote 5 of the Tariff Schedules of the United States provides that:

For the purpose of headnote 1-***(e) vessels which are not "yachts or pleasure boats" within the purview of subpart D, part 6, Schedule 6, "are not articles subject to the provisions of these schedules."

As the vessel in question is not a yacht or pleasure boat, it would not be treated as an article subject to the provisions of the Tariff Schedules and would not, therefore, be subject to duty.

This decision is being circulated to all Customs officers to ensure uniformity in the administration of the customs and navigation laws.

Sincerely yours,

(SIGNED) J. P. TEBEAU

J. P. Tebeau
Director
Carriers, Drawback and Bonds Division

Cc: R.C., Houston
New Orleans

MLublinski/mjn:10/6/76

Attachment B



**DEPARTMENT OF
THE TREASURY
U.S. CUSTOMS SERVICE**

WASHINGTON, D.C. 20229

13 AUG 1986



REFER TO
VES-3-15-CO:R:CD:C
108442 PH

Thomas L. Mills, Esq.
Dyer, Ellis, Joseph & Mills

Watergate – 1000 Items considered “necessary and appropriate for the operation of the vessel” are those items that are integral to the function of the vessel and are carried by the vessel.

600 New Hampshire Avenue, NW
Washington, D.C. 20037

Dear Mr. Mills:

With your letter of June 24, 1986, you enclosed a ruling request from Michael K. Bell, Esq., of Clann, Bell, & Murphy in Houston, Texas, on the applicability of the coastwise laws to foreign-flag self-elevating work platforms denominated as “liftboats.” The liftboats, which carry at least one crane derrick, move to and from offshore oil structures under their own power. On location the liftboats change from seagoing vessels into stationary bottom-bearing, elevated work platforms by lowering their legs to the seabed and jacking themselves up on their legs to the desired heights.

Mr. Bell states that, typically, the liftboat company contracts with an oil company or oilfield servicing company which provides the maintenance crew to perform the work at the rigs or platforms. The liftboats will carry the tools and supplies of the maintenance crew, as well as the maintenance crew, between and to such offshore worksites. The maintenance crew may include scientific and/or technical personnel necessary to perform the mission of the liftboats. On occasion, the maintenance crew may be transported to or from the worksite by helicopter or non-affiliated crew boat. Mr. Bell states that although the liftboats may be large enough to transport drilling mud, treating fluids, lumber, drill pipe, casing, tubing and other items to and from offshore worksites, the liftboats are not intended to be used to transport such items unless they are to be utilized in connection with the operation or business of the liftboats.

Title 46, United States Code, section 883 (46 U.S.C. 883, often called the Jones Act), prohibits the transportation of merchandise between points in the United States embraced within the coastwise laws in any vessel other than a vessel built in and documented under the laws of the United States and owned by persons who are citizens of the United States. Section 289 of title 46, as interpreted by the Customs Service, prohibits the transportation of passengers between points in the United States embraced within the coastwise laws, either directly or by

way of a foreign port, in a non-coastwise-qualified vessel (see above).

A point in United States territorial waters is considered a point embraced within the coastwise laws of the United States, for purposes of these provisions. The territorial waters of the United States consist of the territorial sea, defined as the belt, 3 nautical miles wide, adjacent to the coast of the United States and seaward of the territorial sea baseline.

Section 4(a)(1) of the Outer Continental Shelf Lands Act of 1953, as amended (43 U.S.C. 1333(a)(1)) (OCSLA), provides, in pertinent part, that the laws of the United States are extended to "...the subsoil and seabed of the outer Continental Shelf and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom ... to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State."

Under the foregoing provision, we have ruled that the coastwise laws are extended to mobile rigs during the period they are secured to or submerged onto the seabed of the outer Continental Shelf (OCS) (Treasury Decision 54281(1)). Subsequent rulings have applied the same principles to drilling platforms, artificial islands, warehouse vessels anchored over the OCS when used to supply drilling rigs on the OCS, and other installations and devices attached to the OCS for any of the requisite purposes.

In our interpretation of the coastwise laws, we have ruled that crewmembers, divers, the maintenance crew, and other personnel carried on a vessel the function of which is to engage in oceanographic research, service or repair of drilling rigs on the OCS, or similar operations are not passengers, for purposes of 46 U.S.C. 289. Thus the coastwise laws would not prohibit the transportation by the non-coastwise-qualified liftboat of such persons from a point in the United States to a point on the OCS where the liftboat would engage in the described activities.

Pursuant to 19 U.S.C. § 1401(c), CBP has held that "merchandise" for the purposes of the Jones Act "means goods, wares, and chattels of every description, and includes merchandise the importation of which is prohibited, and monetary instruments...." However, merchandise does not include the equipment of a vessel (*i.e.*, "vessel equipment"). Such articles have been defined to include those which are "necessary and appropriate for the navigation, operation or maintenance of the vessel and for the comfort and safety of the persons on board." Treasury Decision ("T.D.") 49815(4), March 13, 1939. Decisions as to whether a given article constitutes "vessel equipment" are determined on a case-by-case basis.

We have ruled that the use of a vessel in oceanographic research, including marine coring, the laying and repair of underwater cable or pipe, oil well stimulation, including the pumping of cement and other agents into an oil well or oil field on the OCS is not coastwise trade.

The applicability of the coastwise laws to specific uses of the liftboat listed by Mr. Bell in his summary is considered below:

1. Well maintenance projects.
 - a. CBP lacks sufficient facts to determine whether use of the liftboat, equipped with electrical wire, a wireline unit, wireline tools, and other equipment necessary to conduct down hole wireline services would violate the coastwise laws. What constitutes vessel equipment versus merchandise would be determined on a case-by-case basis.
 - b. Use of the liftboat to transport well workover units from a port in the United States to a platform attached to the OCS where well maintenance would be performed by or with the use of the workover unit would violate the coastwise laws because the function of the liftboat in this operation is merely to transport the workover unit between coastwise points.
 - c. Use of the liftboat outfitted with disposable burners, transfer pumps, heat exchangers, separators, a laboratory and other equipment essential for production test analysis of OCS oil wells would not violate the coastwise laws if the operation involved the liftboat jacking up next to a platform with the equipment remaining on board and performing tests by connecting the equipment to the oil wells.
 - d. Use of the liftboat, with lightweight rotary rigs installed on board, to obtain core samples on the OCS would not violate the coastwise laws.
2. Construction/repair work. Use of the liftboat to inspect and/or repair an oil well on the OCS would not violate the coastwise laws. However, CBP lacks sufficient facts to determine whether the transportation of repair materials, structural materials, clamps, and sandblasting equipment to perform these operations by the liftboat to an oil well on the OCS would violate the coastwise laws. A Jones Act-qualified vessel must transport repair materials if those materials do not constitute vessel equipment. What constitutes vessel equipment versus merchandise would be determined on a case-by-case basis.
3. Diving operations. Use of the liftboat to support diving operations at a work site on the OCS, when the liftboat transported the divers and their equipment to the worksite would not violate the coastwise laws.
4. Salvage. Use of the foreign-flag liftboat in salvage operations on the OCS, when the article being salvaged and/or the liftboat are considered to be subject to the laws of the United States by virtue of 43 U.S.C. 1333(a)(1), would violate 46 U.S.C. 316(d), unless the liftboat is authorized to engage in the salvage operations under 46 U.S.C. 316(d) and 19 C.F.R. 4.97.
5. Pipe-laying. Use of the liftboat in a joint operation with a pipelaying crane barge to provide an additional work area and a stable platform for underwater pipe-laying would not violate the coastwise laws. Use of the liftboat to transport pipeline burial tools to a job site where they would be used for burying the pipeline and to return them to the point

from which they were transported also would not violate the coastwise laws, assuming that the pipeline burial tools were used by the liftboat, and the liftboat did not merely transport them to a point on the OCS subject to the coastwise laws by virtue of 43 U.S.C. 1333(a)(1). Mr. Bell should be aware that if the pipeline burial operation is considered dredging, it could be prohibited by 46 U.S.C. 292 when performed by the liftboat if the latter is foreign-built (see ruling VES-10-02/VES-10-03 R:CD:C 103692 MKT, December 28, 1978, and Customs Service Decision (C.S.D.) 85-11, copies enclosed). CBP lacks sufficient facts to determine whether the use of the liftboat to transport pipeline connectors and tools from a port in the United States to an OCS job site and to connect a pipeline to a drilling platform or subsea wellhead would violate the coastwise laws. The same is true regarding the use of the liftboat to transport pipe and repair materials from a port in the United States to a construction site for use to repair a pipeline. A Jones Act-qualified vessel cannot transport repair materials if those materials constitute merchandise and not vessel equipment. What constitutes vessel equipment versus merchandise would be determined on a case-by-case basis.

6. Pipe-handling. Use of the liftboat to handle pipe (e.g., pull and snub it) while jacked up adjacent to an offshore platform would not violate the coastwise laws, assuming this operation involved no transportation of merchandise (other than movement of the pipe by the pipe-handling unit while the liftboat remains stationary) or passengers.
7. Drilling mud and treating fluids. CBP lacks sufficient facts to determine whether the use of the liftboat to transport drilling mud or treating fluids from a point in the United States to a drilling platform where they are used by liftboat to treat the well would violate the coastwise laws. What constitutes vessel equipment versus merchandise would be determined on a case-by-case basis.

Sincerely,

Kathryn C. Peterson
Chief
Carrier Rulings Branch

Enclosures

Attachment C



DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

HQ 113841

FEB 28 1997

VES-3:RR:IT:EC 113841 LLB

CATEGORY: Carriers

Mr. George H. Robinson,
Jr. 822 Harding Street
P.O. Box 52800
Lafayette, Louisiana 70505-2008

RE: Coastwise trade; Cable and pipe laying operations; Outer Continental Shelf;
Subsea production site; 46 U.S.C. App. 883; 43 U.S.C.1333(a)

Dear Mr. Robinson:

Reference is made to your letter of February 17, 1997, in which you request that Customs rule upon the proposed use of a non-coastwise-qualified vessel in the transportation of so-called hydraulic and electrical "umbilicals", the transportation of a Remotely Operated Vehicle (ROV), and the towing of pipeline sections. Our determination is contained in the ruling below.

FACTS:

The company known as BP Exploration & Oil, Inc., intends to initiate a gas and oil exploration project on the outer Continental Shelf of the United States adjacent to the coast of Louisiana. The Company sought and received a Customs Ruling on various aspects of the project (Ruling Letter 113726), and now proposes additional operations for which a ruling is sought.

The specific operation for which the previous ruling was sought involved the proposed installation by a non-qualified vessel of two "umbilicals" which would be laid on the seabed between a production manifold and a fixed production platform on the outer-Continental shelf. One of the umbilicals would be for hydraulic purposes and the other would be for electrical uses. The umbilicals were described as being flexible cables. The manifold and the platform would be located some fourteen miles apart. In addition to the umbilicals being placed on the seabed, it was stated that their terminal ends would be affixed to the manifold at one point, and to the platform at

the other. In addition to the regular vessel crew, it was proposed that several American technicians ride aboard the installing vessel in order to assist in the attachment process. The role of the technicians, as described in the ruling request and elaborated upon in a telephone conversation of November 6, 1996, would be to monitor the installation process along the fourteen-mile course of umbilical laying by use of specialized equipment (the ROV), as well as to briefly board the semi-submersible vessel for the purpose of further monitoring the attachment process. The technicians would re-board the installing vessel following the manifold attachment process.

In the matter currently under consideration, three questions are posed for our consideration:

1. Whether the foreign-flag installing vessel may call at a United States port with foreign-laden umbilicals and spare umbilicals aboard for the purpose of loading the ROY aboard for transportation to the installation site.
2. Whether that same vessel may return to port at the conclusion of the operation for the purpose of off-loading the ROV and any unused umbilicals.
3. Whether a foreign-flag towing vessel may be utilized to tow seven-mile long pipeline segments from a United States port to the off-shore production platform on the outer Continental Shelf.

ISSUE:

Whether the services of non-coastwise-qualified vessels may be utilized to load, transport and unload the Remotely Operated Vehicle to be used in the described operation; to transport and unload unused umbilicals; and to tow pipeline segments between coastwise points.

LAW AND ANALYSIS:

Generally, the coastwise laws prohibit the transportation of passengers or merchandise between points in the United States embraced within the coastwise laws in any vessel other than a vessel built in, documented under the laws of, and owned by citizens of the United States.

The coastwise laws generally apply to points in the territorial sea, which is defined as the belt, three nautical miles wide, seaward of the territorial sea baseline, and to points located in internal waters, landward of the territorial sea baseline.

Title 46, United States Code Appendix, section 883, the coastwise merchandise statute often called the "Jones Act", provides in part that no merchandise shall be transported between points in the United States embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any vessel other than a vessel built in, documented under the laws of, and owned by citizens of the

United States.

Not included within the general meaning of merchandise is the equipment of a vessel which will be used by that vessel. Such materials have been defined as articles, “. . . necessary and appropriate for the navigation, operation or maintenance of the vessel and for the comfort and safety of the persons on board. (Treasury Decision 49815(4), March 13, 1939).

Customs has specifically ruled that, “Vessel equipment placed aboard a vessel at one United States port may be removed from the vessel at another United States port at a later date without violation of the coastwise laws.” (Customs Ruling Letter 102945, November 8, 1978). Decisions as to whether a given article comes within the definition of “vessel equipment” are made on a case by case basis.

Section 4(a) of the Outer Continental Shelf Lands Act of 1953, as amended (43 U.S.C. 1333(a); “OCSLA”), provides in part that the laws of the United States are extended to: “the subsoil and seabed of the outer Continental Shelf and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom . . . to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction within a state.”

Under the foregoing provision, we have ruled that the coastwise laws and other Customs and navigation laws are extended to mobile oil drilling rigs during the period they are secured to or submerged onto the seabed of the outer Continental Shelf (“OCS”). We have applied that principle to drilling platforms, artificial islands, and similar structures, as well as to devices attached to the seabed of the outer Continental Shelf for the purpose of resource exploration operations.

The Customs Service has previously ruled (Ruling 112866 dated August 31, 1993) that the laying of cable is not considered coastwise trade. When cable is laid, it is paid out in a continual operation while the vessel proceeds. Customs distinguishes between such an operation and the act of unloading merchandise since there is no single identifiable coastwise point involved in the laying of cable.

With respect to the operation presently under consideration, we find that both the umbilicals (including spares), and the ROV are considered to be equipment of the foreign-flag umbilical laying vessel. With respect to the umbilicals, even if they were regarded as merchandise the facts indicate that they will be placed aboard the vessel in a foreign port. This being the case, there would be no transportation between coastwise points. The ROV constitutes vessel equipment because it is integral to the function of the umbilical laying vessel. Furthermore, the fact that the ROV is returned to and departs with the vessel is weighs in favor of it being considered vessel equipment. In light of our determination that the named articles are considered equipment, the transportation proposed in the first two enumerated questions, above, may be accomplished with the use of a non-coastwise-qualified vessel.

With respect to the third question presented for our consideration, we find the proposed operation to be in the nature of a coastwise transportation of merchandise rather than a laying of pipeline which, as discussed above, would not be a transportation within the meaning of the merchandise statute (section 883). Unlike pipelaying which is accomplished in a continuous operation with no specifically identifiable point of unloading, the proposal under consideration involves the transportation of pipeline segments from a shore point in the United States to an operating site on the OCS which is considered to be a second coastwise point. The transaction will thus involve a lading at one coastwise point and an unloading at a second such point in violation of the statute.

HOLDING:

Following a thorough consideration of the facts and analysis of the law and applicable precedents, we have determined that the matters posed in enumerated questions 1 and 2, as stated in the Facts portion of this ruling, may be accomplished with the use of a foreign-flag vessel. The transportation posed in enumerated question 3, however, may be lawfully accomplished only with the services of a coastwise-qualified vessel.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Laderberg', with a stylized flourish at the end.

Jerry Laderberg
Acting Chief
Entry and Carrier Rulings Branch

Attachment D



DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, DC

HQ 114435

AUG 6 1998

VES.:J-RR:IT:EC 114435 LLB

CATEGORY: Carriers

Mr. J. Kelly Duncan
Jones, Walker, Waechter, Poitevent, Carrere,
and Denegre
201 St. Charles Avenue ..
New Orleans, Louisiana 70170-5100

RE: Coastwise trade; Pipe laying operations Outer Continental Shelf; Subsea production sites;
46 U.S.C. App. 289; 46 U.S.C. App. 883; 43 U.S.C. 1333(a)

Dear Mr. Duncan:

Reference is made to your letter of July 30, 1998, in which you request that Customs rule upon certain operations proposed by your client in international waters overlying the Outer Continental Shelf of the United States. You have requested that we expedite our consideration of your request, and that we accord confidential treatment to this matter.

FACTS:

The overall operation presented for consideration and ruling is extensive and complicated, but reduced to its essence it involves the transportation of certain technical personnel, subsea umbilicals, flowlines, some containing electrical and hydraulic control lines, and equipment for subsea installation work, from both foreign and domestic ports to work areas in waters in the Gulf of Mexico.

The issues for our consideration have been narrowed by the presentation of three specific questions, which we paraphrase as follows:

1. May a non-coastwise-qualified vessel be used to lay a so-called “umbilical” on the seabed of the Outer Continental Shelf, and to transport and temporarily discharge certain equipment and personnel necessary for the task.
2. May a non-coastwise-qualified vessel be used to lay so-called “flowlines” on the seabed of the Outer Continental Shelf and to transport and temporarily discharge certain equipment and personnel necessary for the task.
3. Would liability for duty on the umbilical be limited to only that portion which is in contact with a production platform which is fixed to the seabed on the Outer Continental Shelf.

ISSUE:

Whether the coastwise laws of the United States would prove an impediment to the laying of flexible umbilical and flowline tubing on the seabed of the Outer Continental Shelf by a non-coastwise-qualified vessel, and might duty be assessed under the Harmonized Tariff Schedule of the United States on any portion of the tubing so laid.

LAW AND ANALYSIS:

Generally, the coastwise laws prohibit the transportation of passengers or merchandise between points in the United States embraced within the coastwise laws in any vessel other than a vessel built in, documented under the laws of, and owned by citizens of the United States.

The coastwise laws generally apply to points in the territorial sea, which is defined as the belt, three nautical miles wide, seaward of the territorial sea baseline, and to points located in internal waters, landward of the territorial sea baseline.

Title 46, United States Code Appendix, section 883, the coastwise merchandise statute often called the “Jones Act”, provides in part that no merchandise shall be transported between points in the United States embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any vessel other than a vessel built in, documented under the laws of, and owned by citizens of the United States.

The coastwise law applicable to the carriage of passengers is found in 46 U.S.C. App. 289 and provides that no foreign vessel shall transport passengers between ports or places in the United States, either directly or by way of a foreign port, under a penalty of \$200 for each passenger so transported and landed. Section 4.50(b), Customs Regulations (19 CFR 4.50(b)), defines as a passenger, “any person carried on a vessel who is not connected with the operation of such vessel, her navigation, ownership, or business.”

Not included within the general meaning of merchandise is the equipment of a vessel which will be used by that vessel. Such materials have been defined as articles, "...necessary and appropriate for the navigation, operation or maintenance of the vessel and for the comfort and safety of the persons on board." (Treasury Decision 49815(4), March 13, 1939). Customs has specifically ruled that, "Vessel equipment placed aboard a vessel at one United States port may be removed from the vessel at another United States port at a later date without violation of the coastwise laws." (Customs Ruling Letter 10294S, November 8, 1978). Decisions as to whether a given article comes within the definition of "vessel equipment" are made on a case by case basis.

Section 4(a) of the Outer Continental Shelf Lands Act of 1983, as amended (43 U.S.C. 1333(a); (OCSLA)), provides in part that the laws of the United States are extended to: "the subsoil and seabed of the outer Continental Shelf and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom...to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction within a state."

Under the foregoing provision, we have ruled that the coastwise laws and other Customs and navigation laws are extended to mobile oil drilling rigs during the period they are secured to or submerged onto the seabed of the outer Continental Shelf ("OCS"). We have applied that principle to drilling platforms, artificial islands, and similar structures, as well as to devices attached to the seabed of the outer Continental Shelf for the purpose of resource exploration operations.

The Customs Service has previously ruled (Ruling 112866 dated August 31, 1993) that the laying of cable is not considered coastwise trade. When cable is laid, it is paid out in a continual operation while the vessel proceeds. Customs distinguishes between such an operation and the act of unloading merchandise since there is no single identifiable coastwise point involved in the laying of cable.

With respect to the dutiability of all or a portion of the umbilical, Customs has had occasion to rule on similar matters. In Headquarters Letter 1064S4, dated November 16, 1983, the issue of the dutiability of certain flexible pipeline laid on the seabed between two fixed platforms was considered. Customs determined in those circumstances that duty liability is limited to that portion of the pipeline which rises along the structure of a production platform, beginning with its first point of attachment to the structure. No subsequent rulings have altered this finding.

With respect to the operation presently under consideration, we find it to be akin to the laying of subsea cable or pipe. The umbilicals and flowlines do not constitute merchandise under the statute because they are paid out, and not unladen. The laying of the umbilicals and flowlines is not an impermissible unloading under the law.

With regard to any technicians transported aboard the vessel, we consider them to be connected with the operation of the vessel. We are informed that they will be engaged in part in monitoring the umbilical and flowline laying operation during that process, and are thus necessary to the successful

completion of the task. They may be required to depart the vessel temporarily at a coastwise point (a platform affixed to the seabed of the Outer Continental Shelf), but will re-board the vessel to depart from the site. This is no different than a member of the crew of a vessel getting off temporarily and then re-joining the vessel before its departure.

Further with respect to the operation presently under consideration, we find the Remote Operated Vehicle (ROV) used in the installation process to be equipment of the foreign-flag umbilical and flowline laying vessel because it is integral to the function of the vessel. Furthermore, the fact that the ROV is returned to and departs with the vessel is weighs in favor of it being considered vessel equipment. In light of our determination that the named article is considered equipment, the transportation proposed in the first two enumerated questions, above, may be accomplished with the use of a non-coastwise-qualified vessel.

HOLDING:

Following a thorough consideration of the facts and analysis of the law and applicable precedents, we have determined that the vessel under consideration may lawfully engage in the laying of flexible umbilicals and flowlines on the Outer Continental Shelf of the United States. Further, technicians and other vessel equipment necessary to the operation of the vessel may be lawfully transported and may be temporarily landed if necessary on a platform fixed to the Outer Continental Shelf, so long as they are re-joined with the vessel for departure.

Sincerely,



Jerry Laderberg
Chief



Entry Procedures and Carriers Branch

Attachment E

HQ 115185

November 20, 2000

VES-3-15-RR:IT:EC 115185 GEV

CATEGORY: Carriers

Karla R. Holomon, Esq.
ExxonMobil Development Company
12450 Greenspoint Drive
Houston, Texas 77210-4876

RE: Coastwise Trade; Outer Continental Shelf Lands Act; 43 U.S.C.
§ 1333(a); 46 U.S.C. App. § 883

Dear Ms. Holomon:

This is in response to your letters of October 4, 2000, and November 8, 2000, respectively, requesting a ruling as to whether the use of a foreign-flagged vessel in the proposed installation of certain equipment at locations in the Gulf of Mexico violates 46 U.S.C. App. § 883 (the "Jones Act"). Our ruling on this matter is set forth below.

FACTS:

The first scenario presented for our consideration involves the installation of jumper pipes on the Gulf of Mexico ocean floor. A jumper pipe is a piece of pipe approximately 50-85 feet in length. The jumper pipes will be used to connect subsea wells to a subsea pipeline. This subsea production equipment, which will be in place at the site where the jumper pipe installation will occur, will not be operational at the time of installation. A subsea pipeline will carry produced fluids from the subsea wells to an existing platform. The jumper pipes, which will be fabricated in Louisiana, will be transported to the installation site by a foreign-flagged offshore multi-purpose construction vessel. The vessel will depart from a Louisiana port and proceed to the site where the vessel's crew will install the jumpers. The vessel will then either: (a) return to the port of origin; (b) return to another U.S. port; or (c) proceed to another offshore installation location.

The second scenario presented for our consideration involves the installation of hull mounted risers (HMR) and steel catenary riser spool pieces (SCRSP) on the side of a deep draft caisson vessel (DDCV) that is currently in operation. The HMR and SCRSP are flanged pipe spools approximately 200 feet and 40 feet in length, respectively. Their purpose is to connect pipeline terminations to interconnect piping running to topside processing equipment. The HMR and SCRSP will be bolted together and installed in existing clamps that are attached to the side of the DDCV. Produced fluids will be carried through the subsea pipeline and the HMR and SCRSP to the topside

equipment for processing. The aforementioned subsea equipment (pipelines and interconnect piping) will be in place at the location where the riser installation occurs but will not be operational at the time of installation. When installed, the top 30 feet of the HMR will be above the waterline. The remaining 170 feet of the HMR and SCRSP will be installed below the waterline. The HMR and SCRSP will be fabricated in Texas and transported to the installation site by a foreign-flagged offshore multi-purpose construction vessel. The vessel will depart from a Texas port and proceed to the site where the vessel's crew will install the HMR and SCRSP. The vessel will then either: (a) return to the port of origin; (b) return to another U.S. port; or (c) proceed to another offshore installation location.

The final scenario presented for our consideration is as follows. Prior to the installation of the jumper pipes and HMR and SCRSP described above, a U.S.-flagged vessel will transport a manifold and pile to be installed on the ocean floor at the site by a foreign-flagged offshore construction vessel. The construction vessel will depart from Galveston, Texas, and proceed to the site where the vessel's crew will install the manifold and pile. The construction vessel will then either: (a) return to the port of origin; (b) return to another U.S. port; or (c) proceed to another offshore installation location. If the manifold or pile is damaged during installation, the preferred course of action will be for the construction vessel to lift the manifold and pile onto its deck and transport same back to the point of origin or to another nearby U.S. port.

ISSUE:

Whether the use of a foreign-flagged vessel in the scenarios described above constitutes a violation of 46 U.S.C. App. § 883.

LAW AND ANALYSIS:

Title 46, United States Code Appendix, § 883 (46 U.S.C. App. § 883, the merchandise coastwise law often called the "Jones Act"), provides, in part, that no merchandise shall be transported between points in the United States embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any vessel other than one that is coastwise-qualified (i.e., U.S.-built, owned and documented).

Section 4.80b(a), Customs Regulations (19 CFR § 4.80b(a)), promulgated pursuant to the aforementioned statute, provides, in pertinent part, as follows:

A coastwise transportation of merchandise takes place, within the meaning of the coastwise laws, when merchandise laden at a point embraced within the coastwise laws ("coastwise point") is unladen at another coastwise point,...
(Emphasis added)

The coastwise laws generally apply to points in the territorial sea, defined as the belt, three nautical miles wide, seaward of the territorial sea baseline, and to points located in internal waters, landward of the territorial sea baseline, in cases where the baseline and the coastline differ.

Section 4(a) of the Outer Continental Shelf Lands Act of 1953, as amended (67 Stat. 462; 43 U.S.C. § 1333(a)) (OCSLA), provides, in part, that the laws of the United States are extended to:

... the subsoil and seabed of the outer Continental Shelf and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom ... to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction within a State.

The statute was substantively amended by the Act of September 18, 1978 (Pub. L. 95-372, Title II, § 203, 92 Stat. 635), to add, among other things, the language concerning temporary attachment to the seabed. The legislative history associated with this amendment is telling, wherein it is stated that:

...It is thus clear that Federal law is to be applicable to all activities or all devices in contact with the seabed for exploration, development, and production. The committee intends that Federal law is, therefore, to be applicable to activities on drilling rigs, and other watercraft, when they are connected to the seabed by drillstring, pipes, or other appurtenances, on the OCS for exploration, development, or production purposes. [House Report 95-590 on the OCSLA Amendment of 1978, page 128, reproduced at 1978 U.S.C.C.A.N. 1450, 1534.]

Under the foregoing provision, we have ruled that the Customs and navigation laws, including the coastwise laws, the laws on entrance and clearance of vessels, and the provisions for dutiability of merchandise, are extended to mobile oil drilling rigs during the period they are secured to or submerged onto the seabed of the OCS (Treasury Decision (T.D.) 54281(1)). We have applied the same principles to drilling platforms, artificial islands, and similar structures, as well as devices attached to the seabed of the OCS for the purpose of resource exploration operations, including warehouse vessels anchored over the OCS when used to supply drilling rigs on the OCS. (see Customs Service Decisions (C.S.D.s) 81-214 and 83-52, and Customs Ruling Letter 107579, dated May 9, 1985)

In regard to the first two scenarios presented for our consideration, we note that both involve the transportation of pipeline connectors by a foreign-flag vessel to the

installation site where the installation will be done by the vessel's crew. In order to make a reasoned determination as to whether these items constitute merchandise or vessel equipment, CBP needs additional facts regarding the nature of the items and how they are used by the foreign-flag vessel. Whether items are tools (and as such, vessel equipment used by the vessel's crew) or merchandise depends upon the nature of the item and the facts associated with the operation of the vessel.

With respect to the third scenario in question, the use of a foreign-flagged offshore construction vessel to effect the installation of a manifold and pile at the above-referenced sites subsequent to their transportation to those sites by a U.S.-flagged vessel and prior to the installation of the jumper pipes and the HMR and SCRSP would not be prohibited by 46 U.S.C. App. § 883. However, in the event of any damage incurred by the manifold and pile during installation, the transportation of the manifold and pile by a foreign-flagged vessel from that location to another coastwise point is prohibited pursuant to 46 U.S.C. App. § 883. It should also be noted that the aforementioned U.S.-flagged vessel must be coastwise-qualified.

HOLDING:

As discussed in the Law and Analysis portion of this ruling, the use of a foreign-flagged vessel to transport the damaged manifold and pile from the installation site on the OCS to another coastwise point also constitutes a violation of 46 U.S.C. App. § 883.

Sincerely,

Larry L. Burton
Chief
Entry Procedures and Carriers Branch

Attachment F

HQ 115487

November 20, 2001

VES-3-15-RR:IT:EC 115487 GEV

CATEGORY: Carriers

Fred B. Baldwin, LLC
1321 State St.
New Orleans, LA 70118

RE: Coastwise Trade; Outer Continental Shelf; Pipe-laying; Umbilical/
Methanol Line-Laying; 43 U.S.C. § 1333(a); 46 U.S.C. App.
§§ 289, 883

Dear Mr. Baldwin:

This is in response to your letter dated September 10, 2001, with attachments, submitted in conjunction with your letter of September 25, 2001, on behalf of your client, [

] requesting a ruling concerning the applicability of the coastwise laws to the laying of a methanol line and an umbilical line between a U.S. port and an offshore worksite by a foreign-flag pipe-laying vessel. Our ruling is set forth below.

FACTS:

[], a Delaware corporation, is a subsidiary of Saipem Inc., a Texas corporation. Saipem Inc. is a wholly-owned subsidiary of [], an Italian energy service company. [] is currently under contract to [] (hereinafter referred to as the "Customer") to install approximately 290,000 ft. of methanol line and 355,000 ft. of umbilical line across the Gulf of Mexico from a platform in [] to a termination point in [] on the Outer Continental Shelf ("OCS"). The project is called the [] (hereinafter referred to as the "Project"). The procurement of the umbilical line and installation of both the umbilical and methanol lines have been subcontracted to a foreign affiliate of [].

The [] (hereinafter referred to as the "Vessel") is the foreign-flag vessel to be used to lay the methanol line and umbilical line. It is equipped with a 600-ton crane, reel pipe-laying systems, has a transit speed of 11 knots, and is fully operational in the pipe-laying/line-laying installation mode on a dynamic positioning system (no anchors).

The single methanol distribution line (a 2.875 outer diameter underwater distribution line sometimes referred to as the "Methanol Line") will deliver methanol to each subsea well in order to prevent hydrate formations during the course of production of the three fields. The Methanol Line will be tied into a nearby production platform called Canyon Station (hereinafter referred to as the "Platform"). The Methanol Line will be laid from the Platform to the three subsea developed fields in the Project, respectively identified on Attachment 1 as [] and [].

In addition, flexible tubular goods or "umbilicals" (a main umbilical line and an infield umbilical line hereinafter sometimes referred to as the "Umbilical Line" or "Umbilical Lines") will provide electric and hydraulic controls to the subsea wells. The Umbilical Line will also be attached to the Platform and will be laid on a course parallel to the Methanol Line on the ocean floor. The Umbilical Lines contain the electrical/ fiber optic systems, each protected with a high density polyethylene sheath and the hydraulic systems composed of superduplex tubes. The hydraulic system provides for hydraulic supply and chemical injection and the electrical/fiber optic system contains the required signal power conductors for controlling the subsea trees.

The Methanol Line will be wound onto reels in the U.S. and the Umbilical Line will be wound onto a carousel and reels before the Vessel arrives in the U.S. The carousel and reels containing the lines will be carried by the Vessel to the Offshore Worksite and the empty reels will be carried back to a U.S. Gulf Coast Port onboard the Vessel at the end of the installation of the Methanol Line and the Umbilical Lines. The carousel and reels will be mounted on the Vessel and will be used in the laying of the Umbilical Lines and the Methanol Line.

The Umbilical Line Materials shall mean the materials assembled into and used in connection with laying the Umbilical Lines and shall include the Uraduct (protective outer casing for the Umbilical Line), Hang Off Clamp (used to hang off the umbilical from the Platform), Abandonment/Recovery Head (equipment to be used during

contingency operations), Pipeline Mattresses, Electro Hydraulic Distribution Units (EHDUs), Mud Mats, Hydraulic Bridges and Flying Leads, Infield Subsea Umbilical Terminations (ISUTs), Main Subsea Umbilical Terminations (MSUTs) and Stab and Hinge-Overs (SHOs) (hereinafter referred to collectively as "Umbilical Line Materials").

While the Umbilical Lines and some of the Umbilical Line Materials such as the Uraduct, the Hang Off Clamp and the Abandonment/ Recovery Head will be foreign-sourced, the remaining Umbilical Line Materials will be U.S.-sourced. The ISUTs, MSUTs and SHOs will be sourced in the United States by the Customer and delivered to [] to be assembled into and made a part of the M.U.L.s and I.U.L.s (i.e., the Umbilical Lines) prior to the voyage on the Vessel from Norway to the U.S. Gulf Coast Port. The Pipeline Mattresses, EDHUs, Muc Mats, Hydraulic Bridges and Flying Leads will be sourced in the United States and delivered to the U.S. Gulf Coast Port to be loaded onto the Vessel, transported to the Offshore Worksite and assembled into and used in connection with the laying of the Umbilical Lines.

The Methanol Line Materials shall mean the materials assembled into and used in connection with the laying of the Methanol Line and shall include Methanol Distribution Units (MDUs), flanges and the Cathodic Protection anodes (hereinafter collectively referred to as "Methanol Line Materials"). The flanges will be foreign-sourced and added to the Methanol Line in the U.S. before the Methanol Line is delivered to the U.S. Gulf Coast Port. The Methanol Line and remaining Methanol Line Materials will be U.S.-sourced.

The Umbilical Line and Umbilical Line Materials and Methanol Line and Methanol Line Materials will include all of the functional parts of the lines, which are to be incorporated into the operation of the respective lines. The Umbilical Line Materials and Methanol Line Materials will be an integral working part of the lines, without which each line would become inoperable. Viewed as a whole distribution line and umbilical line system, the materials will serve as the nerve center of the lines by managing the resources to make the lines function and protect them from damage while in operation.

An additional section of foreign-sourced "spare" Umbilical Line, stored onto one or two foreign-sourced "storage" reels, will be placed on board the Vessel in [] and unloaded at the U.S. Gulf Coast Port.

The "storage" reels and the "spare" Umbilical Lines will be delivered to the Customer at the U.S. Gulf Coast port and will remain in the United States.

It is proposed that the respective carousel, reels, lines and materials are to be carried onboard the Vessel between the U.S. Gulf Coast Port and the Offshore Worksite in connection with the laying of the Umbilical and Methanol Lines.

Contract project management and field engineer personnel will visit the Vessel at the Offshore Worksite location and might travel on the Vessel in transit from the U.S. Gulf Coast Port to the Offshore Worksite and back again. The role of the project management and field engineer personnel will be to monitor the laying of the Umbilical and Methanol Lines. They might get off the Vessel at the Platform and might return to the Gulf Coast Port on the Vessel or travel to and from the Vessel at the Offshore Worksite by U.S.-flag crew boat or helicopter.

Two Remotely Operated Vehicles (ROVs) supplied in the U.S. will be placed onboard the Vessel at the U.S. Gulf Coast Port, will be carried to the Offshore Worksite where they will be used in order to support the laying of the Umbilical and Methanol Lines. Once such operations have been completed, these units will be carried back on the Vessel to the U.S. Gulf Coast Port where they will be offloaded.

The Vessel will call on the same U.S. Gulf Coast port each time the carousel, reels, Umbilical Lines or Umbilical Line Materials or reels, Methanol Lines or Methanol Line Materials are unloaded or loaded onboard the Vessel. The Vessel will not unload any lines or materials whatsoever at another U.S. Gulf Coast Port or any offshore platform.

The details of the proposed operating plan and sequence of loading and unloading and transportation activity are contained in Attachment 2 of your letter. The specific activities of the Vessel in this matter are stated to be as follows:

1. transportation of the foreign-sourced carousel, reels, Umbilical Line (including Umbilical Materials sourced in the U.S., sent to [] to be assembled into the Umbilical Line) and foreign-sourced Umbilical Materials to a U.S. Gulf Coast Port (some of the foreign-sourced reels containing the Umbilical Line and some of the Umbilical Materials sourced outside the U.S. will be off-loaded and placed in temporary storage in a bonded area at a U.S. Gulf Coast Port). The remaining foreign-sourced carousel, reels, Umbilical Line and Umbilical Materials will remain onboard the Vessel;
2. transportation (Phase One) of the foreign-sourced carousel, reels, Umbilical Line and Umbilical Line Materials to the Offshore Worksite and the laying of the Umbilical Line and Umbilical Line Materials;
3. transportation of the empty foreign-sourced carousel and reels from the Offshore Worksite to the U.S. Gulf Coast Port;
4. transportation (Phase Two) of the U.S.-sourced reels, Methanol Line and Methanol Line Materials to the Offshore Worksite and the laying of the Methanol Line and Methanol Line Materials;
5. transportation of empty U.S.-sourced reels from the Offshore Worksite to the U.S. Gulf Coast Port;
6. transportation (Phase Three) of the remaining foreign-sourced reels and Umbilical Line and Umbilical Line Materials (offloaded at the U.S. Gulf Coast Port for temporary storage in a bonded area) and remaining Umbilical Line Materials (foreign-sourced Umbilical Line Materials left onboard the Vessel) and U.S.-sourced Umbilical Line Materials from the U.S. Gulf Coast Port to the Offshore Worksite and the laying of the Umbilical Line and Umbilical Line Materials at the Offshore Worksite; and
7. transportation of the empty foreign-sourced reels from the

Offshore Worksite to the U.S. Gulf Coast Port.

It is noted that the U.S.-sourced reels (and the foreign-sourced "storage reels" containing the "spare" Umbilical Line) will be delivered to the Customer at the U.S. Gulf Coast Port and the foreign-sourced carousel and reels (except the "storage" reels) will be loaded back onto the Vessel for a direct voyage to a foreign port at the end of the Project.

As an alternative to the above transportation plan, some of the Umbilical Lines to be laid on the ocean floor in Phase 3 (stored onto approximately 3 foreign-sourced reels) and the foreign-sourced "storage" reel, or reels, loaded with the "spare" foreign-sourced Umbilical Line would be delivered to the U.S. Gulf Coast Port by a non-coastwise-qualified third party ship or commercial liner and not by the Vessel. Under this alternative scenario, these foreign-sourced reels, that were to be loaded in Norway onto the Vessel, instead would be offloaded from the ship or liner and stored at the U.S. Gulf Coast Port until Phase Three of the Project.

It is proposed that the foreign-sourced articles will be entered into the U.S. on a Temporary Importation Bond (TIB) and some of them will be stored in a bonded area of the U.S. Gulf Coast Port from the time they are offloaded from the Vessel for temporary storage until they are loaded back onto the Vessel to be taken to the Offshore Worksite in connection with the laying of the Umbilical Line. It is also proposed that the foreign-sourced empty reels will also be stored in a bonded area at the U.S. Gulf Coast Port until they are loaded back onto the Vessel for the direct voyage to a foreign country at the end of the Project.

The specific transportation issues presented for our consideration are as follows.

ISSUES:

1. Whether the offloading of the foreign-sourced reels, foreign-sourced Umbilical Line and Umbilical Line Materials from the Vessel at a U.S. Gulf Coast Port following the voyage from [], reloading the reels, Umbilical Line and Umbilical Line Materials onboard the Vessel for transportation to the Offshore Worksite in connection with the laying of the Umbilical Line and Umbilical Line Materials and the transportation of the empty reels back to the U.S. Gulf Coast Port violates 46 U.S.C. App. § 883.
2. Whether the use of the Vessel to transport the foreign-sourced carousel, reels, Umbilical Line and Umbilical Line Materials from the U.S. Gulf Coast Port to the Offshore Worksite in connection with the laying of the Umbilical Line and Umbilical Line Materials and to carry the empty reels back to the U.S. Gulf Coast Port violates 46 U.S.C. App. § 883.
3. Whether the use of the Vessel to carry the U.S.-sourced reels,

Methanol Line and Methanol Line Materials from the U.S. Gulf Coast Port to the Offshore Worksite in connection with the laying of the Methanol Line and Methanol Line Materials and to carry the empty reels back to the U.S. Gulf Coast Port violates 46 U.S.C. App. § 883.

4. Whether the use of the Vessel to carry the U.S.-sourced Umbilical Line Materials from the U.S. Gulf Coast Port to the Offshore Worksite in connection with laying of the Umbilical Line and Umbilical Line Materials violates 46 U.S.C. App. § 883.
5. Whether the transportation of contract project management and field engineer personnel on the Vessel from the U.S. Gulf Coast Port to the Offshore Worksite and back again violates 46 U.S.C. App. § 289.

LAW AND ANALYSIS:

Title 46, United States Code Appendix, § 883 (46 U.S.C. App. § 883, the merchandise coastwise law often called the "Jones Act"), provides, in part, that no merchandise shall be transported between points in the United States embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any vessel other than one that is coastwise-qualified (i.e., U.S.-built, owned and documented). Pursuant to § 4.80b(a), Customs Regulations (19 CFR § 4.80b(a)), promulgated pursuant to 46 U.S.C. App. § 883, a coastwise transportation of merchandise takes place when merchandise laden at one coastwise point is unladen at another coastwise point.

Title 46, United States Code Appendix, § 289 (46 U.S.C. App. § 289, the passenger coastwise law) as interpreted by the Customs Service, prohibits the transportation of passengers between points in the United States embraced within the coastwise laws, either directly or by way of a foreign port, in a non-coastwise-qualified vessel (i.e., any

vessel that is not built in and documented under the laws of the United States, and owned by persons who are citizens of the United States).

For purposes of § 289, "passenger" is defined as "...any person carried on a vessel who is not connected with the operation of such vessel, her navigation, ownership, business." (19 CFR § 4.50(b))

The coastwise laws generally apply to points in the territorial sea, defined as the belt, three nautical miles wide, seaward of the territorial sea baseline, and to points located in internal waters, landward of the territorial sea baseline, in cases where the baseline and the coastline differ.

Section 4(a) of the Outer Continental Shelf Lands Act of 1953, as amended (67 Stat. 462; 43 U.S.C. § 1333(a)) (OCSLA), provides, in part, that the laws of the United States are extended to:

... the subsoil and seabed of the outer Continental Shelf and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom ... to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction within a State.

The statute was substantively amended by the Act of September 18, 1978 (Pub. L. 95-372, Title II, § 203, 92 Stat. 635), to add, among other things, the language concerning temporary attachment to the seabed. The legislative history associated with this amendment is telling, wherein it is stated that:

... It is thus clear that Federal law is to be applicable to all activities or all devices in contact with the seabed for exploration, development, and production. The committee intends that Federal law is, therefore, to be applicable to activities on drilling rigs, and other watercraft, when they are connected to the seabed by drillstring, pipes, or other appurtenances, on the OCS for exploration, development, or production purposes. [House Report 95-590 on the OCSLA Amendment of 1978, page 128, reproduced at 1978 U.S.C.C.A.N. 1450, 1534.]

Under the foregoing provision, we have ruled that the coastwise laws, the laws on entrance and clearance of vessels, and the provisions for dutiability of merchandise, are extended to mobile oil drilling rigs during the period they are secured to or submerged onto the seabed of the OCS. (See Treasury Decisions (T.D.s) 54281(1)), 71-179(1), 78-225 and Customs Service Decision (C.S.D.) 85-54) We have applied the same principles to drilling platforms, artificial islands, and similar structures, as well as devices attached to the seabed of the OCS for the purpose of resource exploration operations, including warehouse vessels anchored over the OCS when used to supply drilling rigs on the OCS. (see Customs Service Decisions (C.S.D.s) 81-214 and 83-52, and Customs Ruling Letter 107579, dated May 9, 1985)

With respect to the proposed use of the Vessel, we note that Customs has long-held that the sole use of a vessel in laying pipe is not considered a use in the coastwise trade of the United States, even when the pipe is laid between two points in the United States embraced within the coastwise laws. The fact that the pipe is not landed as cargo but is only paid out in the course of the laying operation makes such operation permissible. Further, since the use of a vessel in pipe-laying is not a use in the coastwise trade, a foreign-flag vessel may carry pipe which it is to lay between such points. However, the transportation of pipe by any vessel other than a pipe-laying vessel to a pipe-laying location at a point within U.S. territorial waters would be considered coastwise trade and would therefore have to be accomplished by a vessel meeting the statutory requirements entitling it to engage in such trade. (See Customs

ruling letter 103668, dated December 12, 1978, published as Customs Service Decision (C.S.D.) 79-321)

Legitimate equipment, supplies and stores of a pipe-laying vessel, including pipe laden on board to be paid out in the course of such operations, are not considered merchandise within the purview of § 883. However, articles transported on the vessel between points embraced within the coastwise laws which are not legitimate equipment, supplies and stores of the vessel are subject to § 883. Id.

Crewmembers of a pipe-laying vessel, including technicians necessary to assist in the vessel's pipe-laying operation, are not considered passengers under § 289, nor are employees of the installation contractor and/or its subcontractors who are on the vessel in connection with its business. Id.

With respect to the laying of umbilicals, Customs has held that activity "...to be akin to the laying of subsea cable or pipe..." Customs ruling letter 113726, dated November 7, 1996.

In regard to the issues presented for our consideration, we note at the outset that the entry of articles pursuant to a TIB and their placement in a bonded facility are of no consequence for purposes of Customs administration of 46 U.S.C. App. § 883. Furthermore, it is readily apparent that the Platform and the three subsea wells depicted in Attachment 1 are coastwise points pursuant to the OCSLA. However, there are insufficient facts to determine whether the item at issue constitutes a tool (and as such, vessel equipment used by the vessel's crew). Whether items are vessel equipment or merchandise depends on the nature of the item and the facts associated with the operation of the vessel.

Furthermore, the construction project management and field engineer personnel carried onboard the Vessel are not considered to be "passengers" for purposes of 46 U.S.C. App. § 289 so that the transportation between the U.S. Gulf Coast Port and the Offshore Worksite by the Vessel would not give rise to a violation of that statute. However, their transportation between these coastwise points on any other vessel necessitates that vessel being coastwise-qualified.

HOLDINGS:

1. CBP needs additional facts regarding the nature and use of the items in question before determining whether the offloading of the foreign-sourced reels, foreign-sourced Umbilical Line and Umbilical Line Materials from the Vessel at a U.S. Gulf Coast Port following the voyage from [], reloading the reels, Umbilical Line and Umbilical Line Materials onboard the Vessel for transportation to the Offshore Worksite in connection with the laying of the Umbilical Line and Umbilical Line Materials and the transportation of the empty reels back to the U.S. Gulf Coast Port violates 46 U.S.C. App. § 883.

2. CBP needs additional facts regarding the nature and use of the items in question before determining whether the use of the Vessel to transport the foreign-sourced carousel, reels, Umbilical Line and Umbilical Line Materials from the U.S. Gulf Coast Port to the Offshore Worksite in connection with the laying of the Umbilical Line and Umbilical Line Materials and to carry the empty reels back to the U.S. Gulf Coast Port violates 46 U.S.C. App. § 883.
3. CBP needs additional facts regarding the nature and use of the items in question before determining whether the use of the Vessel to carry the U.S.-sourced reels, Methanol Line and Methanol Line Material from the U.S. Gulf Coast Port to the Offshore Worksite in connection with the laying of the Methanol Line and Methanol Line Materials and to carry the empty reels back to the U.S. Gulf Coast Port violates 46 U.S.C. App. § 883.
4. CBP needs additional facts regarding the nature and use of the items in question before determining whether the use of the Vessel to carry the U.S.-sourced Umbilical Line Materials from the U.S. Gulf Coast Port to the Offshore Worksite in connection with laying of the Umbilical Line and Umbilical Line Materials violates 46 U.S.C. App. § 883.
5. The transportation of contract project management and field engineer personnel on the Vessel from the U.S. Gulf Coast Port to the Offshore Worksite and back again does not violate 46 U.S.C. App. § 289.

Sincerely,

Larry L. Burton
Chief
Entry Procedures and Carriers Branch

Attachment G

HQ 115771

August 19, 2002

VES-3-07-RR:IT:EC 115771 GEV

CATEGORY: Carriers

Jose A. Chabert Liompart
Manager
Subaquatic Main Operation Section
Water Company of Puerto Rico
Post Office Box 7066
San Juan, Puerto Rico 00916-9990

RE: Coastwise Trade; Pipeline Repairs; 46 U.S.C. App. §§ 289, 883

Dear Mr. Liompart:

This is in response to your fax dated August 8, 2002, with supporting documentation, requesting a ruling concerning the use of a foreign-flag vessel for underwater pipeline repairs. Our ruling is set forth below.

FACTS:

The Puerto Rico Aqueduct & Sewer Authority (PRASA) has contracted with Bic Marine, Inc. (BIC) to perform emergency underwater repairs on a water pipeline at the waste water treatment plant at Ponce, Puerto Rico. This work is being performed on an emergency basis due to the fact that a low flow has been detected in several segments of the pipeline and it is necessary to comply with the water quality parameters established by the U.S. Environmental Protection Agency.

Bic has informed your company that they will be using the services of Dockside Marine Contractors, Inc., which will supply a Panamanian-flag vessel (the GREAT CARIBE) to transport the necessary equipment (a remotely operated vehicle (ROV)) to perform the work. The vessel will be operated in a radius of two nautical miles from the Ponce Waste Water Treatment Plant.

ISSUE:

Whether the use of a foreign-flag vessel in effecting repairs to an underwater pipeline as described above is violative of 46 U.S.C. App. §§ 289 and/or 883.

LAW AND ANALYSIS:

Title 46, United States Code Appendix, § 289 of title 46 (46 U.S.C. App. § 289), prohibits the transportation of passengers between points in the United States embraced within the coastwise laws, either directly or by way of a foreign port, in a non-coastwise-qualified vessel (i.e., one that is not U.S.-built, owned and documented). We note that pursuant to § 4.50(b), Customs Regulations (19 CFR § 4.50(b)), promulgated pursuant to 46 U.S.C. App. § 289 and used in Customs administration of that statute, the word "passenger" is defined as "... any person carried on a vessel who is not connected with the operation of such vessel, her navigation, ownership or business."

Title 46, United States Code Appendix, § 883 (46 U.S.C. App. § 883, the merchandise coastwise law often called the "Jones Act"), provides, in part, that no merchandise shall be transported between points in the United States embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any vessel other than one that is coastwise-qualified (i.e., U.S.-built, owned and documented).

The coastwise laws generally apply to points in the territorial sea, defined as the belt, three nautical miles wide, seaward of the territorial sea baseline, and to points located in internal waters, landward of the territorial sea baseline, in cases where the baseline and the coastline differ. With respect to Puerto Rico, Customs has long-held that the coastwise laws are applicable thereto pursuant to 48 U.S.C. § 744 and 46 U.S.C. § 877.

In regard to the operation of the vessel in question, it has long been the position of the Customs Service that the transportation by such vessels of equipment, supplies and materials used on or from such vessels in effecting services such as inspections of, and/or repairs to, offshore or subsea structures, including the laying and repair of pipelines, does not constitute a use of the vessel in the coastwise trade. The underlying rationale for this position is that the aforementioned articles are not considered "merchandise" for purposes of 46 U.S.C. App. § 883, but rather vessel equipment. Furthermore, crewmembers of such vessels, including divers and technicians, as well as construction personnel carried on board in connection with the aforementioned services performed on or from the vessels, are not considered "passengers" within the meaning of 19 CFR § 4.50(b). (Id., see also C.S.D.s 79-321, 81-214)

Accordingly, our review of the information you provided indicates that the use of the GREAT CARIBE for purposes of repairing the subject pipeline is not prohibited by the above-cited coastwise laws.

HOLDING:

The use of a foreign-flag vessel in effecting repairs to an underwater pipeline as described above is not violative of 46 U.S.C. App. §§ 289 and/or 883.

Sincerely,

Acting Chief
Entry Procedures and Carriers Branch

Attachment H

HQ 116078

February 11, 2004

VES-3-06:RR:IT:EC 116078 TLS

CATEGORY: Carriers

Julie Knight
Islands' Oil Spill Association
225 A Street
P.O. Box 2316
Friday Harbor, Washington 98250-2316

RE: Oil spill containment and cleanup operations; 46 U.S.C. App. §§ 289 and 883;
19 CFR 4.50(b)

Dear Ms. Knight:

This is in response to your letter of November 5, 2003, in which you request clarification regarding the use of non-coastwise vessels to engage in oil spill containment and cleanup operations in U.S. waters. Our ruling on this matter is set forth below.

FACTS:

Islands' Oil Spill Association (IOSA) is a non-profit organization that provides oil spill response and prevention services in Washington. You describe IOSA's services as responding to local spills on a first response basis when local agencies cannot arrive before IOSA, responding to local spills that are too small or short-term to be worthy of response from local agencies, and contribution of local knowledge to longer term spill response procedures. You state that IOSA is reimbursed for operating expenses by either the responsible party or the U.S. Coast Guard.

The vessel IOSA proposes to use for these operations is a Canadian-built vessel. It has been specifically built to perform the following operations: carry a spill response crew and equipment to the spill site, setting a boom for initial containment, deflection, or diversion of oil, stopping a spill source, and providing a

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platform for removal equipment. You claim that the vessel will not transport any recovered oil and that such transportation will be provided by smaller U.S.-built vessels, which are also owned by IOSA.

ISSUE:

Whether a non-coastwise qualified vessel may engage in the operations described above pursuant to 46 U.S.C. App. §§ 289.

LAW AND ANALYSIS:

Section 27 of the Act of June 5, 1920, as amended (41 Stat. 999; 46 U.S.C. App. § 883 [also referred to as the "Jones Act"]), provides, in pertinent part, that:

No merchandise shall be transported by water, or by land and water, on penalty of forfeiture of the merchandise (or monetary amount up to the value thereof... or the actual cost of the transportation, whichever is greater, to be recovered from any consignor, seller, owner, importer, consignee, agent, or other person or persons so transporting or causing said merchandise to be transported), between points in the United States... embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any other vessel than a vessel built in and documented under that laws of the United States and owned by persons who are citizens of the United States...

We have previously ruled on a case concerning a non-coastwise oil spill recovery vessel. In Customs ruling HQ 110386 (September 29, 1989), we ruled that a non-coastwise-qualified vessel may engage in, among other things, using oil separation equipment to purify water and pump it into barges for disposition. We ruled in HQ 110386 that such operations would not provide transportation of merchandise between coastwise points. HQ 110386 also noted that Customs has long held that the use of a non-coastwise qualified vessel as a stationary facility, whether for lodging, processing, storage, etc., is not a transportation activity which would be prohibited under section 883.

Thus, in this case, the activities contemplated for the subject vessel would not be violative of section 883 when they are stationary activities within the meaning of HQ 110386. See also Customs ruling HQ 111372 (March 20, 1991). As noted above, the subject vessel would carry its gear (containment boom, absorbents, anchor systems, drums, etc.) in order to set a boom for initial containment, deflection, or diversion of oil, stopping a spill source, and provide a platform for removal equipment. None of these activities would involve the transportation of merchandise in view of the fact that the gear involved is vessel equipment which does not constitute merchandise for purposes of 46 U.S.C. App. § 883. See Treasury Decision 49815(4) (March 13, 1939). We emphasize, however, that any

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transportation of the recovered oil at any point within coastwise waters must be done by coastwise-qualified vessels.

The passenger coastwise law, 46 U.S.C. App. § 289, provides that “[n]o foreign vessel shall transport passengers between ports or places in the United States, either directly or by way of a foreign port, under a penalty of \$300 for each passenger so transported and landed. Pursuant to 19 CFR 4.50(b), a vessel “passenger” is defined as “any person carried on a vessel who is not connected with the operation of such vessel, her navigation, ownership, or business.” Thus, the spill response crew and crew members involved in navigation of the vessel would not be considered passengers within the meaning of section 4.50(b) and therefore are exempt from section 289.

HOLDING:

As specified in the Law and Analysis section of this ruling, the subject non-coastwise vessel may engage in the operations described above since such activities do not violate the provisions of 46 U.S.C. App. §§ 289 and 883.

Sincerely,

Glen E. Vereb
Chief
Entry Procedures and Carriers Branch

AGENCY INFORMATION COLLECTION ACTIVITIES:**Application To Pay Off or Discharge an Alien Crewman**

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

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

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and must be submitted (no later than January 24, 2020) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651-0106 in the subject line and the agency name. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

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

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

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

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions

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

Overview of This Information Collection

Title: Application to Pay Off or Discharge an Alien Crewman.

OMB Number: 1651-0106.

Form Number: I-408.

Abstract: CBP Form I-408, Application to Pay Off or Discharge an Alien Crewman, is used as an application by the owner, agent, consignee, charterer, master, or commanding officer of any vessel or aircraft arriving in the United States to obtain permission from the Secretary of the Department of Homeland Security to pay off or discharge an alien crewman. This form is submitted to the CBP officer having jurisdiction over the area in which the vessel or aircraft is located at the time of application. CBP Form I-408 is authorized by Section 256 of the Immigration and Nationality Act (8 U.S.C. 1286) and provided for 8 CFR 252.1(h). This form is accessible at: <https://www.cbp.gov/newsroom/publications/forms>.

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: 85,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 85,000.

Estimated Time per Response: 25 minutes.

Estimated Total Annual Burden Hours: 35,360.

Dated: November 19, 2019.

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

[Published in the Federal Register, November 27, 2019 (84 FR 64911)]

AGENCY INFORMATION COLLECTION ACTIVITIES:

**Declaration of Owner and Declaration of Consignee When
Entry Is Made by an Agent**

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

ACTION: 30-Day notice and request for comments; extension of an existing collection of information.

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

DATES: Comments are encouraged and must be submitted (no later than December 27, 2019) 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 email to *dhsdeskofficer@omb.eop.gov*.

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

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (84 FR 45786) on August 30, 2019, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Declaration of Owner and Declaration of Consignee When Entry is made by an Agent.

OMB Number: 1651-0093.

Form Number: CBP Forms 3347 and 3347A.

Abstract: CBP Form 3347, *Declaration of Owner*, is a declaration from the owner of imported merchandise stating that he/she agrees to pay additional or increased duties, therefore releasing the importer of record from paying such duties. This form must be filed within 90 days from the date of entry. CBP Form 3347 is provided for by 19 CFR 24.11 and 141.20.

When entry is made in a consignee's name by an agent who does not meet the qualifications in 19 CFR 141.19(b)(2), meaning that the agent does not have knowledge of the facts and/or is not authorized under a proper power of attorney by that consignee, a declaration from the consignee on CBP Form 3347A, *Declaration of Consignee When Entry is Made by an Agent*, may be filed with the entry documentation or the entry summary. If the declaration is filed on CBP Form 3347A, then no bond to produce a declaration of the consignee

is required. If the declaration is not filed at entry or entry summary, bond must be given to produce such declaration, and the declaration must be presented within six months after the date that the bond was given. CBP Form 3347A is provided for by 19 CFR 141.19(b)(2).

CBP Forms 3347 and 3347A are authorized by 19 U.S.C. 1485 and are accessible at <https://www.cbp.gov/newsroom/publications/forms?title=3347&=Apply>.

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

Type of Review: Extension (without change).

Affected Public: Businesses.

CBP Form 3347

Estimated Number of Respondents: 900.

Estimated Number of Responses per Respondent: 6.

Estimated Total Annual Responses: 5,400.

Estimated Time per Response: 6 minutes.

Estimated Total Annual Burden Hours: 540.

CBP Form 3347A

Estimated Number of Respondents: 50.

Estimated Number of Responses per Respondent: 6.

Estimated Total Annual Responses: 300.

Estimated Time per Response: 6 minutes.

Estimated Total Annual Burden Hours: 30.

Dated: November 22, 2019.

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

[Published in the Federal Register, November 27, 2019 (84 FR 65400)]