

U.S. Customs and Border Protection



DEPARTMENT OF THE TREASURY

19 CFR PART 12

DEC. 20-04

RIN 1515-AE53

EXTENSION OF IMPORT RESTRICTIONS ON ARCHAEOLOGICAL MATERIAL AND IMPOSITION OF IMPORT RESTRICTIONS ON ECCLESIASTICAL ETHNOLOGICAL MATERIAL FROM EL SALVADOR

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

ACTION: Final rule.

SUMMARY: This document amends the U.S. Customs and Border Protection (CBP) regulations to reflect an extension of import restrictions on certain archaeological material from the Republic of El Salvador (El Salvador). The document further amends the Designated List contained in T.D. 95-20, which describes the types of articles to which the import restrictions apply, to reflect the addition of certain ecclesiastical ethnological material. The import restrictions, which were last extended by CBP Dec. 15-05, were due to expire on March 8, 2020, unless extended. The Assistant Secretary for Educational and Cultural Affairs, United States Department of State, has determined that conditions continue to warrant the imposition of import restrictions on archeological material from El Salvador. Additionally, the Assistant Secretary for Educational and Cultural Affairs, United States Department of State, has made the requisite determinations for adding import restrictions on certain categories of ecclesiastical ethnological material from the Colonial period through the first half of the twentieth century. On March 2, 2020, the Government of the United States and the Government of El Salvador entered into a Memorandum of Understanding (MOU) that supersedes the existing agreement that first became effective on March 8, 1995. Pursuant to the new MOU, the import restrictions for archaeological material will remain in effect for an additional five years until March 2, 2025. The

new MOU further covers import restrictions on ecclesiastical ethnological material until March 2, 2025.

DATES: Effective March 16, 2020.

FOR FURTHER INFORMATION CONTACT: For legal aspects, Lisa L. Burley, Chief, Cargo Security, Carriers and Restricted Merchandise Branch, Regulations and Rulings, Office of Trade, (202) 325-0300, otrrculturalproperty@cbp.dhs.gov. For operational aspects, Genevieve S. Dozier, Management and Program Analyst, Commercial Targeting and Analysis Center, Trade Policy and Programs, Office of Trade, (202) 945-2952, CTAC@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to the Convention on Cultural Property Implementation Act, Public Law 97-446, 19 U.S.C. 2601 *et seq.* (hereinafter, “the Cultural Property Implementation Act,” or “the Act”), which implements the 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (823 U.N.T.S. 231 (1972)), the United States entered into a bilateral agreement with the Republic of El Salvador (El Salvador) on March 8, 1995, concerning the imposition of import restrictions on certain categories of archaeological material from El Salvador’s Pre-Hispanic cultures and ranging in date from approximately 8000 B.C. to 1550 A.D. On March 10, 1995, the former U.S. Customs Service (now U.S. Customs and Border Protection (CBP)) published T.D. 95-20 in the **Federal Register** (60 FR 13352), which amended § 12.104g(a) of title 19 of the Code of Federal Regulations (19 CFR 12.104g(a)) to reflect the imposition of these import restrictions and included a list designating the types of archaeological material covered by the restrictions.

Import restrictions listed at 19 CFR 12.104g(a) are effective for no more than five years beginning on the date on which the agreement enters into force with respect to the United States. This period may be extended for additional periods of not more than five years if it is determined that the factors which justified the initial agreement still pertain and no cause for suspension of the agreement exists. *See* 19 CFR 12.104g(a).

Since the initial notice was published on March 10, 1995, the import restrictions were subsequently extended four (4) times. First, on March 9, 2000, following the exchange of diplomatic notes, the former U.S. Customs Service (now CBP), published T.D. 00-16 in the

Federal Register (65 FR 12470) to extend the import restrictions for a period of five years to March 8, 2005. Second, on March 9, 2005, following the exchange of diplomatic notes, CBP published CBP Dec. 05–10 in the **Federal Register** (70 FR 11539) to extend the import restriction for an additional five-year period to March 8, 2010. Third, on March 8, 2010, following the exchange of diplomatic notes, CBP published CBP Dec. 10–01 in the **Federal Register** (75 FR 10411) to extend the import restriction for an additional period of five years to March 8, 2015. Fourth, on March 6, 2015, following the exchange of diplomatic notes, CBP published CBP Dec. 15–05 in the **Federal Register** (80 FR 12080) to reflect the extension of the import restrictions for an additional five-year period to March 8, 2020.

On June 5, 2019, the United States Department of State proposed in the **Federal Register** (84 FR 26174) to extend the Memorandum of Understanding (MOU) between the United States and El Salvador concerning the imposition of import restrictions on certain categories of archeological material from the Pre-Hispanic Cultures of El Salvador.

On November 7, 2019, after consultation with and recommendations by the Cultural Property Advisory Committee, the Assistant Secretary for Educational and Cultural Affairs, United States Department of State, determined that: (1) El Salvador’s cultural heritage continues to be in jeopardy from pillage of Pre-Hispanic archeological resources and that the import restrictions should be extended for an additional five years; and (2) El Salvador’s cultural heritage is in jeopardy from pillage of certain types of ecclesiastical ethnological material from the Colonial period through the first half of the twentieth century and import restrictions on such types of ecclesiastical ethnological material should be imposed.

On March 2, 2020, the Government of the United States and Government of El Salvador entered into a MOU, titled “Memorandum of Understanding between the Government of the United States of America and the Government of the Republic of El Salvador Concerning the Imposition of Import Restrictions on Categories of Archaeological and Ethnological Material of the Republic of El Salvador.” The new MOU supersedes the existing agreement that first became effective on March 8, 1995. Pursuant to the new MOU, the import restrictions for archaeological material will remain in effect for an additional five years until March 2, 2025. The new MOU further covers import restrictions on certain categories of ecclesiastical ethnological material (from the Colonial period through the first half of the twentieth century ranging in date from approximately A.D. 1525 to 1950) until March 2, 2025.

Accordingly, CBP is amending 19 CFR 12.104g(a) to reflect the extension of the import restrictions, and the Designated List of cul-

tural property described in T.D. 95–20 by adding certain categories of ecclesiastical ethnological material from El Salvador from the Colonial period through the first half of the twentieth century ranging in date from approximately A.D. 1525 to 1950, as set forth below. The restrictions on the importation of archaeological and ecclesiastical ethnological material will be in effect through March 2, 2025. Importation of such material from El Salvador will be restricted through that date unless the conditions set forth in 19 U.S.C. 2606 and 19 CFR 12.104c are met.

The Designated List and additional information may also be found at the following website address: <https://eca.state.gov/cultural-heritage-center/cultural-property-advisory-committee/current-import-restrictions> by selecting the material for “El Salvador.”

Designated List of Archaeological and Ecclesiastical Ethnological Material of El Salvador

The Designated List contained in T.D. 95–20, which describes the types of articles to which the import restrictions apply, is amended to reflect the addition of certain ecclesiastical ethnological material to the Designated List. In order to clarify certain provisions of the Designated List contained in T.D. 95–20, the amendment also includes minor revisions to the language, organization, and numbering of the Designated List. For the reader’s convenience, CBP is reproducing the Designated List contained in T.D. 95–20 in its entirety, with the changes, below.

The Designated List includes archaeological material from El Salvador ranging in date from approximately 8000 B.C. to A.D. 1550, and ecclesiastical ethnological material from El Salvador from the Colonial period through the first half of the twentieth century ranging in date from approximately A.D. 1525 to 1950.

Categories of Material

I. Archaeological Material

- A. Figurines
- B. Other Small Ceramic Artifacts
- C. Ceramic Vessels
- D. Ceramic Drums
- E. Incense Burners
- F. Mushroom Effigies
- G. Stone Sculptures

H. Small Stone Artifacts

I. Metal Artifacts

II. Ethnological Material

A. Paintings

B. Sculptures

C. Furniture

D. Metalwork

E. Textiles

F. Documents and Manuscripts

I. Archaeological Material

Archaeological material covered by the MOU includes material from El Salvador ranging in date from approximately 8000 B.C. to A.D. 1550. Examples of archaeological material covered by the MOU include, but are not limited to, the following objects:

*Simplified Chronology*¹

Archaic period: c. 8000–1700 B.C.

Preclassic period: 1700 B.C.–A.D. 200

Early Preclassic: 1700–800 B.C.

Middle Preclassic: 800–400 B.C.

Late Preclassic: 400 B.C.–A.D. 200

Classic period: 200 B.C.–A.D. 900

Protoclassic: 200 B.C.–A.D. 200

Early Classic: A.D. 200–600

Late Classic: A.D. 600–900

Terminal Classic: A.D. 800–900

Postclassic period: A.D. 900–1524

Early Postclassic: A.D. 900–1200

¹ This list of terms of time periods and their subdivisions contains some terms that overlap and are used to distinguish pivotal intervals in regional prehistory (these terms are: Protoclassic, Terminal Classic, and Protohistoric). Different references may vary slightly as to the beginning and end dates for the periods listed.

Late Postclassic: A.D. 1200–1524

Protohistoric: c. A.D. 1400–1550

A. Figurines

1. Preclassic Figurines

Most are solid ceramic figurines representing women with broad torsos and thighs, and small or virtually flat breasts. These are portrayed in a sitting or standing position. The eyes and mouth were typically represented by jabbing small holes into the still wet clay (punctuation), many times with two or three holes used to depict each eye. Although the bodies are crafted without much detail, elaborate coiffures are commonly shown.

a. *Dating:* Most Preclassic figurines date to the Late Preclassic (corresponding to the Chul and Caynac Ceramic Complexes of western El Salvador, and the Uapala Phase of eastern El Salvador).

b. *Appearance:* Often cream to white, but may also be red or brown (ranging from dark brown to tan). Usually of very fine textured clay.

c. *Size:* Most range between 4 in (10 cm) to 8 in (20 cm) in height. Examples smaller than about 4 in (10 cm) may be perforated for use as pendants. Rare figurines of 16 in (40 cm) or more in height have been reported.

d. *Important Variants:* Some of the larger figurines are hollow rather than solid. Very rare examples have movable arms, with sockets set into the shoulders and separate arm pieces that were actuated by means of strings. Some figurines depict women cradling infants. Whistle mechanisms are very rarely present. Painted designs in black or other colors are very rare on these figurines.

e. *Formal Names:* Bolinas figurines (Stanley H. Boggs, “Pre-Maya Costumes and Coiffures” in *Americas* 25(2): 19–24, Organization of American States, Washington, DC, United States (1973) (hereinafter, referred to as “Boggs 1973a”)); Kulil, Xiquin, and Tat Complex figurines (Bruce H. Dahlin, “Figurines” in *The Prehistory of Chalchuapa, El Salvador, Vol. 2*, University of Pennsylvania Press, Philadelphia, Pennsylvania, United States (Robert A. Sharer ed. 1978) (hereinafter, referred to as “Dahlin 1978”)); Quelepa Figurine Types 1 and 2 (E. Wyllys Andrews, V., “The Archaeology of Quelepa, El Salvador” in *Middle American Research Institute* 42, Tulane University, New Orleans, Louisiana, United States (1976) (hereinafter, referred to as “Andrews 1976”)).

2. Lepa Figurines

Most are solid ceramic figurines representing standing humans, while others are animal effigies that function as whistles, whistle flutes, or wheeled figurines incorporating whistle flutes.

a. *Human Figurines*: These figurines have a generally flattened appearance and heads are usually crowned by a broad and narrow headband (or hairdo) resembling a long bar. Eyes are shown by a single punctuation (to represent the pupil) between two ridges, defining the eye itself. Feet are usually split in a “Y” shape to help support the figurine. The figurines may be adorned with necklaces shown by a series of clay pellets. Rarely is enough detail included to determine which sex is intended (in such cases, women are usually represented).

b. *Pelleted Tubular Whistle Flutes*: Tubes with a whistle mechanism (blowhole) at one end and a rolling pellet within that produces a continuously varying tone when blown and tilted up and down. Simple bird or monkey heads may be added to the instrument’s body.

c. *Wheeled Figurines*: Human or animal effigies with four tabular legs, each with a perforation to accept wooden sticks as axles for the front and rear wheels (the wheels themselves were ceramic discs rarely found together with these artifacts). Decoration is mostly through appliqué using relatively thick strips and pellets of clay.

d. *Animal Effigy Whistle Flutes*: Made from a small sphere of clay with very simple (schematic) appliqué to represent humans, birds, turtles, armadillos, opossums, and other animals. In addition to the whistle mechanism, these have one or two finger holes in their bodies that vary their tone when covered. The most elaborate examples may have punctate and ridge eyes like those found in the Lepa human figurines. May be perforated for suspension.

e. *Dating*: Late Classic Lepa Phase of central and eastern El Salvador, represented in Quelepa, Tehuacán, and other sites.

f. *Appearance*: Usually reddish brown to brick red, with a rough or only moderately smoothed surface. Some have a polished white slip that, when well preserved, may have elaborate designs painted in black, red, and/or yellow. Pelleted tubular whistle flutes have been noted with fugitive (post-firing) white and/or blue paint.

g. *Size*: Most human figurines range in height between 5 in (12 cm) to 10 in (25 cm). Unusually large examples are known to reach 15 in (38 cm) in height, and these tend to bear painted designs more often than the normal sized figurines. The pelleted tubular whistle flutes known are 7 in (18 cm) or slightly shorter in length. The wheeled

figurines known range from about 3.5 in (9 cm) to 5 in (13 cm) in length. The animal effigy whistle flutes measure about 2–3 in (5–8 cm) in maximum length.

h. *Important Variants*: Larger figurines may be hollow rather than solid, and may either contain pellets to act as a rattle, or may be equipped with holes for use as a flute (“ocarina”).

i. *Formal Names*: The human figurines have been classed as Lower Lempa Culture figurines (Wolfgang Haberland, “On Human Figurines from San Marcos Lempa, El Salvador, C.A.” in *El Mexico Antiguo* 9: 509–524, México, D.F. (1961) (hereinafter, referred to as “Haberland 1961”) and as Quelepa Figurine Type 3 (Andrews 1976). The wheeled figurines have been termed Oriental Type (Stanley H. Boggs, “Figurillas con ruedas de Cihuatán y el Oriente de El Salvador” in *Colección de Antropología* 3, Dirección de Publicaciones, Ministerio de Educación, San Salvador, El Salvador (1973) (hereinafter, referred to as “Boggs 1973b”). The animal effigy whistle flutes have been referred to as Lepa Phase whistles (Andrews 1976; see also Stanley H. Boggs, “Notes on Pre-Columbian Wind Instruments from El Salvador” in *Baessler-Archiv* 22, Baessler-Institut, Berlin, Germany (1974) (hereinafter, referred to as “Boggs 1974”).

3. Cotzumalhuapa Figurines and Molds

Ceramic figurines, usually hollow and typically mold-made in part (especially heads). About half the known examples represent women, and most of the remainder depict a variety of animals (men are rare). Some representations of plants and furniture (litters) are known. Whistle mechanisms were optional for all forms of Cotzumalhuapa figurines. Pelleted tubular whistle flutes and recently identified Cotzumalhuapa wheeled figurines are also included here.

a. *Molds*: The molds used to produce these figurines were press molds made of coarse textured fired clay, usually brick red or reddish brown in color. The working faces of these molds present a complicated depressed area that produces the impression, while the opposite side of the mold is usually rounded and carelessly finished. A sheet of wet clay was pressed into the mold and then carefully extracted with the impression of, for examples, the front half of a female figurine (the other half was added by hand modeling, as were optional details like headgear if these were absent from the mold used).

b. *Female Figurines*: The figurines representing women have been referred to as “bell-form” due to the shape of their conical hollow bases. They usually portray elaborately dressed women, adorned with necklaces, earplugs, and large headgear of variable shape (but often resembling a half moon). The uniformity in portrayal suggests

that we are dealing with a personage, and it is not too speculative to suggest that she was an important Cotzumalhuapa goddess. Rare figurines exist where the female's body is covered by cacao pods, indicating a relationship to agricultural production and, in these latter examples, with the intensive production of cacao that has been documented as an important Cotzumalhuapa economic focus. Whistle mechanisms, when present, are usually worked into one shoulder (the larger female figurines tend not to possess whistle mechanisms).

c. *Male Figurines*: The very rare male figurines are known to include representations of warriors (with clubs and shields) and injured or diseased individuals (one example shows an individual with patches of flesh missing from the maxillary area and nose).

d. *Animal Figurines*: Among the animals present in Cotzumalhuapa figurines are parrots, vultures, owls, doves, monkeys, felines (probably jaguars are intended), bats, dogs, deer, frogs or toads, turtles, iguanas, snakes, crocodiles, fish, clams, crabs, and others. These reflect the rich fauna of the Cotzumalhuapa area, which included mangrove lined estuaries, the adjoining coastal plains, and nearby mountain ranges. Monkeys and parrots are, however, the most common animals depicted. Most animal figurines have whistle mechanisms. Because of the complicated forms required for animals, use of molds may sometimes be limited to face areas, and some are entirely hand modeled.

e. *Plant Figurines*: Representations of corn cobs and cacao pods have been found.

f. *Pelleted Tubular Whistle Flutes*: Tubes with a whistle mechanism (blowhole) at one end and a rolling pellet within that produces a continuously varying tone when blown and tilted up and down. One example is apparently a bat effigy, with a bat head and disk (representing the wings) added to the tubular body of the instrument.

g. *Wheeled Figurines*: Cotzumalhuapa wheeled figurines have only recently been identified. One has a tubular body with four tabular supports, each with a perforation to accept the wooden sticks that acted as axles for the front and rear wheels. A mold-made dog head was added to one end of the tube, and a tail to the other.

h. *Other Figurines*: Two figurines have been documented representing the litters that were probably used to transport Cotzumalhuapa elites. They resemble a small rectangular box with a canopy, supported by four spiked feet. A pair of holes at each extreme permitted two sticks to be inserted to act as the carrying poles. On one example, the canopy was modeled to represent the stretched skin of a crocodile arranged with the head at one extreme and the tail at the other, with a spiked crest running between the two. Other Cotzumalhuapa mod-

eled clay artifacts that may be included as figurines include objects resembling scepters, bells, lidded boxes, and plaques with human faces.

i. *Dating*: Late Classic products of the Cotzumalhuapa culture, which in El Salvador included the western coastal plain to the upper drainage of the Paz River. Trade brought examples into Payu Ceramic Complex contexts elsewhere in western and central El Salvador.

j. *Appearance*: Most are brown (from tan through reddish brown) to red (brownish red to brick red), with a coarsely finished to moderately smoothed surface. Rare examples are of Tiquisate Ware (characterized by a very smooth, lustrous, and hard surface, cream to orange in color), and may be ancient imports from the Pacific coast of Guatemala. Traces of paint may be present (blue, black, red, yellow, and white have been documented); the paint was usually applied after firing and tends to be easily eroded. Those parts of figurines made without the benefit of molds tend to be rather carelessly modeled.

k. *Size*: Female figurines usually range in height from 4 in (10 cm) to 12 in (30 cm), but some rare specimens reach 24 in (60 cm) and perhaps more in height. Animal and plant figurines tend to be small, typically ranging from 3 in (8 cm) to 6 in (16 cm) in their maximum dimension, though larger examples occur. The pelleted tubular whistle flute mentioned measures 6 in (16 cm) in length. Wheeled figurines measure 5.5 in (14 cm) in length. The models of litters are approximately 9 in (23 cm) in length.

l. *Important Variants*: Cotzumalhuapa use of clay was very creative and the observer should expect figurine forms not mentioned here.

4. Payu Figurine Flutes and Whistles

Most Payu ceramic figurines known are musical instruments that have been classified as whistles, whistle flutes, and flutes (commonly called “ocarinas”). Although their decoration varies considerably, important hallmarks (when present) are the decorative use of parallel strips of clay (sometimes with longitudinal grooves), and appliqué of clay pellets with a distinctive dimple in their center. Molds were sometimes employed to render the faces of humans and monkeys. Human faces may include details commonly associated with Classic Maya conventions, including cheek decorations (from tattoos or scarification), extension of the bridge of the nose to above eye level, and/or a steeply inclined forehead (representing cranial deformation).

a. *Globular Flutes (“ocarinas”)*: Payu figurine globular flutes have a very distinctive construction. Three spheres of clay were joined together in a column or in an “L” shape (and pierced at the junctures). The uppermost sphere was equipped with a blowhole. Clay was then

packed around this assembly and decorative elements added. All “L”-shaped flutes known were decorated to represent a standing quadruped animal whose open mouth forms the blowhole. Other (straight) flutes were almost always modeled to represent a human (either full-body or just the head portion).

b. *Tubular Whistle Flutes*: A tubular form with a whistle mechanism (blowhole) at one end and three to five finger holes along the body of the tube. The appliquéd head and arms of a monkey or human are always present next to the blowhole.

c. *Whistle Flutes*: A small, spherical body with a whistle mechanism and one or two finger holes is hidden to a lesser or greater degree under effigy decoration. This decoration tends to be notably more carefully executed and detailed than Lepa or Cotzumahuapa examples. Examples include effigies of humans (full-body or heads), monkeys, dogs, birds, and reptiles. Smaller whistle flutes may be perforated for suspension.

d. *Dating*: An artifact class belonging to the assemblage associated with the Payu Ceramic Complex (Late Classic Period).

e. *Appearance*: Most Payu figurines are of medium textured clay with a moderately smoothed surface (and almost always unslipped). Color is usually reddish brown but may range from tan to brick red. Traces of paint are rare and may include blue-green, white, yellow, red, or black. Painted decoration, when present, was usually added after firing and tends to easily wear away.

f. *Size*: Globular flutes: 3–8 in (8–21 cm); tubular whistle flutes: 6–8 in (15–21 cm); whistle flutes: 2–8 in (5–20 cm).

g. *Formal Names*: None. Many examples are illustrated in Boggs 1974 (noted as Late Classic, from western and part of central El Salvador).

5. Guazapa Figurines

Early Postclassic ceramic figurines whose style is derived from central Mexico and form part of the Guazapa Phase of central and western El Salvador. The Guazapa Phase has been interpreted as marking the large-scale migration of Nahua speakers into this area, these being the ancestors of the historical Pipil.

a. *Mazapan-Related Figurines*: Very flat figurines whose rendition of the human figure has been compared to gingerbread cookies. These objects were made by pressing a sheet of clay into a mold, obtaining a thin (0.75–1 in (2–3 cm)) solid figurine. The rear portion of the figurine is left unfinished and may exhibit finger marks from when the clay was pressed into its mold. The front displays a woman with a blouse with a triangular front, coming to a point in the middle of the

waist. This type of blouse was referred to as a *quechquemitl* in central Mexico at the time of the Conquest, when its use was restricted to images of goddesses and goddess impersonators. These figurines are named for their close similarity to figurines of the Mazapan (Toltec) Phase of central Mexico.

b. *Toad Effigies*: Hand modeled large hollow toad effigies. They are usually shown as sitting as erect as possible for a toad, looking upwards. The front and rear of the toad's body is decorated with strips and buttons of clay meant to represent festive ribbons and bows. The tongue may be shown hanging from the mouth. In Postclassic Nahua mythology, toads were considered Tlaloc's (the rain god) helpers, and it was they who announced the coming of the rains (the extended tongues are probably meant to represent their thirsty anticipation of rain). Due to this association, some examples of toad effigies include two rings around the eyes (a diagnostic trait of Tlaloc himself).

c. *Tlaloc Bottles*: Bottles with a more or less spherical body crowned by a straight tubular neck with a flat, flaring rim. The body is decorated with the face of the rain god Tlaloc whose most distinctive trait is a ring around each eye. Many Tlaloc Bottles are in fact plugged in the neck or body and could not have actually functioned as vessels. Tlaloc was considered to dwell in the mountain peaks and pour out the rains from a bottle. These artifacts were probably household votive images of that bottle.

d. *Very Large Effigy Figurines or Statues*: Hand modeled hollow figurines representing jaguars, gods, or god impersonators. The larger examples reach life size and may truly be considered ceramic statuary (in any case, they have been included under "Figurines" to facilitate discussion). Known examples of gods or god impersonators represent the gods Tlaloc (identifiable by the rings around his eyes), Mictlantecutli (represented as a skeletal personage), and Xipe Totec (portrayed as wearing a flayed human skin). The largest figures may be crafted in several mating parts (for example, a Xipe Totec effigy was made in two large halves joining at the waist, with a separate head). Seventeen jaguar effigies were found in one excavation at Cihuatán; all of these portray a jaguar sitting on its haunches, decorated with necklaces and a few bulbous objects placed on different parts of the body.

e. *Small Solid Figurines*: Hand modeled figurines of humans that are usually solid or mostly so, and that occasionally employed molds to form the face. Most appear to represent males who may carry war equipment (such as a dart thrower or *atlatl*) and large headgear. These figurines tend to be relatively small and crudely modeled.

f. *Wheeled Figurines*: Small wheeled figurine, consisting of a tubular hollow body with four tabular supports, each with a hole to accept wooden sticks acting as axles for the front and rear wheels. The wheels are flat ceramic disks. A tail was added to one end of the tubular body and a head to the other. Examples are known with deer heads with antlers and dog heads with tongue extended over the lower lip.

g. *Dating*: Artifacts of the Early Postclassic Guazapa Phase of central and western El Salvador (at Cihuatán, Igualtepeque, El Cajete, Ulata, Santa María, Pueblo Viejo Las Marias, and other sites).

h. *Appearance*: Generally reddish brown to brick red, but may be as light as tan in color. The surface may be smoothed but not polished and has a sandy texture. Many give the impression of having been hastily made. Traces of white, black, blue, yellow, and/or red fugitive paint have been found on some figurines.

i. *Size*: Height of Mazapan-related figurines: 6–10 in (15–25 cm); height of toad effigies: 6–9 in (15–23 cm); height of Tlaloc bottles: 4–10 in (10–25 cm); height of very large effigy figurines or statues: 24–55 in (61–140 cm); height of small solid figurines: 6–18 in (15–30 cm); length of wheeled figurines: 5.5–8.5 in (14–22 cm).

j. *Formal Names*: Encompassed by the Guazapa Phase, the type site of which is Cihuatán (see Stanley H. Boggs, “A Human-Effigy Figure from Chalchuapa, El Salvador” in *Notes on Middle American Archaeology and Ethnology* 31, Carnegie Institution of Washington, Washington, DC, United States (1944) (hereinafter, referred to as “Boggs 1944”); Stanley H. Boggs, “Apuntes sobre varios objetos de barro procedentes de Los Guapotes en El Lago de Guija” in *Antropología e Historia de Guatemala* 15(1), Instituto de Antropología e Historia, Guatemala (1963) (hereinafter, referred to as “Boggs 1963”); Boggs 1973b; Stanley H. Boggs, “Antigüedades salvadoreñas errantes: dos Xipe Totecs del lago de Güija” in *Anales del Museo Nacional “David J. Guzmán”* 49, Dirección de Publicaciones, Ministerio de Educación, San Salvador, El Salvador (1976) (hereinafter, referred to as “Boggs 1976”); Karen Olson Bruhns, “Cihuatán: An Early Postclassic Town of El Salvador, the 1977–78 Excavations” in *Monographs in Anthropology* 5, The Museum of Anthropology, University of Missouri, Columbia, Missouri, United States (1980) (hereinafter, referred to as “Bruhns 1980”); William R. Fowler, Jr., *The Pipil-Nicarao of Central America* (unpublished dissertation) (on file with Department of Anthropology, University of Calgary, Canada (1981) (hereinafter, referred to as “Fowler 1981”); William R. Fowler, Jr., “The Figurines of

Cihuatán, El Salvador” in *The New World Figurine Project, Vol. 1*, Research Press, Provo, Utah, United States (Terry Stocker ed. 1990) (hereinafter, referred to as “Fowler 1990”).

B. Other Small Ceramic Artifacts

1. Spindle Whorls or Malacates

Small ceramic disc-shaped artifacts with a central perforation. As viewed in section, these are thicker towards the center. They may have incised or mold-made decoration. These are often mistaken for ceramic beads and many may be strung together for transport or display.

a. *Dating*: Late Classic to Protohistoric Periods. Different varieties are documented in relation to Late Classic Phases and ceramic complexes (Lepa, Payu, Tamasha) through the Postclassic (Guazapa, Cuscatlán, and others).

b. *Appearance*: Carefully formed and smoothed. Many were slipped, and run the full range of black through brown through red. Fugitive white paint has been noted as a rare filler for incised designs.

c. *Size*: 0.8–1.2 in (2.1–3.2 cm) in diameter. Holes are always close to 0.25 in (0.6 cm) in diameter.

d. *Formal Names*: Referred to as spindle whorls or malacates (see, e.g., John M. Longyear, III, “Archaeological Investigations in El Salvador” in *Memoirs of the Peabody Museum of Archaeology and Ethnology* 9(2), Harvard University, Cambridge, United States (1944) (hereinafter, referred to as “Longyear 1944”); Robert J. Sharer, ed., *The Prehistory of Chalchuapa, El Salvador*; University of Pennsylvania, Philadelphia, Pennsylvania, United States (1978) (hereinafter, referred to as “Sharer 1978”); Andrews 1976).

2. Ceramic Seals

Ceramic seals present a high-relief pattern on clay surface and are thought to have been used with paint to stamp designs for body and/or textile decoration. Some were used to impress designs on still-wet pottery objects. Some seals have been found still covered with red pigment. Seals may be flat, with a spike handle on the rear, or cylindrical and used by rolling. Cylinder seals usually have a central perforation that would have allowed a stick to be passed through and facilitate their use like rolling pins.

a. *Dating*: To date, seals have been found in El Salvador in contexts ranging from the Late Preclassic and Late Classic Periods (in relation to the Chul, Caynac and Payu Ceramic Complexes and the Tamasha Phase).

b. *Appearance*: Well-smoothed and sometimes slipped surfaces. Color ranges from black-brown through reddish-brown and red.

c. *Size*: Flat seals: 1.2–5 in (3–13 cm) in diameter; cylinder seals may be 2.4–5 in (6–12 cm) in length.

d. *Formal Names*: Usually referred to as seals or stamps, flat or cylindrical (see Sharer 1978; Arthur A. Demarest, “The Archaeology of Santa Leticia and the Rise of the Maya Civilization” in *Publication 52*, Middle American Research Institute, Tulane University, New Orleans, Louisiana, United States (1986) (hereinafter, referred to as “Demarest 1986”); Paul E. Amaroli, *Informe preliminar de las excavaciones arqueológicas en Cara Sucia, departamento de Ahuachapán, El Salvador* (unpublished manuscript) (on file with Dirección de Patrimonio Cultural, San Salvador, El Salvador) (1987) (hereinafter, referred to as “Amaroli 1987”).

3. Miniatures

Very small ceramic objects made in the form of jars or flasks. Often made of a very fine cream colored ceramic. These may be modeled to resemble squash effigies, or may include stamped designs of Maya glyphs, human forms, or animals. Miniature vessels often contain residuals of red pigment. Late Classic Period.

a. *Size*: 1.5–4 in (4–10 cm) in height.

b. *Formal Names*: None.

4. Spools

This category includes several varieties of spool-shaped artifacts that functioned as earspools and as labrets. Often a short tab extends from one side, while the other may have modeled (and sometimes mold-made) decoration. Alternatively, the spool sides may have incised decoration.

a. *Dating*: Early Preclassic through Postclassic Periods (Sharer 1978; Amaroli 1987).

b. *Size*: Normally do not exceed 1.3 in (3.4 cm) in their maximum dimension.

C. Ceramic Vessels

1. Polychrome Vessels

a. *Copador Polychrome Vessels*: Hemispherical bowls, bowls with composite walls, cylindrical vases, and jars with painted designs in red, black, and optionally yellowish orange on a cream to light orange base. The red paint used is almost always specular (small flecks of crystals flash as the vessel is moved in strong light). Copador paste is

cream colored (or sometimes very light brown) and is not very hard or dense. Designs (usually on the exterior) may include bands of motifs derived from Maya glyphs, seated individuals, individuals in a swimming position, melon-like stripes, birds or other animals, and others. Rare examples have excavated lines or patterns. Copador Polychrome may usually be distinguished on the basis of its specular red paint and cream colored paste.

i. *Dating*: Late Classic Period (defined as a member of the Payu Ceramic Complex, which is commonly in Tamasha Phase deposits (Cara Sucia)).

ii. *Size*: Bowl diameter may vary from 4–12 in (10–30 cm), the height of cylindrical vases may range from 6–12.5 in (15–32 cm), and jar height ranges from approximately 5–11 in (12–28 cm).

iii. *Formal Names*: Referred to as the Copador Ceramic Group (Sharer 1978).

b. *Gualpopa Polychrome*: This type is closely related to Copador Polychrome, with which it shares a cream colored paste and the hemispherical bowl form (rarer forms in Gualpopa are: Flat bottomed bowls with vertical walls and composite walled bowls). Designs in Gualpopa are painted in red (which, unlike the Copador, are not specular) and black on a cream-orange base. Gualpopa motifs are simpler than Copador. Most common designs are geometric designs (spirals, “melon” bands, chevrons, and others), but repeating birds, monkeys, or designs derived from Maya glyphs may be found.

i. *Dating*: Late Classic, especially the first part of this period. Defined as a member of the Payu Ceramic Complex.

ii. *Size*: Diameters range from 6–15 in (16–38 cm).

iii. *Formal Names*: Termed as the Gualpopa Ceramic Group (Sharer 1978).

c. *Arambala Polychrome*: Formerly referred to as “false Copador” due to its close resemblance to Copador Polychrome. Arambala may be differentiated from Copador by its reddish paste (contrasting with Copador’s cream paste) and the use of a dull red paint (rather than Copador’s specular red paint). Apart from these two differences, however, Arambala closely duplicates Copador’s repertoire of vessel forms, dimensions, and decoration (which are described above). A cream-orange slip was added over Arambala’s reddish paste to approximate Copador’s base color, but this slip often has a streaky appearance.

i. *Dating*: Late Classic Period. A member of the Payu Ceramic Complex and present in the Tamasha Phase of Cara Sucia.

ii. *Size*: See the description for Copador Polychrome.

iii. *Formal Names*: Defined as the Arambala Ceramic Group (Sharer 1978).

d. *Campana Polychrome Vessels*: Flat bottomed bowls with flaring walls, usually large. Provided with four hollow supports that may take the form of pinched cylinders or cylinders with human or animal effigies. Intricate painted designs were executed in black-brown, dull red, and orange, on a cream to cream-orange base. A large portrayal of a human or animal is featured on the interior center of these vessels, and the rims often have a distinctive encircling twisted rope and dot design. Some examples have a few curving lines of broad (up to 0.5 in (1.3 cm)) Usulután negative decoration. Campana Polychrome paste is dense, hard, and brick red. Other forms include small bowls without supports, with flat bottoms and flaring walls, and cylindrical vases with bulging and sometimes faceted midsections and occasionally short ring bases. The cylindrical vases usually feature panels on opposing sides of the vessel, with human or animal designs, and may have very short and wide tabular supports.

i. *Dating*: Late Classic Period. Present in association with the Payu Ceramic Complex (Sharer 1978), the Lepa Phase (Andrews 1976), and the Tamasha Phase (Amaroli 1987).

ii. *Size*: The large bowls with supports range from 10–20 in (25–50 cm) in diameter. The small bowls without supports are usually 6–9 in (16–22 cm) in diameter. Cylindrical vases range in height from 7–10 in (18–25 cm).

iii. *Formal Names*: Termed as the Campana Polychrome Ceramic Group (Sharer 1978).

e. *Salua Polychrome*: Mostly cylindrical vases, usually with very short and wide tabular supports. The larger examples may have two opposing modeled head handles, just below the rim, representing monkeys or other animals. Bold designs are painted on a cream to orange base, using different combinations of black, dull red, dark orange, and yellow. The normally invisible paste is brick red. Black was often used to create ample panels (or even to cover almost the entire vessel) as a backdrop for featured designs. The principal designs are strikingly displayed and can include: Mat patterns (*petates*), twisted cord patterns, animals (jaguars, parrots, owls, and others), humans, sea shells, ballcourts (represented by a two or four colored “T”-shaped drawing), and other motifs. Humans are often arrayed in finely detailed costumes and may be represented playing musical instruments, sowing with a digging stick, armed for battle, seated within a structure, or in other attitudes. A decorative option was to excise or stamp designs in panels or registers.

The remainder of the vessel (or, if a featured motif is lacking, all of the vessel) is decorated with panels and registers with circumferential bands near the rim and geometric patterns elsewhere. Other vessel forms known for Salua are short cylinders, bowls, convex walled bowls (*i.e.*, with bulging sides), composite walled bowls, and jars. Despite their exceptional decoration, colored stucco was sometimes used to cover areas of Salua vessels (when eroded this stucco leaves chalky traces). Salua vessels have rarely been found filled with red pigment.

i. *Dating*: Late Classic (associated with the Payu Ceramic Complex and the Lepa Phase).

ii. *Size*: The cylindrical vessels grade into vertical walled bowls over a range of heights from 3.5–12.5 in (9–32 cm). Bowl diameters range from 6–12 in (15–30 cm).

iii. *Formal Names*: The name Salua is a local term employed in the National Museum of El Salvador. It has been long recognized that probably several different ceramic groups are lumped under this term, and that at least some of these groups probably correspond with the so-called Ulua or Sula Valley Polychromes of neighboring Honduras (which, in recent years, have been divided among several ceramic groups).² Sharer cites Salua as a special group of the Payu complex, termed Special: Polychrome B, and he also mentions the name Salua Polychrome (Sharer 1978). At Quelepa, it was noted as an unnamed ceramic group referred to as Dark Orange and Black on Orange (Andrews 1976). Several examples are illustrated in Longyear 1944 and John M. Longyear, III, “Archaeological Survey of El Salvador” in *Handbook of Middle American Indians, Vol. 4*, University of Texas Press, Austin, Texas, United States (Gordon F. Ekholm and Gordon R. Willey eds. 1966) (hereinafter, referred to as “Longyear 1966”).

f. *Quelepa Polychrome*: Hemispherical and composite wall bowls and jars. Bowls may have basal flanges or slight angle changes near the rim, and small solid or larger hollow supports. Quelepa Polychrome has a hard and very white base (slip) over a fine red paste. On this white base were painted designs in orange (often applied as a wash over most of the vessel), red, and black; very rarely a purple paint may be present. Designs include “checkerboards”, sunbursts, circles, bands, wavy lines, and others. Animals may be depicted on the interior or exterior (jaguars, birds, and monkeys have been noted).

i. *Dating*: Late Classic (a member of the Lepa Ceramic Complex).

² In comparison with Honduran collections, there is a relative abundance of Salua Polychrome in national and private collections in El Salvador.

ii. *Size*: Bowls may measure from 4.5–15 in (11–38 cm) in diameter.

iii. *Formal Names*: Termed as the Quelepa Polychrome Ceramic Group in Andrews 1976.

g. *Los Llanitos Polychrome*: Flaring walled bowls, most or all with solid tabular supports (supports may have effigy decoration). A cream colored slip was applied on a red paste. Orange paint was applied to the entire interior of the bowl and in small areas bordered by black on the exterior. In addition to orange and black, colors may include dull red, sepia, and rarely purple. Two designs diagnostic of Los Llanitos Polychrome are a “five-fingered flame” and stacks of three or four horizontal bars of decreasing length.

i. *Dating*: Late Classic (a member of the Lepa Ceramic Complex).

ii. *Size*: 7–12.5 in (18–32 cm) in diameter.

iii. *Formal Names*: Termed Los Llanitos Polychrome by Longyear (Longyear 1944) and Los Llanitos Polychrome Ceramic Group by Andrews (Andrews 1976).

h. *“Chinautla” Polychrome*: Flaring walled bowls with flat bases and three or four hollow conical supports with simple appliqué. Red and black-brown designs were painted over a cream slip in registers, including spirals, stepped frets, bars, and dots.

i. *Dating*: Late Postclassic (a member of the Ahal Ceramic Complex).

ii. *Size*: 6.5–10 in (17–26 cm) in diameter.

iii. *Formal Names*: First defined in Chalchuapa as the Chinautla Ceramic Group by Sharer (Sharer 1978) due to its similarities with the “Chinautla Polychrome tradition” found mostly in the Guatemalan highlands, which is subdivided into several distinct and locally distributed ceramic groups, of which the Chalchuapa variety would be one.

i. *Machacal Purple Polychrome*: Bowls (hemispherical, composite walled, or vertical walled with convex bases). With the exception of vertical walled bowls, these may be supported by ring bases, pedestal bases, or four hollow cylindrical supports. Possesses an orange base slip with red and dark purple designs. Purple designs in the form of a horizontal “S” on the vessel exterior are common. Vessel bottoms usually have a simple purple design that some people have considered to vaguely resemble a bird. The generous use of purple paint on an orange base slip is a distinctive characteristic of this variety.

i. *Dating*: End of the Early Classic and beginning of the Late Classic.

ii. *Size*: 5–11.5 in (13–29 cm) in diameter.

iii. *Formal Names*: Termed Red and Purple on Orange by Boggs (in Longyear 1944), and Machacal Purple-polychrome by Sharer (Sharer 1978).

j. *Nicoya Polychrome*: Hemispherical bowls, bowls with rounded to almost flat bases and flaring walls (these may have three hollow cylindrical or conical supports with effigy decoration as an option, often in the form of bird heads), cylindrical vases with ring bases, and jars. Red, black, and yellow paint was applied over a very smooth white slip with a “soapy” texture. Usually over half of the vessel was left white. Designs include registers with geometric designs, human figures, and others. Rare vessels may have unusual forms and appendages.

i. *Dating*: Early Postclassic.

ii. *Size*: Bowls range from 6–11 in (15–28 cm) in diameter; cylindrical vases range from 6.5–12 in (17–30 cm) in height.

iii. *Formal Names*: Long called Nicoya Polychrome due to its relationship with the different varieties grouped under that name first defined for Nicaragua and Costa Rica. The variety found in El Salvador differs sufficiently from those varieties in forms and decoration to be considered as an additional type.

k. *Chancala Polychrome*: Hemispherical bowls, often slightly flaring from just under the rim. A cream base slip (often streaky in appearance) was painted with designs in brown-black and red. Animals rendered in a distinctive silhouette style were painted on opposing sides of the exterior (monkeys, lizards, and birds seem to be represented), with large solid circles, squares or cross-hatch designs between the two. The upper portion of the exterior body is divided by bands in a register holding step frets, circles, and/ or other designs.

i. *Dating*: Late Classic.

ii. *Size*: 6–8 in (15–20 cm) in diameter.

iii. *Formal Names*: Termed Chancala Polychrome by Boggs (Stanley H. Boggs, “Cerámica clásica del barrio Santa Anita, San Salvador en la colección Orlando de Sola” in *Anales del Museo Nacional “David J. Guzmán”* 9 (37–41), Museo Nacional de San Salvador, San Salvador, El Salvador (1972) (hereinafter, referred to as “Boggs 1972”).

l. *Salinitas Polychrome*: Known in bowl forms with a streaky cream to orange base slip. Black circumferencial bands define registers that usually enclose alternating spirals and stylized animals outlined in black with orange infilling.

i. *Dating*: Late Classic Period.

ii. *Formal Names*: Termed Salinitas Polychrome by Boggs.

2. Vessels With Usulután Decoration

Here are included several different varieties of ceramics that prominently feature Usulután decoration as their distinctive trait. Usulután decoration is a negative technique, resulting in light-colored lines against a darker background. The light lines were achieved by applying a resist substance and then covering the vessel with a slip that fired a darker color. Since this failed to adhere to the areas with resist, these maintained their lighter shade (a simplified explanation). In its most elaborate version, the resist substance was applied with a multiple brush with as many as seven small brushes fastened in a row, allowing the creation of swirling parallel lines. The base color on these vessels ranges from salmon pink to dark yellow, with the lines being a lighter shade of the same. Some varieties have red paint added as rim bands or (in the case of the Chilanga Ceramic Group) simple designs. Formal names for the ceramic groups considered here are: Jicalapa, Puxtla, Izalco, and Chilanga (Sharer 1978, Demarest 1986, Andrews 1976).

3. Plumbate Vessels

Unpainted vessels with a glazed appearance. Surface color ranges from dark brown-black to lead-colored to salmon-orange, and sometimes all are found on a single vessel. Some areas may be iridescent. This is an extremely hard ceramic and “rings” when tapped. Vessel forms include a variety of forms of jars, bowls, cylindrical vases, and may even include figurines. Effigy decoration is common.

a. *Dating*: Terminal Classic (San Juan variety) and Early Postclassic (Tohil variety).

b. *Formal Names*: Both San Juan and Tohil varieties³ are found in El Salvador (Sharer 1978).

4. Olocuilta Orange and Santa Tecla Red Vessels

These two distinctive varieties of Late Preclassic ceramic vessels share many forms and types of decoration. Forms include a variety of bowls that may have very wide everted rims with scalloped and incised designs (in extreme cases, the rims may be extended to form fish or other animal effigies when viewed from above). Bowls may also include faceted flanges. Some bowls may take the form of toad effigies. Usulután decoration (very often poorly preserved) may be present. The Santa Tecla Red variety is distinguished by its dense dark red

³ One third of all Tohil vessels recorded in the only pan-Mesoamerican inventory to date were from El Salvador (Ann O. Shepard, “Plumbate: A Mesoamerican Trade Ware” in *Publication 573*, Carnegie Institution of Washington, Washington, DC, United States (1948)).

slip, while Olocuilta Orange has a light orange slip (often with a powdery texture when slightly eroded). Santa Tecla Red may have graphite rubbed into grooves.

a. *Dating*: Late Preclassic (Chul and Caynac Ceramic Complexes).

b. *Formal Names*: Santa Tecla and Olocuilta Ceramic Groups (Sharer 1978; Demarest 1986).⁴

5. Incised or Excised Vessels

Here are considered different varieties of ceramic vessels whose salient visual trait is decoration based on incision or excision.

a. *Pinos*: Pinos vessels have a smooth streaky black to brown slip with (post-slip) incisions on the exterior forming geometric designs. These incisions are sometimes filled with red or white pigment. Forms include a variety of bowl forms. Defined as part of the Chul and Caynac Ceramic Complexes of the Late Preclassic Period (Sharer 1978; Demarest 1986).

b. *Lolotique*: A variety of bowl forms of a dark and dull red color with fine post-slip incised geometric patterns. Defined as part of the Chul and Caynac Ceramic Complexes of the Late Preclassic Period (Sharer 1978; Demarest 1986).

c. *Chalate Carved*: Cylindrical vessels with a band of false glyphs or geometric designs carved below the rim. Details within this excavated band may be emphasized with incision. Vessel bodies are usually tan colored, and cream slip was sometimes added over the exterior, avoiding the carved band which was sometimes painted with red slip. When the cream slip is present, negative designs of dots, circles, water lilies, or egrets may be barely visible on the vessel body. The name of this Late Classic type is provisional and was proposed by Boggs based on its abundance in the Chalatenango area.

d. *Red Excised*: Cylindrical vessels with a band of false glyphs or geometric decoration excised below the rim and vertical excised grooves usually covering the rest of the exterior, sometimes with two opposing excised panels representing animal heads or other designs. Slipped with a dark red-orange color. Short solid tabular or nubbin supports may be present. Provisional name for a Late Classic type common in central El Salvador.

e. *Cotzumalhuapa Incised Cylindrical Vases*: Cylindrical vases, orange to brown in color, with fine incision including geometric motifs and monkeys. The rim area is distinguished by a band or groove. Late Classic Period.

⁴ In these sources, "Olocuilta" (which is the name of a Salvadoran town) was misspelled "Olocuitla".

6. Vessels With Red Decoration

Here are grouped together varieties of ceramic vessels whose principal decoration was executed in red paint.

a. *Marihua Red on Buff*: Forms include: Hemispherical bowls, bowls with rounded bases and flaring walls (these usually have three hollow or cylindrical supports, sometimes in the form of bird heads), and jars with three handles. Broad red lines form geometric designs on the buff colored interior of bowls and the exterior of jars. Designs include arcs, crosses, step frets, *ehecatcozcatl* (split snail shell motif), and others. Very rare are finely incised designs in a band on the exterior of bowls. Postclassic Period (Wolfgang Haberland, "Marihua Red-on-Buff and the Pipil Question" in *Ethnos* 29 (1–2), National Museum of Ethnography, Stockholm, Sweden (1964) (hereinafter, referred to as "Haberland 1964")).

b. *Guarumal*: Almost all known examples are jars. Part of the jar exterior (reddish brown in color) is painted with a dense and hard red paint that is finely crazed. The paint may cover the upper portion of vessels, or may be distributed as panels, large dots or arcs. Rarely the entire vessel exterior is covered in red. A decorative option was to apply white paint in circles (applied with a hollow cane) and/or zig-zagging lines. This white paint is also very hard and was applied over red painted areas. A small rabbit appliqué may appear on the vessel body. Late Classic Period (Marilyn P. Beaudry, "The Ceramics of the Zapotitán Valley" in *Archaeology and Volcanism in Central America: The Zapotitán Valley of El Salvador*, University of Texas Press, Austin, Texas, United States (Payson D. Sheets ed. 1983) (hereinafter, referred to as "Beaudry 1983")).

c. *Delirio Red on White*: Hemispherical bowls (sometimes made into an *armadillo* effigy by means of a shingled exterior and appliquéd head and tail), bowls with flat or slightly rounded bottoms and flaring walls (these may have hollow cylindrical supports), jars (which may have a pair of effigy head handles below the rim), and other minor forms. A hard white slip was painted in red with very intricate geometric designs. Naturalistic forms are very rare. Late Classic Period (Lepa Ceramic Complex—Andrews 1976).

d. *Cara Sucia Red Painted*: Jars with dull red-orange paint over a cream-orange slip. The lower body is divided by vertical pairs of bands. Birds or other motifs may be painted on the shoulder of the vessel. Late Classic Period.

7. Jars With Modeled Effigy Faces

Here are grouped together different varieties of ceramic jars that share the presence of effigy faces or heads applied to the vessel neck. Motifs include: Old man, man with goatee and closed eyes, monkey, bird, and schematic humans.

8. Tiquisate Vessels

Tiquisate vessels are entirely orange (ranging from light cream-orange to deep orange in color). Their surface is very hard and may “ring” when tapped. Vessel forms include hemispherical bowls and cylindrical vases. Decoration may take the form of rows of bosses, incised geometric designs, or stamped scenes of humans, animal heads, twisted bands, or other designs. Late Classic.

9. Fine Paste Vessels

Forms include small flat bottomed bowls with vertical walls and hollow rattle supports, and piriform vessels with ring bases. Vessel walls are very thin and “ring” when tapped. An orange may be applied to the vessel with the exception of the base. Fine incising may be found on the exterior of bowls and may retain white and blue post-fire paint. Terminal Classic Period.

10. Cara Sucia Pedestal-Based Bowls

A distinctive type of bowl with a tall pedestal base. The bowls often have a basal flange, and red painted zones are sometimes found on the interior. Late Classic Period.

11. Stuccoed Vessels

Here are grouped a variety of vessel forms and types whose common denominator for the purposes at hand is the presence of stuccoed decoration. The stucco involved is usually a white kaolin clay with blue, blue-green, red, yellow, or brown pigment mixed in, and probably had (originally) an organic binder or agglutinate. Since that binder long since ceased to function, the stuccoed decoration tends to be very fragile. Designs are usually simple bands or geometric motifs, but occasionally human or animal figures may be represented. Entirely stuccoed vessels seem to be most common in the Late Classic, and especially in the Terminal Classic.

12. Guazapa Scraped Slip Vessels

Jars with a brown body over which was applied a cream colored slip that was finger dragged (like finger painting) while it was still wet,

creating curving or wavy designs. A reddish-orange wash was sometimes applied over the scraped slip. Early and Late Classic Periods.

13. Ancient Imports

Late Classic Palmar and Other Lowland Maya Ceramics Several vessels of so-called “Peten Glossware” have been found in El Salvador that include the formally defined Palmar Ceramic Group, and may also include examples of the Saxche Ceramic Group and others (Sharer 1978). To date, three of such vessels have been found in scientific excavations (one in a Tazumal tomb in the 1940s, a Palmar vessel in an offering with an eccentric flint in San Andrés in the 1970s, and a Palmar vessel in a grave on the outskirts of San Salvador in 1993). Several others have been documented in looting situations, including three recorded by Sharer (Sharer 1978), and in private collections. Although these vessels were not made in the territory of El Salvador, they were ancient imports, and, as such, form part of the Salvadoran cultural heritage, providing important testimony relative to long-distance social and economic relationships.

Forms include bowls with flat or slightly rounded bottoms and walls ranging from slightly flaring (nearly vertical) to broadly flaring walls, shallow simple bowls, tecomates (spherical forms with a small orifice), and cylindrical vases. Bowls may have ring bases, hollow cylindrical supports, or other forms of supports. Decoration consists of an orange or cream base slip over which were painted designs in black, red, and sometimes yellow. Designs include: Glyph bands, humans standing, seated, dancing, or in other attitudes, heads (human, animal, God K, and others), animals in different positions, and other themes rendered in Late Classic Lowland Maya style.

D. Ceramic Drums

Ceramic drums comprise a globular body with a short rim on one extreme (over which the drum surface was stretched) and a long open shaft on the other extreme (which served as a stand). The body may have incised decoration. Surfaces are usually slipped and well-polished, and may range from dark brown-black to brown to brownish red in color. Late Classic Period.

E. Incense Burners

1. Ladle Censers

This category groups together a variety of different spoon- or ladle-shaped incense burners. These have a handle (which may be a hollow tube or a flattened loop) which supports the “spoon” or “ladle” that

actually held the embers over which incense was sprinkled. The ladle portion may have holes perforated to facilitate the circulation of air, and in the taller, more cup-like versions these holes may take the form of crosses or step frets (these are the so-called "Mixteca-Puebla" style censers). Animal heads, claws, or other effigies may be added to end of the handle.

2. Three-Pronged Censers

Standing cylinders with three vertical prongs at the top and two long vertical flanges on the sides. Effigy faces may be added to the vessel bodies (bats have been noted). Post-fire paint added in red, orange, and white. Late Preclassic and Early Classic Periods (Sharer 1978).

3. Lolotique Spiked Censers

The bowl-shaped censer body is supported by a tall pedestal base with perforations in the form of two large squares or circles, or slits. Short spikes cover the base and body. May retain remnants of post-fire red or white paint. Late Classic Period (Andrews 1978).

4. Las Lajas Spiked Censers

Large hourglass-shaped censer covered by short spikes. Incised or modeled decoration may be found on the everted rims found at top and bottom. An internal shelf may be present to hold the large clay dish that supported the embers. Early Postclassic Period (Fowler 1981).

5. San Andrés Stone Censers

Squat barrel-shaped censers of hard volcanic stone with columns of spikes on part of the exterior. The upper part of these censers have a dish-like depression to contain embers. Late Classic Period.

6. Large Effigy Censers

Different varieties of censers whose common traits are their relatively large size and the prominent presence of elaborate effigies covering much or all of the censer body. In extreme cases, the censer is entirely concealed within a virtual ceramic sculpture. As an alternative to a single large effigy, some present several figures on a single censer, or a single element (like a head) repeated several times. Recorded effigies have included: The god Tlaloc (identifiable by a large ring around each eye), an individual with bulbous protruding eyes, the god Xipe Totec (appearing as an individual wearing a flayed human skin), jaguars, monkeys, iguanas, large saurians (so-called

Earth Monsters), GIII (a manifestation of the Sun god identifiable by a twisted cord extending vertically between the eyes and catfish-like barbels curling from the sides of the mouth), and others. Mostly Late Classic and Postclassic Periods.

7. Cotzumalhuapa Goblet Censers

Large goblet shaped vessel forms (essentially a large bowl with walls that begin as vertical and midway to the rim moderately flare outward, with a pedestal base), usually with signs of burning on the interior base. These censers may be unadorned, or may have two or three hollow head effigies rising directly from the rim, or they may have many small effigy heads attached in a row around the vessel just below its rim (monkey and iguana heads have been documented). Lids, when present, may appear as inverted bowls, with or without an effigy figure on top (one example has a large seated monkey). Late Classic Period.

F. Mushroom Effigies

Though some regard these as phallic effigies, most agree that mushrooms are represented. Two varieties are presented here.

1. Ceramic Mushroom Effigies

Tall hollow bases rise from a flaring base and taper upwards to support the mushroom “cap”. The body may be plain or may carry red paint and fine incisions (usually in the form of rows of triangles). Probably Late Preclassic and Early Classic Periods.

2. Stone Mushroom Effigies

Usually made of fine-grained volcanic stone. The shaft of the mushroom rises from a base that may be cylindrical or square, and occasionally has short supports. Near the “cap” may often be found two raised bands representing the point from which the cap separates from its stem as it opens. Late Preclassic and Early Classic Periods.

G. Stone Sculpture

1. Preclassic Animal Head Sculptures

Monumental sculptures in volcanic stone representing very stylized animal heads (Demarest 1986). These have usually been interpreted as jaguar heads, and, thus, are commonly called Jaguar Heads, but reptilian elements may also be present. These were apparently architectural elements associated with Late Preclassic Period pyramids.

2. Cotzumalhuapa Sculpture

Monumental sculptures in volcanic stone in the Cotzumalhuapa style (see Lee A. Parsons, "Bilbao, Guatemala" (Vol. 1) in *Publications in Anthropology* 11, Milwaukee Public Museum, Milwaukee, Wisconsin, United States (1967) (hereinafter, referred to as "Parsons 1967"); Lee A. Parsons, "Bilbao, Guatemala" (Vol. 2) in *Publications in Anthropology* 12, Milwaukee Public Museum, Milwaukee, Wisconsin, United States (1969) (hereinafter, referred to as "Parsons 1969")). Themes known from El Salvador include: A snake emerging from the ground, a skeletal figure with a hat resembling a derby, a coiled snake, and a disk with a jaguar face. Some of these are made from two stones which connect by means of a hidden tenon. Late Classic Period.

3. Tenoned Head Sculptures

Long sculptures of volcanic stone with an animal head at one end and an undecorated tenon at the other, intended to be mounted in monumental architecture. The heads usually represent a bird or reptile. Late Classic Period.

4. Balsamo Sculpture

These portable sculptures are usually made of vesicular volcanic stone and represent a human form in a squatting position. The vertebrae are usually indicated as a notched ridge on the individual's back. Although this form predominates, a grasshopper sculpture is also documented. Postclassic Period.

5. Yugos

"U"-shaped ballgame yugos (yokes) made of dense volcanic stone. Very rare examples may carry carved decoration. Late Classic Period.

6. Hachas

Thin ballgame hachas usually representing animal or human heads (a variety of other designs are also found, such as, a coiled snake and a skull). Made of fine-grained volcanic stone. Some examples have iron pyrite "eyes" and traces of red paint. Late Classic Period.

7. Effigy Metates

Metates with a thin and slightly curving body, with an animal head at one end. A tail may be present at the other end. These are usually supported by three tall supports. Made of dense volcanic stone. Late Classic and Early Postclassic Periods.

H. Small Stone Artifacts

1. Jade or Similar Greenstone Artifacts

Lustrous and hard green-colored stone crafted into: Beads (spherical, globular, tubular, or discoidal), pendants (plain or with human or animal effigies, including so called “axe gods” and canine tooth effigies), plaques (or pectorals) with elaborate designs, masks, mosaics, earspools, animal or human effigies (heads or full figure), or schematic squatting human forms (similar to examples from the El Cajón area of Honduras).

2. Eccentric Chipped Stone

Flint, chert, or obsidian flaked into eccentric forms. These may include: A zigzag lance point form, a disc with three prongs or spike on one side, and elaborate large effigy eccentrics apparently meant to serve as scepters (similar to those found in caches at Copán, Quiriguá, and other sites). Late Classic Period.

3. Obsidian Artifacts in General

Prismatic blades, bifacial artifacts (lance points, arrow points, “knives”), cores, and other objects made from obsidian (a black colored volcanic glass).

4. Pyrite Mosaic “Mirrors”

A mosaic of carefully fitted plaques of iron pyrite placed on a thin disc-shaped backing made of stone or clay that may have designs on one side. When new, the pyrite reflected light brilliantly, but archaeological specimens have often lost their shine due to oxidation (the pyrite may convert to a brownish black crust). Late Classic and perhaps other periods.

5. Paint Pallets

Small artifacts of vesicular volcanic stone with a dish-shaped or squared depression on one surface. Some pallets are simple, being essentially natural cobbles of a flattened oblong shape with the depression worked on one surface, or sometimes two depressions on opposing surfaces. Others are elaborately carved and may include four supports and animal or human head effigies. Traces of red pigment have been found on some pallets. Late Classic and possibly other periods.

6. Translucent Stone Bowls

Thin bowls carved from light colored translucent stone (which in different cases has been labeled as marble, alabaster, and onyx). At least some of these may be ancient imports from the territory of Honduras. Late Classic Period.

7. Barkbeaters

Tabular dense stone artifacts with numerous longitudinal parallel incisions worked on one or both broad faces. On one variety (Classic and Postclassic Periods), three of the four narrow sides have a broad groove meant to receive a very pliable stick wound around it as a handle. The other variety considered here has an integral stone handle (Late Preclassic).

8. Celts

These were originally mounted on wood handles for use as hatchets or adzes. Made of very dense, fine-grained stone and are often highly polished near the bit and sometimes over the entire body. Some examples are made of jade or stone resembling jade.

I. Metal Artifacts

1. Copper Celts

Mounted on wooden handles for use as hatchets or adzes. Long copper celts with a rectangular cross section. May have a dark patina. Postclassic Period.

2. Copper Rings

Copper finger rings made with the lost wax technique. Documented examples include filigree details or effigy heads. Terminal Classic and Postclassic Periods.

3. Copper Bells

Copper bells, plain or with effigies, usually made by the lost wax technique. Postclassic Period.

4. Tumbaga Artifacts

Tumbaga is an alloy of copper and gold. Artifacts made of Tumbaga may present a mottled surface looking golden in parts. Documented Tumbaga artifacts from El Salvador include small animal figurines made by the lost wax technique, and a small hammered sheet mask with eyes and mouth cutouts. Late Classic Period.

II. Ecclesiastical Ethnological Material

Ethnological material covered by the MOU includes ecclesiastical material from the Colonial period through the first half of the twentieth century ranging in date from approximately A.D. 1525 to 1950 that was made by artisans and used for religious purposes. Salvadoran artisans created paintings, sculptures, furniture, metalwork, textiles, and craftwork for religious use in churches and cofradias, or ecclesiastical lay organizations, until the mid-twentieth century. This ethnological material was not mass-produced or industrially produced, and most works were anonymous. Examples of ethnological material covered by the MOU include, but are not limited to, the following objects:

A. Paintings

Paintings depicting figures, narratives, and events, relating to ecclesiastical themes, usually done in oil on wood, metal, walls, or canvas (linen, jute, or cotton).

B. Sculptures

Sculptural images of scenes or figures, carved in wood and usually painted, relating to ecclesiastical themes, including Christ, the Virgin Mary, saints, Anima Sola (souls in purgatory), and other figures.

1. Relief Sculptures

Low-relief plaques, often with polychrome painting, relating to ecclesiastical themes.

2. Sculpted Figures

Wood carvings of figures relating to ecclesiastical themes. Figures are decorated with polychrome painting, sometimes using the *estofado* technique. Hands and faces may be more finely carved than the torso. Eyelashes, eyes, and hair may be added. Clothing might be sculpted and painted. In some cases, the torso consists of a simple wood frame covered in fabric clothing. Figures may have articulated arms, and sometimes legs, so they can be posed to represent various religious scenes. Sculpted figures may be life-sized or miniaturized. Some figures have metal accessories, such as, halos, aureoles, and staves.

C. Furniture

Furniture used for ecclesiastical purposes, usually made from wood with glass, metal, and/or textiles attached.

1. Altarpieces or Retablos

Elaborate ornamental structures placed behind the altar, including attached paintings, sculptures, and other religious objects.

2. Reliquaries and Coffins

Containers made from wood, glass, and/or metal that hold and exhibit sacred objects or human remains.

3. Church Furnishings

Furnishings used for liturgical rites, including pulpits, tabernacles, lecterns, confessionals, pews, choir stalls, chancels, baldachins, and palanquins.

4. Processional Furnishings

Litters, canopies, coffins, cases, crosses, banners, and cofradia insignias carried in processions and made of wood, glass, and/or textiles.

D. Metalwork

Ritual objects for ceremonial ecclesiastical use made of gold, silver, and/or other metals, such as, monstrances, lecterns, chalices, censers, candlesticks, crucifixes, crosses, decorative plaques, tabernacles, processional banners, church bells, and cofradia insignias; and objects used to dress sculptures, including, among others, crowns, halos, and aureoles.

E. Textiles

Textiles used to perform religious services made from cotton or silk that may be embroidered with metallic and/or silk thread, brocades, prints, lace, fabrics, braids, and/or bobbin lace.

1. Religious Vestments

Garments worn by priests and/or other ecclesiastics, including cloaks, tunics, surplices, chasubles, dalmatics, albs, amices, stoles, maniples, cinctures, rochets, miters, bonnets, and humeral veils.

2. Garments To Dress Sculptures

Life-sized or miniaturized garments, including tunics, robes, dresses, jackets, capes, stoles, veils, belts, and embroidered cloths.

3. Coverings and Hangings

Altar cloths, towels, and tabernacle veils used for religious services.

F. Documents and Manuscripts

Original handwritten texts or printed texts of limited circulation, primarily on paper, parchment, or vellum, including religious texts, hymnals, and church records. Documents may contain wax, clay, or ink seals or stamps denoting an ecclesiastical institution. Documents are generally written in Spanish, but may include words from indigenous languages, such as, Nawat, Lenca, or Mayan languages.

Inapplicability of Notice and Delayed Effective Date

This amendment involves a foreign affairs function of the United States and is, therefore, being made without notice or public procedure (5 U.S.C. 553(a)(1)). For the same reason, a delayed effective date is not required under 5 U.S.C. 553(d)(3).

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Executive Orders 12866 and 13771

CBP has determined that this document is not a regulation or rule subject to the provisions of Executive Order 12866 or Executive Order 13771 because it pertains to a foreign affairs function of the United States, as described above, and therefore is specifically exempted by section 3(d)(2) of Executive Order 12866 and section 4(a) of Executive Order 13771.

Signing Authority

This regulation is being issued in accordance with 19 CFR 0.1(a)(1) pertaining to the Secretary of the Treasury's authority (or that of his/her delegate) to approve regulations related to customs revenue functions.

List of Subjects in 19 CFR Part 12

Cultural property, Customs duties and inspection, Imports, Prohibited merchandise, Reporting and recordkeeping requirements.

Amendment to CBP Regulations

For the reasons set forth above, part 12 of Title 19 of the Code of Federal Regulations (19 CFR part 12), is amended as set forth below:

PART 12—SPECIAL CLASSES OF MERCHANDISE

■ 1. The general authority citation for part 12 and the specific authority for § 12.104g continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

Sections 12.104 through 12.104i also issued under 19 U.S.C. 2612;

* * * * *

■ 2. In § 12.104g, paragraph (a), the entry for El Salvador in the table is revised to read as follows:

§ 12.104g Specific items or categories designated by agreements or emergency actions.

(a) * * *

State party	Cultural property	Decision No.
*	* * *	*
El Salvador.....	Archaeological material representing El Salvador's Pre-Hispanic cultures ranging in date from approximately 8000 B.C. through A.D. 1550 and ecclesiastical ethnological material from the Colonial period through the first half of the twentieth century ranging in date from approximately A.D. 1525 to 1950.	CBP Dec. 20–04.
*	* * *	*

* * * * *

Dated: March 6, 2020.

MARK A. MORGAN
Acting Commissioner,
U.S. Customs and Border Protection.

Approved:
TIMOTHY E. SKUD,
Deputy Assistant
Secretary of the Treasury.

19 CFR CHAPTER I

TRANSPORTATION SECURITY ADMINISTRATION

49 CFR CHAPTER XII

NOTIFICATION OF ARRIVAL RESTRICTIONS APPLICABLE TO FLIGHTS CARRYING PERSONS WHO HAVE RECENTLY TRAVELED FROM OR WERE OTHERWISE PRESENT WITHIN THE COUNTRIES OF THE SCHENGEN AREA

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

ACTION: Notification of arrival restrictions.

SUMMARY: This document announces the decision of the Secretary of Homeland Security (DHS) to direct all flights to the United States carrying persons who have recently traveled from, or were otherwise present within, the countries of the Schengen Area to arrive at one of the United States airports where the United States Government is focusing public health resources. There are twenty-six countries in the Schengen Area: Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, and Switzerland. This document also modifies two notifications regarding decisions of the Secretary of DHS: To direct all flights to the United States carrying persons who have recently traveled from, or were otherwise present within, the People's Republic of China (excluding the Special Regions of Hong Kong and Macau) to arrive at one of the United States airports where the United States Government is focusing public health resources (effective February 2, 2020); and to direct all flights to the United States carrying persons who have recently traveled from, or were otherwise present within, the Islamic Republic of Iran to arrive at one of the United States airports where the United States Government is focusing public health resources (effective March 2, 2020). This document also adds two additional airports to the list of airports where flights subject to the arrival restrictions are permitted to land—Boston Logan International Airport (BOS) and Miami International Airport (MIA).

DATES: Flights departing after 11:59 p.m. Eastern Daylight Time on Friday, March 13, 2020, and covered by the arrival restrictions regarding the countries of the Schengen Area are required to land

at one of the airports identified in this document. These arrival restrictions will continue until cancelled or modified by the Secretary of DHS and notification is published in the **Federal Register** of such cancellation or modification.

FOR FURTHER INFORMATION CONTACT: Matthew S. Davies, Office of Field Operations, U.S. Customs and Border Protection (CBP) at 202-325-2073.

SUPPLEMENTARY INFORMATION:

Background

Coronaviruses are a large family of viruses that are common in many different species of animals, including camels, cattle, cats, and bats. While it is rare, animal coronaviruses can infect people, and then spread between people (human-to-human) such as with Middle East Respiratory Syndrome and Severe Acute Respiratory Syndrome. The United States Government is closely monitoring an outbreak of respiratory illness caused by human-to-human transmission of a novel (new) coronavirus (which has since been renamed “SARS-CoV-2” and causes the disease COVID-19), first identified in Wuhan City, Hubei Province, People’s Republic of China.

The potential for widespread transmission of this virus by infected individuals seeking to enter the United States threatens the security of our transportation system and infrastructure, and the national security. Noting recent pronouncements by the World Health Organization (WHO) and the Centers for Disease Control and Prevention (CDC) for the novel coronavirus outbreak to assist in preventing the introduction, transmission, and spread of this communicable disease globally and in the United States, including the categorization by WHO of COVID-19 as a pandemic on March 11, 2020, DHS, in coordination with CDC and other Federal, state and local agencies charged with protecting the American public, is implementing enhanced protocols to ensure that all travelers seeking to enter the United States with recent travel from, or who were otherwise recently present within, any of the countries of the Schengen Area are provided appropriate public health services.

The enhanced arrival protocols concerning travelers with recent travel from, or who were otherwise recently present within, the People’s Republic of China, excluding the Special Administrative Regions of Hong Kong and Macau, identified in the documents published at 85 FR 6044 on February 4, 2020 and 85 FR 7214 on February 7, 2020, also remain in place in this notice, except that flights are permitted to land at two additional airports. The enhanced arrival protocols concerning travelers with recent travel from, or who were otherwise

present within, the Islamic Republic of Iran, identified in the document published at 85 FR 12731 on March 4, 2020, also remain in place in this notice except that flights are permitted to land at two additional airports.

Enhanced traveler arrival protocols are part of a layered approach used with other public health measures already in place to detect arriving travelers who are exhibiting overt signs of illness. Related measures include reporting ill travelers identified by carriers during travel to appropriate public health officials for evaluation, and referring ill travelers arriving at a U.S. port of entry by CBP to appropriate public health officials in order to slow and prevent the introduction into, and transmission and spread of, communicable disease in the United States.

To ensure that travelers with recent presence in the countries of the Schengen Area are screened appropriately, DHS directs that all flights to the United States carrying persons who have recently traveled from, or were otherwise present within, the countries of the Schengen Area arrive at airports where enhanced public health services and protocols have been implemented. Although DHS will continue to work with carriers to ensure that they identify potential persons who traveled from, or who have otherwise recently been present within, the affected areas prior to boarding, carriers shall comply with the requirements of this document in all cases, including when such persons are identified after boarding but prior to takeoff.

On Friday, January 31, 2020, DHS posted a document on the **Federal Register** public inspection page, announcing the DHS Secretary's decision that arrival restrictions regarding the People's Republic of China (excluding the Special Administrative Regions of Hong Kong and Macau) would go into effect at 5 p.m. Eastern Daylight Time on Sunday, February 2, 2020, at seven airports. The document announcing this decision was published in the **Federal Register** on February 4, 2020 at 85 FR 6044. On Friday, February 7, 2020, DHS published a document adding two airports to the list of airports where flights subject to the arrival restrictions are permitted to land and describing when the arrival restrictions would include those airports. See 85 FR 7214. With this document, DHS is adding the following two additional airports to the list of airports where flights subject to the arrival restrictions are permitted to land: Boston Logan International Airport (BOS), and Miami International Airport (MIA).

As with actions related to the People's Republic of China and the Islamic Republic of Iran, DHS anticipates that airlines will be able to fully support implementation of these arrival restrictions.

Notification of Arrival Restrictions Applicable to All Flights Carrying Persons Who Have Recently Traveled From or Were Otherwise Present Within the Countries of the Schengen Area

Pursuant to 19 U.S.C. 1433(c), 19 CFR 122.32, 49 U.S.C. 114, and 49 CFR 1544.305 and 1546.105, DHS has the authority to limit the locations where all flights entering the U.S. from abroad may land. Under this authority and effective for flights departing after 11:59 p.m. ET on Friday March 13, 2020, I hereby direct all operators of aircraft to ensure that all flights carrying persons who have recently traveled from, or were otherwise present within, any of the countries of the Schengen Area only land at one of the following airports:

- John F. Kennedy International Airport (JFK), New York;
- Chicago O'Hare International Airport (ORD), Illinois;
- San Francisco International Airport (SFO), California;
- Seattle-Tacoma International Airport (SEA), Washington;
- Daniel K. Inouye International Airport (HNL), Hawaii;
- Los Angeles International Airport, (LAX), California;
- Hartsfield-Jackson Atlanta International Airport (ATL), Georgia;
- Washington-Dulles International Airport (IAD), Virginia;
- Newark Liberty International Airport (EWR), New Jersey;
- Dallas/Fort Worth International Airport (DFW), Texas;
- Detroit Metropolitan Airport (DTW), Michigan;
- Boston Logan International Airport (BOS), Massachusetts; and
- Miami International Airport (MIA), Florida.

This direction considers a person to have recently traveled from, or otherwise been present within, a country of the Schengen Area if that person departed from, or was otherwise present within, a country of the Schengen Area within 14 days of the date of the person's entry or attempted entry into the United States. The Schengen Area consists of the following countries: Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, and Switzerland.

For purposes of this document, crew and flights carrying only cargo (*i.e.*, no passengers or non-crew) are excluded from the applicable measures set forth in this notice.

This direction is subject to any changes to the airport landing destination that may be required for aircraft and/or airspace safety, as directed by the Federal Aviation Administration.

This list of affected airports may be modified by the Secretary of Homeland Security, in consultation with the Secretary of Health and Human Services and the Secretary of Transportation. This list of affected airports may be modified by an updated publication in the **Federal Register** or by posting an advisory to follow at *www.cbp.gov*. The restrictions will remain in effect until superseded, modified, or revoked by publication in the **Federal Register**.

For purposes of this **Federal Register** document, “United States” means the States of the United States, the District of Columbia, and territories and possessions of the United States (including Puerto Rico, the U.S. Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, and Guam).

CHAD F. WOLF,
Acting Secretary,
U.S. Department of Homeland Security.

[Published in the Federal Register, March 17, 2020 (85 FR 15059)]

19 CFR CHAPTER I

TRANSPORTATION SECURITY ADMINISTRATION

49 CFR CHAPTER XII

NOTIFICATION OF ARRIVAL RESTRICTIONS APPLICABLE TO FLIGHTS CARRYING PERSONS WHO HAVE RECENTLY TRAVELED FROM OR WERE OTHERWISE PRESENT WITHIN THE UNITED KINGDOM OR THE REPUBLIC OF IRELAND

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

ACTION: Notification of arrival restrictions.

SUMMARY: This document announces the decision of the Secretary of Homeland Security (DHS) to direct all flights to the United States carrying persons who have recently traveled from, or were otherwise present within, the United Kingdom, excluding overseas territories outside of Europe, or the Republic of Ireland to arrive at one of the United States airports where the United States Government is focus-

ing public health resources. This document updates the previous decisions of the Secretary of DHS: To direct all flights to the United States carrying persons who have recently traveled from, or were otherwise present within, the People's Republic of China (excluding the Special Regions of Hong Kong and Macau) to arrive at one of the United States airports where the United States Government is focusing public health resources (effective February 2, 2020); to direct all flights to the United States carrying persons who have recently traveled from, or were otherwise present within, the Islamic Republic of Iran to arrive at one of the United States airports where the United States Government is focusing public health resources (effective March 2, 2020); and to direct all flights to the United States carrying persons who have recently traveled from, or were otherwise present within, the countries of the Schengen Area, to arrive at one of the United States airports where the United States Government is focusing public health resources (effective March 13, 2020).

DATES: Flights departing after 11:59 p.m. Eastern Daylight Time (EDT) on Monday, March 16, 2020, and covered by the arrival restrictions regarding the United Kingdom, excluding overseas territories outside of Europe, or the Republic of Ireland are required to land at one of the airports identified in this document. These arrival restrictions will continue until cancelled or modified by the Secretary of DHS and notification is published in the **Federal Register** of such cancellation or modification.

FOR FURTHER INFORMATION CONTACT: Matthew S. Davies, Office of Field Operations, U.S. Customs and Border Protection (CBP) at 202-325-2073.

SUPPLEMENTARY INFORMATION:

Background

Coronaviruses are a large family of viruses that are common in many different species of animals, including camels, cattle, cats, and bats. While it is rare, animal coronaviruses can infect people, and then spread between people (human-to-human) such as with Middle East Respiratory Syndrome and Severe Acute Respiratory Syndrome. The United States Government is closely monitoring an outbreak of respiratory illness caused by human-to-human transmission of a novel (new) coronavirus (which has since been renamed "SARS-CoV-2" and causes the disease COVID-19), first identified in Wuhan City, Hubei Province, People's Republic of China.

The potential for widespread transmission of this virus by infected individuals seeking to enter the United States threatens the security of our transportation system and infrastructure, and the national

security. Noting recent pronouncements by the World Health Organization (WHO) and the Centers for Disease Control and Prevention (CDC) for the novel coronavirus outbreak, including the categorization by WHO of COVID-19 as a pandemic on March 11, 2020, and to assist in preventing the introduction, transmission, and spread of this communicable disease globally and in the United States, DHS, in coordination with CDC and other Federal, state and local agencies charged with protecting the American public, is implementing enhanced protocols to ensure that all travelers seeking to enter the United States with recent travel from, or who were otherwise recently present within, the United Kingdom, excluding overseas territories outside of Europe, or the Republic of Ireland are provided appropriate public health services.

The enhanced arrival protocols concerning travelers with recent travel from, or who were otherwise recently present within, the People's Republic of China, excluding the Special Administrative Regions of Hong Kong and Macau, identified in the documents published at 85 FR 6044 on February 4, 2020 and 85 FR 7214 on February 7, 2020, also remain in place, except that flights are permitted to land at two additional airports pursuant to the notification posted on the **Federal Register** public inspection page on March 13, 2020. The enhanced arrival protocols concerning travelers with recent travel from, or who were otherwise present within, the Islamic Republic of Iran, identified in the document published at 85 FR 12731 on March 4, 2020, also remain in place except that flights are permitted to land at two additional airports pursuant to the notification posted on the **Federal Register** public inspection page on March 13, 2020. Travelers with recent travel from, or who were otherwise present within, the countries of the Schengen Area also remain in place, identified in the document posted on the **Federal Register** public inspection page on March 13, 2020.

Enhanced traveler arrival protocols are part of a layered approach used with other public health measures already in place to detect arriving travelers who are exhibiting overt signs of illness. Additional measures include requiring carriers to distribute a Centers for Disease Control and Prevention (CDC) health declaration form to passengers on flights originating in the People's Republic of China, excluding the Special Administrative Regions of Hong Kong and Macau, the Islamic Republic of Iran, specified countries in the Schengen Area, the United Kingdom (excluding overseas territories outside Europe), and the Republic of Ireland to support CDC passenger health screening and contact tracing. U.S. Government Representatives will collect this form from passengers upon arrival in the United States. Other measures to protect the public include reporting ill

travelers identified by carriers during travel to appropriate public health officials for evaluation, and referring ill travelers arriving at a U.S. port of entry by CBP to appropriate public health officials in order to slow and prevent the introduction into, and transmission and spread of, communicable disease in the United States.

To ensure that travelers with recent presence in the United Kingdom, excluding overseas territories outside of Europe, or the Republic of Ireland are screened appropriately, DHS directs that all flights to the United States carrying persons who have recently traveled from, or were otherwise present within, the United Kingdom, excluding overseas territories outside of Europe, or the Republic of Ireland arrive at airports where enhanced public health services and protocols have been implemented. Although DHS will continue to work with carriers to ensure that they identify potential persons who traveled from, or who have otherwise recently been present within, the affected areas prior to boarding, carriers shall comply with the requirements of this document in all cases, including when such persons are identified after boarding but prior to takeoff.

On Friday, January 31, 2020, DHS posted a document on the **Federal Register** public inspection page, announcing the DHS Secretary's decision that arrival restrictions regarding the People's Republic of China (excluding the Special Administrative Regions of Hong Kong and Macau) would go into effect at 5 p.m. Eastern Daylight Time on Sunday, February 2, 2020, at seven airports. The document announcing this decision was published in the **Federal Register** on February 4, 2020 at 85 FR 6044. On Friday, February 7, 2020, DHS published a document adding four airports to the list of airports where flights subject to the arrival restrictions are permitted to land and describing when the arrival restrictions would include those airports. *See* 85 FR 7214. On Friday, March 13, 2020, DHS posted a document on the **Federal Register** public inspection page adding two airports to the list of airports where flights subject to the arrival restrictions are permitted to land.

As with actions related to the People's Republic of China, the Islamic Republic of Iran and the countries of the Schengen Area, DHS anticipates that airlines will be able to fully support implementation of these arrival restrictions.

Notification of Arrival Restrictions Applicable to All Flights Carrying Persons Who Have Recently Traveled From or Were Otherwise Present Within the United Kingdom, Excluding Overseas Territories Outside of Europe, or the Republic of Ireland

Pursuant to 19 U.S.C. 1433(c), 19 CFR 122.32, 49 U.S.C. 114, and 49 CFR 1544.305 and 1546.105, DHS has the authority to limit the

locations where all flights entering the U.S. from abroad may land. Under this authority and effective for flights departing after 11:59 p.m. Eastern Daylight Time on Monday, March 16, 2020, I hereby direct all operators of aircraft to ensure that all flights carrying persons who have recently traveled from, or were otherwise present within, the United Kingdom, excluding overseas territories outside of Europe, or the Republic of Ireland only land at one of the following airports:

- John F. Kennedy International Airport (JFK), New York;
- Chicago O'Hare International Airport (ORD), Illinois;
- San Francisco International Airport (SFO), California;
- Seattle-Tacoma International Airport (SEA), Washington;
- Daniel K. Inouye International Airport (HNL), Hawaii;
- Los Angeles International Airport, (LAX), California;
- Hartsfield-Jackson Atlanta International Airport (ATL), Georgia;
- Washington-Dulles International Airport (IAD), Virginia;
- Newark Liberty International Airport (EWR), New Jersey;
- Dallas/Fort Worth International Airport (DFW), Texas;
- Detroit Metropolitan Airport (DTW), Michigan;
- Boston Logan International Airport (BOS), Massachusetts; and
- Miami International Airport (MIA), Florida.

This direction considers a person to have recently traveled from, or otherwise been present within, the United Kingdom, excluding overseas territories outside of Europe, or the Republic of Ireland if that person departed from, or was otherwise present within, the United Kingdom, excluding overseas territories outside of Europe, or the Republic of Ireland within 14 days of the date of the person's entry or attempted entry into the United States.

For purposes of this document, crew and flights carrying only cargo (*i.e.*, no passengers or non-crew) are excluded from the applicable measures set forth in this notice.

This direction is subject to any changes to the airport landing destination that may be required for aircraft and/or airspace safety, as directed by the Federal Aviation Administration.

This list of affected airports may be modified by the Secretary of Homeland Security, in consultation with the Secretary of Health and Human Services and the Secretary of Transportation. This list of affected airports may be modified by an updated publication in the **Federal Register** or by posting an advisory to follow at *www.cbp.gov*. The restrictions will remain in effect until superseded, modified, or revoked by publication in the **Federal Register**.

For purposes of this **Federal Register** document, “United States” means the States of the United States, the District of Columbia, and territories and possessions of the United States (including Puerto Rico, the U.S. Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, and Guam).

The Acting Secretary of DHS, Chad F. Wolf, having reviewed and approved this document, is delegating the authority to electronically sign this document to Christina E. McDonald, who is the Federal Register Liaison for DHS, for purposes of publication in the **Federal Register**.

CHRISTINA E. McDONALD,
Federal Register Liaison,
U.S. Department of Homeland Security.

[Published in the Federal Register, March 19, 2020 (85 FR 15714)]



19 CFR PART 177

REVOCATION OF ONE RULING LETTER, MODIFICATION OF ONE RULING LETTER, AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF STRETCHER COVERS AND GURNEY COVERS

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

ACTION: Notice of revocation of one ruling letter, modification of one ruling letter, and revocation of treatment relating to the tariff classification of stretcher covers and gurney covers.

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 and modifying one ruling letter concerning the tariff classification of stretcher covers and gurney covers under the Harmonized Tariff Schedule of the United States (HTSUS). Simi-

larly, 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. 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 **May 1, 2020**.

FOR FURTHER INFORMATION CONTACT: Marie Durane, Food, Textiles and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325-0984.

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 and modify one ruling letter pertaining to the tariff classification of stretcher covers and gurney covers. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

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

In New York Ruling Letter (“NY”) B89677, dated October 6, 1997, CBP classified a stretcher cover in heading 6307, HTSUS, specifically in subheading 6307.90.99, HTSUS, which provides for “Other made up articles, including dress patterns: Other: Other: Other.” CBP has reviewed NY B89677 and has determined the ruling letter to be in error. It is now CBP’s position that stretcher covers are properly classified, in heading 6302, HTSUS, specifically in subheading 6302.32.20, HTSUS, which provides for “Bed linen, table linen, toilet linen and kitchen linen: Other bed linen: Of man-made fibers: Other.”

In NY I88978, dated December 13, 2002, CBP classified a stretcher cover and gurney cover in heading 6307, HTSUS, specifically in subheading 6307.90.98, HTSUS, which provides for “Other made up articles, including dress patterns: Other: Other: Other.” CBP has reviewed NY I88978 and has determined the ruling letter to be in error. It is now CBP’s position that stretcher cover and gurney cover are properly classified, in heading 6302, HTSUS, specifically in subheading 6302.32.20, HTSUS, which provides for “Bed linen, table linen, toilet linen and kitchen linen: Other bed linen: Of man-made fibers: Other.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY B89677 and modifying NY I88978, and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter (“HQ”) H254033, 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*.

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachment

NY B89677

October 6, 1997

CLA-2-63:RR:NC:TA:352 B89677

CATEGORY: Classification

TARIFF NO.: 6307.90.9989

MR. LAWRENCE R. PILON
HODES & PILON
33 NORTH DEARBORN STREET, SUITE 2204
CHICAGO, ILL 60602-3109

RE: The tariff classification of a stretcher cover from the Philippines.

DEAR MR. PILON:

In your letter dated September 12, 1997, on behalf of Medline Industries, Inc., you requested a tariff classification ruling.

The sample submitted is a stretcher cover made of nonwoven polypropylene fabric and measures 72" x 32". The ends are folded over and sewn to form pockets to hold the cover on the stretcher.

The applicable subheading for the stretcher cover will be 6307.90.9989, Harmonized Tariff Schedule of the United States (HTS), which provides for other made up articles...Other. The rate of duty will be 7 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 Alan Tytelman at 212-466-5896.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

NY I88978

December 13, 2002

CLA-2-63:RR:NC:TA:351 I88978

CATEGORY: Classification

TARIFF NO.: 6307.90.9889

Ms. NANCY L. RICE
KAPPLER USA
115 GRIMES DRIVE
GUNTERSVILLE, AL 35976

RE: The tariff classification of a stretcher cover, a gurney cover, a blood pressure sleeve and a strap assembly from China.

DEAR Ms. RICE:

In your letter dated November 25, 2002 you requested a tariff classification ruling. The samples are being returned as requested.

The samples submitted are a disposable stretcher cover, a disposable gurney cover, a disposable blood pressure sleeve and a strap assembly to be used to secure patients. The stretcher cover is made of nonwoven spun bonded polypropylene fabric coated on one side with polyethylene. The ends are folded over and sewn to form pockets to hold the cover on the stretcher. It features textile strap handles

The gurney cover is constructed of nonwoven spun bonded polypropylene fabric coated on one side with polyethylene. It features two web fabric straps with a plastic buckle and strap handles.

The blood pressure sleeve is composed of a nonwoven spun bonded polypropylene textile fabric panel coated on one side with polyethylene. The sides are seamed to form a tubular shape article with an elasticized opening at each end. It features a clear plastic window.

The strap assembly is constructed of twelve adjustable web fabric straps with plastic buckles. The straps are assembled together to form an adjustable strap to cover a patient's head, shoulders, chest, abdomen, pelvic, thigh and leg areas. The straps are made of nylon webbing fabric.

The applicable subheading for the stretcher cover, gurney cover, blood pressure sleeve and strap assembly will be 6307.90.9889, Harmonized Tariff Schedule of the United States (HTS), which provides for other made up articles . . . Other. The rate of duty will be 7 percent ad valorem. The rate of duty for the year 2003 will be the same.

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 Mitchel Bayer at 646-733-3102.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

HQ H254033
OT:RR:CTF:FTM H254033 LOR/MJD
CATEGORY: Classification
TARIFF NO.: 6302.32.20

MR. LAWRENCE PILON
HODES, KEATING & PILON
33 NORTH DEARBORN STREET
SUITE 2204
CHICAGO, IL 60602-3109

RE: Revocation of NY B89677 and modification of NY I88978; Classification of a stretcher cover and a gurney cover

DEAR MR. PILON:

This is reference to New York Ruling Letter (“NY”) B89677, dated October 6, 1997, that U.S. Customs and Border Protection (“CBP”) issued to you on behalf of Medline Industries, Inc. NY B89677 concerns the tariff classification of a stretcher cover under subheading 6307.90.99 of the Harmonized Tariff Schedule of the United States (“HTSUS”), which provides for “Other made up articles, including dress patterns: Other: Other: Other: Other.” After reviewing NY B89677, we have determined it to be in error. Therefore, for the reasons set forth below, we hereby revoke NY B89677.

In addition, we have also reviewed NY I88978, dated December 13, 2002, which involves the classification of substantially identical stretcher cover and gurney covers under subheading 6307.90.98, HTSUS, as well as other articles. As with NY B89677, we have determined that the tariff classification of the stretcher covers and gurney covers in this ruling is incorrect. Therefore, we are modifying NY I88978 with respect to the stretcher covers and the gurney covers.

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 September 25, 2019, in Volume 53, Number 34, of the *Customs Bulletin*. One comment was received in response to this notice, opposing CBP’s revocation of NY B89677 and modification of NY I88978. This comment will be addressed below.

FACTS:

In NY B89677, CBP described the subject merchandise as follows:

The sample submitted is a stretcher cover made of nonwoven polypropylene fabric and measures 72” x 32”. The ends are folded over and sewn to form pockets to hold the cover on the stretcher.

In NY I88978, CBP described the subject merchandise as follows:

The stretcher cover is made of nonwoven spun bonded polypropylene fabric coated on one side with polyethylene. The ends are folded over and sewn to form pockets to hold the cover on the stretcher. It features textile strap handles.

The gurney cover is constructed of nonwoven spun bonded polypropylene fabric coated on one side with polyethylene. It features two web fabric straps with a plastic buckle and strap handles.

ISSUE:

Whether the disposable stretcher covers and disposable gurney covers are classified in heading 6302, HTSUS, as bed linen or in heading 6307, HTSUS, as other made up articles.

LAW AND ANALYSIS:

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (“GRIs”). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings or notes do not require otherwise, the remaining GRIs 2 through 6 may be applied.

The 2019 HTSUS headings under consideration are as follows:

6302 Bed linen, table linen, toilet linen and kitchen linen:

* * * * *

6307 Other made up articles, including dress patterns:

* * * * *

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

EN 63.02 states, in pertinent part:

These articles are usually made of cotton or flax, but sometimes also of hemp, ramie or man-made fibres, etc.; they are normally of a kind suitable for laundering. They include:

Bed linen, e.g., sheets, pillowcases, bolster cases, eiderdown cases and mattress covers.

EN 63.07 states, in pertinent part:

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

Heading 6302, HTSUS, is the provision for “bed linen.” The term “bed linen” is not defined in the tariff. As such, CBP may determine the scope of the term by relying upon its common and commercial meaning, and by consulting lexicographic sources. *Medline Indus. v. United States*, 62 F.3d 1407, 1409 (Fed. Cir. 1995). “[T]he meaning of a tariff term is presumed to be the same as its common or dictionary meaning.” *Brookside Veneers, Ltd. v. United States*, 847 F.2d 786, 789 (Fed. Cir. 1988) (citations omitted), cert. denied, 488 U.S. 943, 109 S. Ct. 369, 102 L. Ed. 2d 358 (1988).

The term “bed linen” is defined in the *Oxford English Dictionary* (“OED”) as “[b]edclothes, esp. sheets and pillow-cases, originally of linen.” The term “bed-clothes” is defined as “[t]he sheets and blankets with which a bed is covered.” A “bed” is defined as “[t]he sleeping-place of a person or animal.” The term “bed” is further defined as “[a] permanent structure or arrangement for sleeping on, or for the sake of rest.” A “stretcher” is defined as “[A]

framework of two poles with a long piece of canvas strung between them, used for carrying sick, injured, or dead people. Lastly, the OED defines the term “gurney” as “a wheeled stretcher used for transporting patients.” See 2012 OED located at www.oed.com.

In *Medline*, the U.S. Court of Appeals for the Federal Circuit (“CAFC”) reversed the U.S. Court of International Trade (“CIT”) and determined that the CIT erred in “limiting the scope of heading 6302, HTSUS, to include, only those items found on all beds, thus excluding specialized items such as drawsheets which are only found on some beds.” The CAFC stated that, “[t]he correct definition of bed linens includes linen, cotton or other fabric articles for a bed.” See, *Medline*, 62 F.3d at 1410.

In accordance with the CAFC’s rationale in *Medline*, for purposes of heading 6302, HTSUS, the definition of “bed” is not limited to “all beds” and “bed linens” are not limited to linen, cotton or other fabric articles for a bed. The subject stretcher covers and gurney covers in this case, which are fitted sheets, are used to protect the stretchers and gurneys from dirt and other contaminants, and to provide comfort to the patient.¹ Here, the subject disposable stretcher covers in NY B89677 and NY I88978 meet the CAFC’s definition of “bed linen,” set forth above. We further note that although the subject gurney covers in NY I88978 have straps, these articles are used to cover gurneys in the same way that stretcher covers are used to cover stretchers. Accordingly, the gurney covers also meet the CAFC’s definition in *Medline* for “other fabric articles for a bed.” Therefore, consistent with the court’s analysis in *Medline*, we find that the subject disposable stretcher covers and gurney covers are classified in heading 6302, HTSUS.

Moreover, CBP has classified other articles that are similar to the subject stretcher covers and gurney covers in subheading 6302.32.20, HTSUS. See, for example, NY C89339, dated July 20, 1998 (classifying a disposable fitted sheet made of 100 percent polypropylene); NY E80050, dated April 22, 1999 (classifying a “Disposable Bedding Pack for 911 Emergency Use”); NY I87600, dated November 15, 2002 (classifying a stretcher kit, composed of two disposable pillow cases, a top sheet, and a fitted stretcher sheet made of 100 percent polypropylene spunbond cotton); and, NY K85383, dated May 12, 2004 (classifying a “fitted sheet made of polypropylene nonwoven fabric,” similar to the stretcher covers at issue in NY C89339).

One comment was received in opposition to the proposed ruling. The commenter argues that stretchers and gurneys are not beds, and, therefore, stretcher covers and gurney covers cannot be classified as bed linens under heading 6302, HTSUS. The commenter also argues that the proposed ruling misconstrues *Medline* and that *Medline* is irrelevant to this case. The commenter opines that stretcher covers and gurney covers do not meet the CAFC’s definition of bed linens in *Medline* because stretcher covers and gurney covers are not used on any beds. In addition, the commenter disagrees with this ruling’s assertion that because CAFC held that heading 6302,

¹ CBP has found that fitted bed linen of heading 6302, HTSUS, is used to protect a bed or pillow from dirt and to add comfort for the sleeper. See, HQ H241333, dated June 26, 2014 (classifying a futon cover in heading 6304, HTSUS, after finding that it could be part of a room’s décor as opposed to functioning primarily to protect the mattress from dirt); HQ H056837, dated May 19, 2011 (classifying futon cover Style A as bed linen after finding that it may function to cover and protect both the foam pad and the mattress from dirt and air exposure); HQ 967041, dated September 30, 2004 (classifying disposable covers designed to cover and protect pillows distributed for the passenger’s comfort and sleep needs).

HTSUS, is not limited to “all beds,” “bed linens” are not limited to linen, cotton or other fabric articles for a bed.

In arguing that gurney covers and stretcher covers cannot be bed linens because gurneys and stretchers are not beds, the commenter discounts the fact that gurney covers and stretcher covers are fitted sheets, and fitted sheets have been consistently classified as bed linens under heading 6302, HTSUS. Heading 6302, HTSUS, is the only provision for fitted sheets and simply because the fitted sheets, in this case, go on gurneys and stretchers does not change what they are nor can it disqualify them from heading 6302, HTSUS. A fitted sheet is designed to protect the item it covers from contamination and provide a smooth surface for the person lying on it. It is immaterial to their classification as bed linens whether they are made for gurneys or stretchers. Accordingly, *Medline* is an appropriate case to cite to in this ruling because it resolves the fact that bed linens in heading 6302, HTSUS, do not have to go on all beds, they can go on some beds, and arguably on a single bed, what is of consequence is that what goes on the beds are bed linens, and fitted sheets are bed linens that can be made of a variety of materials such as nonwoven polypropylene as are the fitted sheets in this case.

The commenter also asserts that the ruling cites to previous CBP decisions that do not refer to stretchers or gurneys. Once more, stretcher covers and gurney covers are fitted sheets, and so the cases mentioned in this ruling are appropriate because they refer to fitted sheets and similar bed linens. Furthermore, the commenter notes that the ruling does not cite to Headquarters Ruling Letter (“HQ”) H243928, dated June 22, 2017, that found that sleep sacks, primarily used for travel purposes in sleeping bags, hammocks, or independently, are not classifiable as bed linen in heading 6302, HTSUS. Citing to *Medline*, HQ H243928 determines that because the sleep sacks are certainly not found on all beds, nor can they be described as specialized items ... which are only found on some beds, they cannot be classified under heading 6302, HTSUS, and are classified under heading 6307, HTSUS. However, the sleep sacks in HQ H243928 are different from gurney covers or stretcher covers. HQ H243928 states that “unlike the drawsheets in *Medline*, the sleep sacks are used to protect the consumer from the undersheets and mattresses, rather than to protect the undersheets and mattresses from the consumer. In other words, they are not “bed-clothes” designed to cover the bed, rather they are designed to protect the consumer.” Hence, because the sleep sacks at issue in HQ H243928 are not made for use as bed-clothes, which is the definition of bed linens, they cannot be classified under heading 6302, HTSUS, unlike the fitted sheets in this case whose purpose are to be used as bed clothes or bed linens, and are thus classifiable under heading 6302, HTSUS.

Therefore, based on the foregoing, it is our opinion that the stretcher covers and gurney covers, which we consider to be fitted sheets, are described in heading 6302, HTSUS. Inasmuch as the stretcher covers and gurney covers are more specifically described in heading, 6302, HTSUS, they are excluded from classification in heading 6307, HTSUS.

HOLDING:

By application of GRIs 1 and 6, the stretcher covers are classified in heading 6302, HTSUS, specifically in subheading 6302.32.20, HTSUS, which provides for “Bed linen, table linen, toilet linen and kitchen linen: Other bed linen: Of man-made fibers: Other.” The 2019 rate of duty is 11.4% *ad valorem*.

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

NY B89677, dated October 6, 1997, is hereby revoked to classify the disposable stretcher covers in subheading 6302.32.20, HTSUS.

NY I88978, dated December 13, 2002, is hereby modified to classify the disposable stretcher covers and the disposable gurney covers in subheading 6302.32.20, HTSUS.

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

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

CC: Ms. Nancy L. Rice
Kappler USA
115 Grimes Drive
Guntersville, AL 35976



**PROPOSED MODIFICATION OF ONE RULING LETTER
AND PROPOSED REVOCATION OF TREATMENT
RELATING TO THE TARIFF CLASSIFICATION OF STEEL
DOCTOR BLADES IN COILS**

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

ACTION: Notice of proposed modification of one ruling letter, and proposed revocation of treatment relating to the tariff classification of steel doctor blades.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to modify one ruling letter concerning tariff classification of steel doctor blades 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 May 1, 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 Ms. Cammy Canedo at (202) 325-0439.

FOR FURTHER INFORMATION CONTACT: Reema Bogin, Chemicals, Petroleum, Metals and Miscellaneous Articles Branch, Regulations and Rulings, Office of Trade, at reema.bogin@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to 19 U.S.C. § 1625(c)(1), this notice advises interested parties that CBP is proposing to modify one ruling letter pertaining to the tariff classification of steel doctor blades. Although in this notice, CBP is specifically referring to New York Ruling Letter ("NY") N301037, dated November 7, 2018 (Attachment A), this notice also covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the comment period.

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

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

In NY N301037, CBP classified various steel doctor blades in coils in headings of chapter 72, HTSUS. Uncoated PS1 steel doctor blades in coils and in widths of less than 600 mm were classified in heading 7212, HTSUS, specifically in subheading 7212.50.0000, HTSUSA (“Annotated”), which provides for “Flat-rolled products or iron or nonalloy steel, of a width of less than 600 mm, clad, plated or coated: Otherwise plated or coated.” Uncoated PS1 steel doctor blades in coils and in widths of 600 mm or more were classified in heading 7210, HTSUS, specifically in subheading 7210.90.9000, HTSUSA, which provides for “Flat-rolled products of iron or nonalloy steel, of a width of 600 mm or more, clad, plated or coated: Other: Other: Other.” PS INOX steel doctor blades in coils and in widths of less than 600 mm were classified in heading 7220, HTSUS, specifically in subheading 7220.90.00, HTSUS, which provides for “Flat-rolled products of stainless steel, of a width of less than 600 mm: Other.” PS INOX steel doctor blades in coils and in widths of 600 mm or more were classified in heading 7219, HTSUS, specifically in subheading 7219.90.00, HTSUS, which provides for “Flat-rolled products of stainless steel, of a width of 600 mm or more: Other.” CBP has reviewed NY N301037 and has determined the ruling letter to be partially in error. It is now CBP’s position that the above merchandise are classified as follows: uncoated PS1 steel doctor blades in coils and in widths of less than 600 mm are properly classified in heading 7211, HTSUS, specifically in subheading 7211.90.0000, HTSUSA, which provides for “Flat-rolled products of iron or nonalloy steel, of a width of less than 600 mm, not clad, plated or coated: Other”; uncoated PS1 steel doctor blades in coils and in widths of 600 mm or more are properly classified in heading 7209, HTSUS, specifically in subheading 7209.90.0000, HTSUSA, which provides for “Flat-rolled products of iron or nonalloy steel, of a width of 600 mm or more, cold-rolled (cold-reduced), not clad, plated or coated: Other”; PS INOX steel doctor blades in coils and in widths of less than 600 mm are properly classified in heading 7220, HTSUS, specifically in subheading 7220.90.0060, HTSUSA, which provides for “Flat-rolled products of stainless steel, of a width of less than 600 mm: Other: Other: Containing less than 15 percent by weight of chromium”; and PS INOX steel doctor blades in coils and in widths of 600 mm or more are properly classified in heading 7219, HTSUS, specifically in subheading 7219.90.0060, HTSUSA, which

provides for “Flat-rolled products of stainless steel, of a width of 600 mm or more: Other: Other: Other: Containing less than 15 percent by weight of chromium.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to modify NY N301037 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H303128, set forth as Attachment B to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

CRAIG T. CLARK,
Director
Commercial and Trade Facilitation Division

Attachments

N301037

November 7, 2018

CLA-2-72:OT:RR:NC:N1:117

CATEGORY: Classification

TARIFF NO.: 7210.90.9000; 7212.50.0000;
7225.99.0090; 7226.99.0180; 7219.90.00;
7220.90.00; 9903.80.01

MR. ANDREW VAN DENEND
PRECISION FLEXO & GRAVURE
3050 S. VALLEJO
ENGLEWOOD, CO 80110

RE: The tariff classification of steel doctor blades from Italy

DEAR MR. VAN DENEND:

In your letter dated October 8, 2018 you requested a tariff classification ruling.

The products under consideration are described as steel doctor blades intended to be used as parts for printing presses. The steel is imported in various chemistries and dimensions. It is stated to be cold-rolled in Sweden and shipped to Italy where the edges are ground. The final product has a ceramic coating and is shipped from Italy to the U.S. In accordance with the definitions of steel in Section XV, Harmonized Tariff Schedule of the United States (HTSUS), the chemistries are described as PS1 which is a nonalloy steel, PS2 and PS4 which are tool steel, PS3 which is an other alloy steel and PS INOX grade which is a stainless steel. Although stated to be imported custom made, the blades are flat-rolled steel in 200 meter coils that are imported without markings indicating at what length the doctor blades need to be cut for printing press use.

You suggest classification in 8443.91.3000 as parts of printing presses. We do not agree.

Flat-rolled products of steel are defined in HTS Chapter 72 Note 1. (k) as “Rolled products of solid rectangular (other than square) cross section...in the form of coils of successively superimposed layers....” The Explanatory Notes to heading 7208 state that flat-rolled products may have been worked after rolling by beveling or rounding the edges.

In *Heraeus-Amersil v. United States*, 640 F. Supp. 1331 (1986), the classification of merchandise — contact tape composed of gold, silver and palladium imported in continuous lengths for use in making individual contacts for telephone relays — was addressed and is comparable to the merchandise at issue here. The Court stated that “...where such articles are imported in the piece and nothing remains to be done except to cut them apart, they shall be treated for dut[y] purposes as if already cut apart and assessed according to their individual character or identity. This follows, however, only in case the character or identity of the individual articles is fixed with certainty and in case the woven piece in its entirety is not commercially capable of any other use.” Significantly, the *Heraeus* rule isn’t satisfied here because of noncompliance with the “fixed with certainty” criteria. Individual doctor blades are not identifiable in the coiled material, that is, there are no markings on the steel to indicate where individual blades are to be cut.

The applicable subheading for the PS1 coils in widths of 600 mm or more will be 7210.90.9000, HTSUS, which provides for flat-rolled products of iron

or nonalloy steel, of a width of 600 mm or more, clad, plated or coated, other, other, other. The rate of duty will be free.

The applicable subheading for the PS1 coils in widths of less than 600 mm will be 7212.50.0000, HTSUS, which provides for flat-rolled products of iron or nonalloy steel, of a width of less than 600 mm, clad, plated or coated, otherwise plated or coated. The rate of duty will be free.

The applicable subheading for the PS2, PS3 and PS4 coils in widths of 600 mm or more will be 7225.99.0090, HTSUS, which provides for flat-rolled products of other alloy steel, of a width of 600 mm or more, other, other, other. The rate of duty will be free.

The applicable subheading for the PS2, PS3 and PS4 coils in widths of less than 600 mm will be 7226.99.0180, HTSUS, which provides for flat-rolled products of other alloy steel, of a width of less than 600 mm, other, other, other. The rate of duty will be free.

Please note that insufficient information was provided for the chemical composition on the PS INOX grade to allow classification beyond the 8 digit level.

The applicable subheading for the PS INOX coils in widths of 600 mm or more will be 7219.90.00, HTSUS, which provides for flat-rolled products of stainless steel, of a width of 600 mm or more, other. The rate of duty will be free.

The applicable subheading for the PS INOX coils in widths of less than 600 mm will be 7220.90.00, HTSUS, which provides for flat-rolled products of stainless steel, of a width of less than 600 mm, 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 the World Wide Web at <https://hts.usitc.gov/current>.

On March 8, 2018, Presidential proclamations 9704 and 9705 imposed additional tariffs and quotas on a number of steel and aluminum mill products. Exemptions have been made on a temporary basis for some countries. Quantitative limitations or quotas may apply for certain exempted countries and can also be found in Chapter 99. Additional duties for steel of 25 percent and for aluminum of 10 percent are reflected in Chapter 99, subheading 9903.80.01 for steel and subheading 9903.85.01 for aluminum. Products classified under subheadings 7210.90.9000, 7212.50.0000, 7225.99.0090, 7226.99.0180, 7219.90.00 and 7220.90.00, HTSUS, may be subject to additional duties or quota. At the time of importation, you must report the Chapter 99 subheading applicable to your product classification in addition to the Chapter 72, 73 or 76 subheading listed above.

The Proclamations are subject to periodic amendment of the exclusions, so you should exercise reasonable care in monitoring the status of goods covered by the Proclamations and the applicable Chapter 99 subheadings.

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 Mary Ellen Laker at mary.ellen.laker@cbp.dhs.gov.

Sincerely,
STEVEN A. MACK
Director
National Commodity Specialist Division

HQ H303128
OT: RR: CTF: CPMM: H303128 RRB
CATEGORY: Classification
TARIFF NO.: 7209.90.0000; 7211.90.0000;
7219.90.0060; 7220.90.0060

MR. JOSEPH W. ROHE
FOX ROTHSCHILD LLP
2 W. WASHINGTON STREET, SUITE 1100
GREENVILLE, SC 29601

Re: Modification of NY N301037; Classification of steel doctor blades in coils from Italy

DEAR MR. ROHE:

This is in response to your letter, dated February 21, 2019, in which you request reconsideration of New York Ruling Letter (“NY”) N301037 (“reconsideration request”), issued to you on November 7, 2018 by U.S. Customs and Border Protection (“CBP”), involving the classification of steel doctor blades in coils under the Harmonized Tariff Schedule of the United States (“HTSUS”). You submitted the reconsideration request on behalf of your client, Precision Flexo & Gravure, LLC (“Precision”). At issue in NY N301037 were six different types of steel doctor blades imported in coils: 1) PS1 coils in widths of 600 mm or more; 2) PS1 coils in widths of less than 600 mm; 3) PS2, PS3, and PS4 coils in widths of 600 mm or more; 4) PS2, PS3, and PS4 coils in widths of less than 600 mm; 5) PS INOX coils in widths of 600 mm or more; and 6) PS INOX coils in widths of less than 600 mm. In your reconsideration request, you submitted additional information about certain products described in NY N301037.¹

After reviewing the submitted information, we believe that NY N301037 is partially in error. For the reasons set forth below, we hereby modify NY N301037 with respect to the classification PS1 coils and PS INOX coils.

FACTS:

The steel doctor blades in coils at issue were described as follows in NY N301037:

The products under consideration are described as steel doctor blades intended to be used as parts for printing presses. The steel is imported in various chemistries and dimensions. It is stated to be cold-rolled in Sweden and shipped to Italy where the edges are ground. The final product has a ceramic coating and is shipped from Italy to the U.S. In accordance with the definitions of steel in Section XV, Harmonized Tariff Schedule of the United States (HTSUS), the chemistries are described as PS1 which is a nonalloy steel, PS2 and PS4 which are tool steel, PS3 which is an other alloy steel and PS INOX grade which is a stainless steel. Although stated to be imported custom made, the blades are flat-rolled steel in 200

¹ You also state that “Precision’s doctor blades are imported in two forms: either pre-cut to standardized lengths typically ranging from ~700 mm to ~1770mm, or in coils ranging in length from ~70m to ~200 m. To the extent that Precision is asking for reconsideration of items not identified in the original ruling request, it should send a new binding ruling request to CBP’s National Commodity Specialist Division (“NCS”) at <https://erulings.cbp.gov>.

meter coils that are imported without markings indicating at what length the doctor blades need to be cut for printing press use.

In NY N301037, CBP classified the steel doctor blades in coils as follows:

- PS1 coils in widths of 600 mm or more in subheading 7210.90.9000, HTSUSA (Annotated), which provides for “Flat-rolled products of iron or nonalloy steel, of a width of 600 mm or more, clad, plated or coated: Other: Other: Other.”
- PS1 coils in widths of less than 600 mm in subheading 7212.50.0000, HTSUSA, which provides for “Flat-rolled products of iron or nonalloy steel, of a width of less than 600 mm, clad, plated or coated: Otherwise plated or coated.”
- PS2, PS3, and PS4 coils in widths of 600 mm or more in subheading 7225.99.0090, HTSUSA, which provides for “Flat-rolled products of other alloy steel, of a width of 600 mm or more: Other: Other: Other.”
- PS2, PS3, and PS4 coils in widths of less than 600 mm in subheading 7226.99.0180, HTSUSA, which provides for “Flat-rolled products of other alloy steel, of a width of less than 600 mm: Other: Other: Other.”
- PS INOX coils in widths of 600 mm or more in subheading 7219.90.00, HTSUS, which provides for “Flat-rolled products of stainless steel, of a width of 600 mm or more: Other.”
- PS INOX coils in widths of less than 600 mm in subheading 7220.90.00, HTSUS, which provides for “Flat-rolled products of stainless steel, of a width of less than 600 mm: Other.”

However, commodity information sheets submitted with your reconsideration request show that only doctor blade material known as “Extra” and “Eco 1–6,” which is comprised of a PS4 base material, has a ceramic coating² and that the PS INOX blade material contains less than 15 percent by weight of chromium.

ISSUE:

Whether steel doctor blades imported in coils that are not pre-marked for cutting at the time of importation are classified in headings of chapter 72, HTSUS, as iron and steel, or in heading 8443, HTSUS, as “Printing machinery used for printing by means of plates, cylinders and other printing components of heading 8442; other printers, copying machines and facsimile machine, whether or not combined; parts and accessories thereof.”

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States (“HTSUS”) is made in accordance with the General Rules of Interpretation (“GRI”). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified

² In its request for reconsideration, Precision states that only doctor blades designated as “EcoCer” are ceramic coated, with no mention of “Extra.”

solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

The 2019 HTSUS provisions under consideration are as follows:

- 7209 Flat-rolled products of iron or nonalloy steel, of a width of 600 mm or more, cold-rolled (cold-reduced), not clad, plated or coated:
- 7210 Flat-rolled products of iron or nonalloy steel, of a width of 600 mm or more, clad, plated or coated:
- 7211 Flat-rolled products of iron or nonalloy steel, of a width of less than 600 mm, not clad, plated or coated:
- 7212 Flat-rolled products of iron or nonalloy steel, of a width of less than 600 mm, clad, plated or coated:
- 7219 Flat-rolled products of stainless steel, of a width of 600 mm or more:
- 7220 Flat-rolled products of stainless steel, of a width of less than 600 mm:
- 7225 Flat-rolled products of other alloy steel, of a width of 600 mm or more:
- 7226 Flat-rolled products of other alloy steel, of a width of less than 600 mm:
- 8443 Printing machinery used for printing by means of plates, cylinders and other printing components of heading 8442; other printers, copying machines and facsimile machine, whether or not combined; parts and accessories thereof:

* * *

Section XV, note 1(f) states the following regarding base metals and articles of base metals:

1) This section does not cover:

* * *

f) Articles of section XVI (machinery, mechanical appliances and electrical goods);

Note 1(k) to chapter 72 states the following:

1) In this chapter and, in the case of notes (d), (e), and (f) below throughout the tariff schedule, the following expressions have the meanings hereby assigned to them:

* * *

k) *Flat-rolled products*

Rolled products of solid, rectangular (other than square) cross section, which do not conform to the definition at (ij) above, in the form of:

- coils of successively superimposed layers, or
- straight lengths, which if of a thickness less than 4.75 mm are of a width measuring at least 10 times the thickness or if of a thickness of 4.75 mm or more are of a width which exceeds 150 mm and measures at least twice the thickness.

Flat-rolled products include those with patterns in relief derived directly from rolling (for example, grooves, ribs, checkers, tears,

buttons, lozenges) and those which have been perforated, corrugated or polished, provided that they do not thereby assume the character of articles or products of other headings.

Flat-rolled products of a shape other than rectangular or square, of any size, are to be classified as products of a width of 600 mm or more, provided that they do not assume the character of articles or products of other headings.

* * *

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

The EN to 72.08 states the following, in relevant part:

Flat-rolled products of this heading may have patterns in relief derived directly from rolling, such as grooves, ribs, chequers, tears, buttons, lozenges, or they may have been worked after rolling (e.g., perforated, corrugated, bevelled or rounded at the edges), **provided** they do not thereby assume the character of articles or products of other headings.

* * *

It has been CBP’s longstanding position that parts of machinery, imported in unmarked material lengths, are classified according to their constituent material. *See, e.g.* Headquarters Ruling Letter (“HQ”) 965589, dated September 17, 2002 (classifying in heading 7211 and 7226, HTSUS, steel doctor blades with rounded edges and a polished surface that were used in printers and imported in coils) and HQ 963309, dated May 31, 2000 (classifying plastic doctor blades imported in coils and used in machinery for making paper pulp, paper or paperboard in chapter 39, HTSUS, based on its constituent material). Moreover, we have historically classified all steel doctor blades imported in coil form within chapter 72, HTSUS, regardless of the operations performed subsequent to the rolling process. *See, e.g.*, HQ 965589; NY D82766, dated October 9, 1998 (classifying steel doctor blades imported in coils, which were ceramic-coated and beveled along their length subsequent to the flat-rolling operation, in heading 7212, HTSUS); NY A88253, dated November 6, 1996 (classifying steel doctor blades that are zinc-coated and machine-beveled along their length, and imported in continuous coils that are cut to length after importation, in chapter 72, HTSUS). In each of these instances, the doctor blades were imported in coiled material lengths, and neither beveling, nor additional coating or polishing performed on the steel after flat-rolling precluded classification as a flat-rolled product of chapter 72, HTSUS. Both NY N301037 and HQ 965589 cite to *Heraeus-Amersil v. United States*, 640 F. Supp. 1331 (C.I.T. 1986) as further support of CBP’s longstanding position. The rule of decision in *Heraeus* is that “. . .where such articles are imported in the piece and nothing remains to be done except to cut them apart, they shall be treated for dutiable purposes as if already cut apart and assessed according to their individual character or identity. This follows, however, only in case the character or identity of the individual articles is fixed with certainty and in case the . . .piece in its entirety is not commercially

capable of any other use.” As we explained in NY N301037, the *Heraeus* rule is not satisfied here because the doctor blades are not identifiable in the coiled materials as there are no markings on the steel to indicate where individual blades are to be cut— i.e., the blades are not “fixed with certainty.”

While Precision downplays the *Heraeus* rule, relying on cases such as *U.S. v. Buss & Co.*, 5 C.C.A. 110 (1914), which is over one hundred years old, involving different merchandise, these arguments are without merit. For example, Precision cites to *Doherty-Barrow of Texas v. United States*, 3 C.I.T. 228 (1982), where the court stated that “[e]xcept for cutting to length, the subject merchandise requires no additional processing, manufacturing or finishing. . . the character or identity thereof, except for cutting to length, is fixed with certainty.” *Doherty-Barrow*, 3 C.I.T. at 232. However, Precision omits the court’s further exposition in regards to why the bale ties in *Doherty-Barrow* were deemed to be fixed with certainty; the court further explained that “[f]or a bale tie to be ‘made from’ strip under item 642.93, TSUS, some manufacturing process is implied which transforms strip steel into bale ties, whether finished or unfinished. Both finished and unfinished manufactured products must be sufficiently processed to a point where they possess characteristics distinguishing them from which they are made” (citing *American Import Co. v. United States*, 26 C.C.P.A. 72, 75–6 (1938)). The bale ties at issue in *Doherty-Barrow* were in conformance with rigid specifications for American standard cotton bale ties, including chemical composition and tensile strength. *Doherty-Barrow*, 3 C.I.T. at 232. Unlike the bale ties in *Doherty-Barrow*, such specifications are not required for the manufacture of doctor blades for use in printing machinery. Accordingly, *Doherty-Barrow* is irrelevant to the subject doctor blades.

In addition, Precision cites to *J.E. Bernard & Co., Inc. v. United States*, 50 Cust. Ct. 41 (1963), which involved the classification of steel bandsaw blades imported in coils. Precision argues that the imported steel doctor blades are similar to the merchandise in that case, which were classified as finished bandsaws rather than as its constituent material. However, Precision simplifies its characterization of the blades in *J.E. Bernard* as merely involving imported blades that were coiled into different lengths and cut to length after importation. In fact, prior to importation, the steel bandsaws in *J.E. Bernard* consisted of heavily manufactured steel strips that underwent a milling process in which teeth were cut into the strips, which were then electronically heat treated through a tempering process to harden the metal, after which the material was polished and the teeth were given a “waving set” to meet requirements for use, followed by oiling and coiling the strips into specific lengths, all of which happened prior to importation. *J.E. Bernard*, 50 Cust. Ct. at 43. Thus, the operations rendered on the steel bandsaws in *J.E. Bernard* go far beyond the comparatively simple workings applied to the subject steel doctor blade coils (e.g., skiving, beveling, etc.) such that the character of the steel bandsaws imported in coils were “fixed with certainty.” Accordingly, *J.E. Bernard* is not dispositive to the classification of the doctor blades at issue.

Precision cites to note 1(f) of section XV (base metal and articles of base metals), which excludes articles of section XVI (machinery, mechanical appliances and electrical goods) and includes articles of heading 8443. Precision also cites to note 1(k) of chapter 72, which defines flat-rolled products as “rolled products of solid rectangular (other than square) cross section. . .” Precision argues that the doctor blades are not of rectangular cross section,

but rather of customized rounded, beveled and lamella edges to effect their use as doctor blades. However, note 1(k) to chapter 72 also states that flat-rolled products of chapter 72 may be perforated, corrugated or polished, provided they do not assume the character of articles of other headings. This is expanded upon in the ENs to heading 72.08, which lists other examples of operations that may be performed on flat-rolled products subsequent to the rolling process: “Flat-rolled products of this heading may have patterns in relief derived directly from rolling, such as grooves, ribs, chequers, tears, button, lozenges, or they may have been worked after rolling (e.g., perforated, corrugated, beveled or rounded at the edges), provided they do not thereby assume the character of articles or products of other headings.” The lamella and wing lamella edges at issue here are achieved through skiving. Even though the ENs do not expressly mention this kind of operation, it does not mean that skiving should not be included as an example of operations performed on flat-rolled products of chapter 72. Accordingly, the doctor blade materials at issue meet the definition of a flat-rolled product for purposes of classification in chapter 72.

Precision also argues that GRI 2(a), which provides 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 article has the essential character of the complete or finished article,” applies to its merchandise. However, Precision’s argument is without merit, as the doctor blades are specifically provided for in chapter 72 under the terms of the headings and chapter notes therein and as imported in coils, do not have the essential character of a doctor blade

While NY N301037 properly classified the doctor blades in headings of chapter 72, the ruling needs to be modified with respect to the classification of the PS1 uncoated coils. Because the submitted commodity information sheet clarifies that only Extra and Eco1–6 blade material comprised of a PS4 base material is ceramic-coated, the uncoated PS1 coils in widths of less than 600 mm are properly classified in subheading 7211.90.0000, HTSUSA (Annotated), which provides for “Flat-rolled products of iron or nonalloy steel, of a width of less than 600 mm, not clad, plated or coated: Other.” Uncoated PS1 coils in widths of 600 mm or more are properly classified in subheading 7209.90.0000, HTSUSA, which provides for “Flat-rolled products of iron or nonalloy steel, of a width of 600 mm or more, cold-rolled (cold-reduced), not clad, plated or coated: Other.”

Lastly, after receiving the information in your request for reconsideration regarding the chemistry of the merchandise, we are modifying NY N301037 to now state the correct 10-digit classification of the PS INOX stainless steel grade blade material. Based on that information, the PS INOX coils, in widths of less than 600 mm, are properly classified at the 10-digit level in subheading 7220.90.0060, HTSUSA, which provides for “Flat-rolled products of stainless steel, of a width of less than 600 mm: Other: Other: Containing less than 15 percent by weight of chromium.” The PS INOX coils in widths of 600 mm or more are properly classified at the 10-digit level in subheading 7219.90.0060, HTSUSA, which provides for “Flat-rolled products of stainless steel, of a width of 600 mm or more: Other: Other: Other: Containing less than 15 percent by weight of chromium.” The remaining analysis of NY N301037 remains unchanged.

HOLDING:

By application of GRIs 1 and 6, the uncoated PS1 coils in widths of less than 600 mm are classified in heading 7211, HTSUS, and specifically in subheading 7211.90.0000, HTSUSA, which provides for “Flat-rolled products of iron or nonalloy steel, of a width of less than 600 mm, not clad, plated or coated: Other.” The 2019 column one, general rate of duty is Free.

By application of GRIs 1 and 6, the uncoated PS1 coils in widths of 600 mm or more are classified in heading 7209, HTSUS, and specifically in subheading 7209.90.0000, HTSUSA, which provides for “Flat-rolled products of iron or nonalloy steel, of a width of 600 mm or more, cold-rolled (cold-reduced), not clad, plated or coated: Other.” The 2019 column one, general rate of duty is Free.

By application of GRIs 1 and 6, the PS INOX coils that are imported in widths of less than 600 mm are classified in heading 7220, HTSUS, and specifically in subheading 7220.90.0060, HTSUSA, which provides for “Flat-rolled products of stainless steel, of a width of less than 600 mm: Other: Other: Containing less than 15 percent by weight of chromium.” The 2019 column one, general rate of duty is FREE.

By application of GRIs 1 and 6, the PS INOX coils that are imported in widths of 600 mm or more are classified in heading 7219, HTSUS, and specifically in subheading 7219.90.0060, HTSUSA, which provides for “Flat-rolled products of stainless steel, of a width of 600 mm or more: Other: Other: Other: Containing less than 15 percent by weight of chromium.” The 2019 column one, general rate of duty is FREE.

On March 8, 2018, Presidential proclamations 9704 and 9705 imposed additional tariffs and quotas on a number of steel and aluminum mill products. Exemptions have been made on a temporary basis for some countries. Quantitative limitations or quotas may apply for certain exempted countries and can also be found in Chapter 99. Additional duties for steel of 25 percent and for aluminum of 10 percent are reflected in Chapter 99, subheading 9903.80.01 for steel and subheading 9903.85.01 for aluminum. Products classified under subheading 7209.90.00, 7211.90.00, 7219.90.00, and 7220.90.00, HTSUS, may be subject to additional duties or quota. At the time of importation, you must report the Chapter 99 subheading applicable to your product classification in addition to the Chapter 72, 73 or 76 subheading listed above. The Proclamations are subject to periodic amendment of the exclusions, so you should exercise reasonable care in monitoring the status of goods covered by the Proclamations and the applicable Chapter 99 subheadings.

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 at www.usitc.gov.

EFFECT ON OTHER RULINGS:

NY N301037, dated November 7, 2018, is hereby modified with respect to the classification of the uncoated PS1 doctor blade material in coils and to clarify the 10-digit classification of the PS INOX doctor blade material.

Sincerely,

CRAIG T. CLARK,

Director

Commercial and Trade Facilitation Division

19 CFR PART 177

REVOCAION OF 23 RULING LETTERS, MODIFICATION OF 11 RULING LETTERS, AND REVOCAION OF TREATMENT RELATING TO CLASSIFICATION OF DRINK MIXES

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

ACTION: Notice of revocation of 23 ruling letters, modification of 11 ruling letters, and revocation of treatment relating to the classification of drink mixes.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CPB is revoking 23 rulings and modifying 11 rulings concerning the classification of drink mixes under the Harmonized Tariff Schedule of the United States (“HTSUS”). Similarly, CPB is revoking any treatment previously accorded by CPB to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 54, No. 4, on February 5, 2020. 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 May 31, 2020.

FOR FURTHER INFORMATION CONTACT: Tatiana Salnik Matherne, Tariff Classification and Marking Branch: (202) 325–0351.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), a notice was published in the *Customs Bulletin*, Vol. 54, No. 4, on February 5, 2020, proposing to revoke 23 rulings and modify 11 rulings pertaining to the classification of drink mixes. 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 this notice period.

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

CBP classified the subject drink mixes in various subheadings of heading 1701 and 1702, HTSUS, according to their sugar content, in the following rulings: Headquarters Ruling Letter ("HQ") 963668, dated June 23, 2000; HQ 964497, dated January 23, 2001; HQ 967563, dated November 4, 2005; New York Ruling Letter ("NY") 805860, dated January 25, 1995; NY 807382, dated February 28, 1995; NY 806349, dated January 31, 1995; NY 807225, dated February 28, 1995; NY 818773, dated February 22, 1996; NY A81526, dated April 2, 1996; NY A86301, dated August 19, 1996; NY B83306, dated March 25, 1997; NY B86542, dated June 24, 1997; NY B86441, dated June 26, 1997; NY C82414, December 8, 1997; NY C82415, December 8, 1997; NY D80530, dated August 7, 1998; NY D83344, dated October 30, 1998; NY D83345, dated October 27, 1998; NY F89359, dated August 2, 2000; NY G89465, dated April 30, 2001; NY H82031, dated June 5, 2001; NY H85600, dated November 6, 2001; NY I87369, dated November 19, 2002; NY L82138, dated February 14, 2005; NY L88611, dated December 5, 2005; NY N015991, dated September 10, 2007; NY N019259, dated November 20, 2007; NY N042679, dated November 26, 2008; NY N045475, dated November 26, 2008; NY N073508, dated September 29, 2009; NY R01312, dated February 2, 2005; NY R01313, dated February 9, 2005; NY N158039, dated May 13, 2011; NY N251352, dated April 8, 2014; NY N235188, dated December 10, 2012; NY 803800, dated November 9, 1994; NY N238296, dated February 27, 2013; NY 870767, dated January 29,

1992; NY 883426, dated March 9, 1993; NY 863959, dated July 13, 1991; NY N015994, dated September 10, 2007; HQ 083698, dated June 1, 1989; NY 860227, dated February 20, 1991; NY 804357, dated November 22, 1994; HQ 951849, dated August 11, 1992; NY 869626, dated January 2, 1992; NY C82572, dated December 15, 1997; NY C89506, dated July 8, 1998; NY A87589, dated September 23, 1996; NY A89697, dated November 27, 1996 and NY B80099, dated December 10, 1996. CBP has reviewed the above-cited rulings and found them to be in error. It is now CBP's position that the drink mixes at issue in those rulings are classified under heading 2106, HTSUS, as other food preparations. Six of the mentioned rulings are being modified with respect to their classification in this manner, but remain in effect with respect to the NAFTA preference accorded to the merchandise.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking HQ 963668; HQ 964497; HQ 967563; NY 805860; NY 807382; NY 806349; NY 807225; NY A81526; NY B83306; NY B86542; NY D80530; NY D83344; NY D83345; NY F89359; NY H82031; NY H85600; NY L82138; NY N015991; NY N019259; NY N042679; NY N045475; NY N073508; and NY R01312 and modifying NY 818773, NY B86441, NY G89465, NY L88611, NY A86301, NY C82414, NY C82415, NY G86167, NY I87369, NY R01313, and NY N158039, as well as any other ruling not specifically identified, to reflect the analysis contained in HQ H157219, 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*.

CRAIG T. CLARK,
Director

Commercial and Trade Facilitation Division

Attachment

HQ H157219
OT:RR:CTF:FTM H157219 TSM
CATEGORY: Classification
TARIFF NO.: 2106.90; 1701; 1702

MR. JOHN M. PETERSON
MR. CURTIS W. KNAUSS
NEVILLE PETERSON LLP
80 BROAD STREET, 34TH FLOOR
NEW YORK, N.Y. 10004

RE: Revocation of HQ 964497, HQ 967563, NY 805860, NY 807382, NY 806349, NY A81526, NY B83306, NY B86542, NY D80530, NY D83344, NY D83345, NY F89359, NY H82031, NY H85600, NY L82138, NY N015991, NY N019259, NY N045475, NY N073508, NY R01312, NY N251352, NY N235188, NY 803800, NY N238296, NY 870767, NY 883426, NY 863959, NY N015994 and HQ 083698; Modification of HQ 963668, NY 807225, NY N042679, NY 818773, NY B86441, NY G89465, NY L88611, NY A86301, NY C82414, NY C82415, NY I87369, NY R01313, NY N158039, NY 860227, NY 804357, HQ 951849, NY 869626, NY C82572, NY C89506, NY A87589, NY A89697 and NY B80099; Classification of drink mixes.

DEAR MESSRS. PETERSON AND KNAUSS:

This letter concerns Headquarters Ruling Letter (“HQ”) 963668, which U.S. Customs and Border Protection (“CBP”) issued to you on June 23, 2000, pertaining to the classification of “KLASS Aguas Frescas” Flavored Powdered Drink Mixes, imported packaged for retail sale and containing between 79% and 90% of sucrose, fructose or dextrose, under the Harmonized Tariff Schedule of the United States (“HTSUS”).¹ This letter also concerns the following rulings:

- HQ 964497, dated January 23, 2001 (classifying cherry and orange drink mixes, imported in 24-ounce packages and containing between 87% and 96% sugar, intended for sale in supermarkets);
- HQ 967563, dated November 4, 2005 (classifying drink mixes containing between 80% and 85% sugar, imported in 2,400 to 2,700 pound bulk bags and repackaged into various sizes for industrial, food service and retail sale after importation);
- New York Ruling Letter (“NY”) 805860, dated January 25, 1995 (classifying drink mixes containing over 85% sugar, imported in containers ranging from 19 ounces net weight to 5 pounds 3 ounces net weight and sold to grocery stores and warehouse clubs);
- NY 807382, dated February 28, 1995 (classifying drink mixes containing over 85% sugar, imported in containers ranging from 19 ounces net weight to 5 pounds 3 ounces net weight and sold to grocery stores and warehouse clubs);

¹ We note that HQ 963668 also classified the “Horchata” mix in retail packages, which is not included in this modification.

- NY 806349, dated January 31, 1995 (classifying drink mixes containing between 90% and 96% sugar, imported in 2000 pound drums and packaged into smaller packages for retail sale after importation);
- NY 807225, dated February 28, 1995 (classifying fruit flavored beverage crystals containing 94% sugar, imported in retail packages weighing between 240 and 300 grams, in food service packages for restaurants weighing between 450 and 500 grams and in food service packages for cafeterias in 25 pound cartons);²
- NY 818773, dated February 22, 1996 (classifying various grape flavored drink mixes, containing between 95% and 98% sugar: Grape Aid 0, Grape Aid 51, and Grape Aid 35, which are packaged for retail sale);³
- NY A81526, dated April 2, 1996 (classifying “Flavour Crystals” containing 95% sugar, imported in a foil package containing 480 grams that is mixed with water to produce 4.55 liters of a finished beverage);
- NY A86301, dated August 19, 1996 (classifying a lemonade mix containing 64.82% sugar, imported into the United States in bulk to be repackaged for retail sale);
- NY B83306, dated March 25, 1997 (classifying powdered drink mixes containing between 75% and 95% sugar, imported in 2000 pound bags);
- NY B86542, dated June 24, 1997 (classifying a variety of powdered, fruit-flavored drink mixes containing unspecified amounts of sugar, imported in two pound packages shipped 15 to a case, or in one ton tote bags which will be repackaged for retail sale);
- NY B86441, dated June 26, 1997 (classifying crystal drink mixes containing unspecified amounts of sugar and imported in individual packages);⁴
- NY C82414, December 8, 1997 (classifying powdered instant beverage products in four flavors, containing unspecified amounts of sugar and imported in retail containers);
- NY C82415, December 8, 1997 (classifying powdered instant beverage products in four flavors, containing unspecified amounts of sugar and imported in retail containers);
- NY D80530, dated August 7, 1998 (classifying drink crystals containing 95% sugar, in four flavors that are imported 450 gram, 540 gram and 900 gram pouches, or tins for sale to the retail consumer);

² We note that NY 807225 also classified tea flavored beverage crystals, which are not included in this modification.

³ We note that NY 818773 also classified a fourth beverage mix, Grape Aid 100, which is not included in this modification.

⁴ We note that NY B86441 also classifies “Lemon and Raspberry Iced Teas” in heading 2101, HTSUS, and “Peach Lite Crystals” in heading 2106, HTSUS. These products are not included in this modification.

- NY D83344, dated October 30, 1998 (classifying powdered drink mixes, containing at least 75 percent sugar with no less than 12 percent fructose, imported with a net weight of 19 ounces);
- NY D83345, dated October 27, 1998 (classifying powdered drink mixes containing at least 87% sugar, imported in packages of 24 ounces);
- NY F89359, dated August 2, 2000 (classifying a powdered beverage mix containing an unspecified amount of sugar, imported for retail sale in 250-gram packages);
- NY G89465, dated April 30, 2001 (classifying “Xuky,” a milkshake powder in five flavors: vanilla, pineapple, strawberry and coconut, containing 97% sugar);⁵
- NY H82031, dated June 5, 2001 (classifying two types of powdered fruit or vegetable juices: (1) “Zuko” juice, containing 87.19% sugar and imported in 45 gram sachets and 405 gram bags; and (2) “Zuko Diet” juice, containing 75.29% maltodextrin and imported in 20 gram pouches);⁶
- NY H85600, dated November 6, 2001 (classifying powdered soft drinks containing over 89% sugar, imported packaged for retail sale in foil packs having a net weight of 110 grams);
- NY I87369, dated November 19, 2002 (classifying a beverage mix containing 85.6% sugar, packaged in cans, jars, and pouches for retail sale, and in larger bulk containers for the food service industry);
- NY L82138, dated February 14, 2005 (classifying a powdered drink mix containing 79% sugar and imported in foil packets containing 50 grams each);
- NY L88611, dated December 5, 2005 (classifying “Xuky” products - milkshake powders in four flavors: vanilla, strawberry, coconut and pineapple, containing 86% to 97% sugar and imported in 450-gram plastic containers);⁷
- NY N015991, dated September 10, 2007 (classifying Instant Strawberry artificial flavored powder imported in pouches in two sizes, 7 ounces (200 grams) and 14 ounces (400 grams), and containing 87.82% sugar);
- NY N019259, dated November 20, 2007 (classifying an “Apple Cider” powdered beverage mix, imported in a 2 pound bag and containing an unspecified amount of sugar);
- NY N042679, dated November 26, 2008 (classifying “Ice Ade” powder soft drink mixes, imported in flavors cherry, tropical punch, orange and

⁵ We note that NY G89465 also classified products other than the vanilla, strawberry, pineapple and coconut flavors of the “Xuky” powder. Only the classification of these “Xuky” powder flavors is at issue in this modification.

⁶ We note that the “Zuko Diet” juice, sweetened by maltodextrin, is not subject to any of the sugar quotas.

⁷ We note that NY L88611 also classified chocolate flavored “Xuky” milk shake powder and chocolate flavored “Muky” and “Muky Light” powdered drink mixes, as well “Bretzke” gelatin powders, which are not at issue in this modification.

lemonade, packaged for retail sale in 15-ounce, multi colored plastic canisters, and containing between 93% and 96% sugar depending on the flavor);⁸

- NY N045475, dated November 26, 2008 (classifying powdered drink mixes containing 92.66% sugar, imported into the United States in plastic lined super sacks (totes), scaled out to 1075 kilograms per super sack and packaged in the United States into 0.74 ounce bags for retail);
- NY N073508, dated September 29, 2009 (classifying a “powder soft drink mix” packaged for retail sale and containing 95.43% sugar);
- NY R01312, dated February 2, 2005 (classifying drink mixes containing 80% to 85% sugar and imported in 2,400 pound to 2,700 pound bulk bags);
- NY R01313, dated February 9, 2005 (classifying drink mixes containing 80% to 85% sugar and imported in 2,400 pound to 2,700 pound bulk bags);
- NY N158039, dated May 13, 2011 (classifying drink mixes containing, depending on drink variety, either 56% (“Zuko Naranja”) or 66% (“Zuko Tamarindo”) dextrose, 9% sucrose, 1% or less, each, aspartame and acesulfame-K, and imported packaged for retail sale in pouches containing 20 grams (0.7 ounces) net weight);⁹
- NY N251352, dated April 8, 2014 (classifying drink mixes containing sucrose and artificial sweeteners, and imported packaged for retail sale);
- NY N235188, dated December 10, 2012 (classifying drink mixes containing sucrose and artificial sweeteners, and packaged for retail sale);
- NY N238296, dated February 27, 2013 (classifying drink mixes containing 84% sugar and packaged for retail sale);
- NY N015994, dated September 10, 2007 (classifying drink mixes containing over 87% sugar and 9% maltodextrin, imported in fifty pound bags);
- NY C82572, dated December 15, 1997 (classifying drink mixes containing between 93.5% and 95% sugar, imported in bulk for retail packaging in the United States);
- NY C89506, dated July 8, 1998 (classifying drink mixes (imported in five flavors) containing between 75% and 95% sugar, and between 0% and 18% fructose depending on flavor, and imported in 2,000 pound sacks for retail packaging in the United States);
- NY A87589, dated September 23, 1996 (classifying drink mixes (imported in five flavors) containing between 75% and 95% sugar, and

⁸ We note that NY N042679 also classified a fifth drink variety, Iced Tea flavored “Ice Age” soft drink. This product is not included in this modification.

⁹ We note that NY N158039 also classified a third drink mix variety, “Zuko Horchata,” in heading 2106, HTSUS. This product is not included in this modification.

- between 0% and 18% fructose depending on flavor, and imported in 2,000 pound sacks for retail packaging in the United States);
- NY A89697, dated November 27, 1996 (classifying drink mixes containing 95% sugar and imported in one metric ton bags for retail packaging in the United States);
 - NY B80099, dated December 10, 1996 (classifying drink mixes containing over 96% sugar and 0.79% maltodextrin, imported in 2,000 pound bulk bags and 100 pound paper bags, to be repackaged for retail sale upon importation);¹⁰
 - NY 863959, dated July 13, 1991 (classifying drink mixes containing between 89% and 97% sugar, depending on the flavor, and imported either packaged for retail sale or in one metric ton containers to be repackaged upon importation);
 - NY 883426, dated March 9, 1993 (classifying drink mixes containing 91.4% sugar and packaged for retail sale in 890 gram cardboard canisters);
 - NY 804357, dated November 22, 1994 (classifying drink mixes containing between 90% and 93% sugar and packaged for retail sale in sachets, jars and canisters);¹¹
 - HQ 083698, dated June 1, 1989 (classifying a drink base mix containing 97.61% sugar and imported in industrial packaging such as 2,000 pound totes and 100 pound bags)
 - NY 803800, dated November 9, 1994 (classifying drink mixes containing sugar and imported packaged for retail sale in 18 ounce, 27 ounce or 40.5 ounce jars, depending on flavor);
 - NY 870767, dated January 29, 1992 (classifying drink mixes containing 89% sugar and imported in one ton tote bags);
 - NY 860227, dated February 20, 1991 (classifying drink mixes containing between 83.28% and 90.13% of either sugar alone or sugar with maltodextrin and corn syrup, depending on the drink mix's flavor, all packaged for retail sale);¹²
 - HQ 951849, dated August 11, 1992 (classifying drink mixes either sweetened by sugar or unsweetened, depending on the flavor)¹³ and

¹⁰ We note that NY B80099 also classified an iced tea mix in heading 2101, HTSUS, which is not included in this modification.

¹¹ We note that NY 804357 also classified an iced tea mix in heading 2101, HTSUS, which is not included in this modification.

¹² We note that NY 860227 also classified certain margarita salt in heading 2501, HTSUS, which is not included in this modification.

¹³ We note that HQ 951849 also classified soft candies and liquid candies in heading 1701, HTSUS, powdered dip mixes in heading 2103, HTSUS, and liquid picante sauce in heading 2103, HTSUS. These products are not included in this modification. Moreover, HQ 951849 also addressed certain issues regarding country of origin marking, which are also not at issue in this modification.

- NY 869626, dated January 2, 1992 (classifying drink mixes containing 91.3% sugar and imported in bulk).¹⁴

In these rulings, various types of drink mixes consisting of sugar and other ingredients were classified in heading 1701, HTSUS, as “Cane or beet sugar and chemically pure sucrose, in solid form,” or in heading 1702, HTSUS, as “Other sugars, including chemically pure lactose, maltose, glucose and fructose, in solid form; sugar syrups not containing added flavoring or coloring matter; artificial honey, whether or not mixed with natural honey; caramel.” We have reconsidered these rulings and now believe that they are incorrect. For the reasons that follow, we hereby revoke HQ 964497, HQ 967563, NY 805860, NY 807382, NY 806349, NY A81526, NY B83306, NY B86542, NY D80530, NY D83344, NY D83345, NY F89359, NY H82031, NY H85600, NY L82138, NY N015991, NY N019259, NY N045475, NY N073508, 964497, HQ 967563, NY 805860, NY 807382, NY 806349, NY A81526, NY B83306, NY B86542, NY D80530, NY D83344, NY D83345, NY F89359, NY H82031, NY H85600, NY L82138, NY N015991, NY N019259, NY N045475, NY N073508, 964497, HQ 967563, NY 805860, NY 807382, NY 806349, NY A81526, NY B83306, NY B86542, NY D80530, NY D83344, NY D83345, NY F89359, NY H82031, NY H85600, NY L82138, NY N015991, NY N019259, NY N045475, NY N073508,

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 54, No. 4, on February 4, 2020, proposing to revoke the rulings cited above, and to revoke any treatment accorded to substantially identical transactions. One comment in support of the proposed action was received on or before March 6, 2020.

FACTS:

The subject merchandise consists of various types of drink mixes that are imported in the form of a powder. Water is added post-importation to turn the mixes into beverages. The mixes come in various flavors, such as lemonade, lemon-lime, orange, grape, mixed berry, cherry, and fruit punch, among others, but all have a similar ingredient list. The largest ingredient in these mixes is sugar. The majority of these mixes contain 80% sugar or more; the rest contain between 60% and 80%. Some of the subject mixes contain sucrose, others dextrose, and others fructose.

The mixes also contain a range of other ingredients, such as flavoring, coloring, citric acid, malic acid, pectin, and silicon dioxide, among other things. Given the amount of sugar in these mixes, these other ingredients make up small but varying percentages of the total ingredients. Most of the mixes are imported packaged for retail sale.

In the rulings at issue, CBP classified these mixes according to their sugar content, in either heading 1701, HTSUS, which provides for “Cane or beet sugar and chemically pure sucrose, in solid form,” or in heading 1702, HTSUS, which provides for “Other sugars, including chemically pure lactose,

¹⁴ We note that NY 869626 also classified an iced tea mix under heading 2101, HTSUS, and an instant chocolate drink powder mix under heading 1806, HTSUS. These products are not included in this modification.

maltose, glucose and fructose, in solid form; sugar syrups not containing added flavoring or coloring matter; artificial honey, whether or not mixed with natural honey; caramel.”

ISSUE:

Whether beverage mixes whose ingredients consist of sugar and other ingredients should be classified according to their sugar content in either heading 1701, HTSUS, or heading 1702, HTSUS, or in heading 2106, HTSUS, as “Food preparations not elsewhere specified or included.”

LAW AND ANALYSIS:

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

The HTSUS headings at issue are as follows:

1701	Cane or beet sugar and chemically pure sucrose, in solid form: * * *
1702	Other sugars, including chemically pure lactose, maltose, glucose and fructose, in solid form; sugar syrups not containing added flavoring or coloring matter; artificial honey, whether or not mixed with natural honey; caramel: * * *
2106	Food preparations not elsewhere specified or included:
2106.90	Other: Other: Other: Other: Articles containing over 65 percent by dry weight of sugar described in additional U.S. note 2 to chapter 17:
2106.90.92	Described in additional U.S. note 7 to chapter 17 and entered pursuant to its provisions
2106.90.94	Other Articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17:
2106.90.95	Described in additional U.S. note 8 to chapter 17 and entered pursuant to its provisions
2106.90.97	Other

2106.90.98

Other

Additional U.S. Note 2 to Chapter 17, HTSUS, reads the following:

For the purposes of this schedule, the term “articles containing over 65 percent by dry weight of sugar described in additional U.S. Note 2 to chapter 17” means articles containing over 65 percent by dry weight of sugars derived from sugar cane or sugar beets, whether or not mixed with other ingredients, capable of being further processed or mixed with similar or other ingredients, and not prepared for marketing to the ultimate consumer in the identical form and package in which imported.

Additional U.S. Note 3 to Chapter 17, HTSUS, reads the following:

For the purposes of this schedule, the term “articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17” means articles containing over 10 percent by dry weight of sugars derived from sugar cane or sugar beets, whether or not mixed with other ingredients, except (a) articles not principally of crystalline structure or not in dry amorphous form, the foregoing that are prepared for marketing to the ultimate consumer in the identical form and package in which imported; (b) blended syrups containing sugars derived from sugar cane or sugar beets, capable of being further processed or mixed with similar or other ingredients, and not prepared for marketing to the ultimate consumer in the identical form and package in which imported; (c) articles containing over 65 percent by dry weight of sugars derived from sugar cane or sugar beets, whether or not mixed with other ingredients, capable of being further processed or mixed with similar or other ingredients, and not prepared for marketing to the ultimate consumer in the identical form and package in which imported; or (d) cake decorations and similar products to be used in the same condition as imported without any further processing other than the direct application to individual pastries or confections, finely ground or masticated coconut meat or juice thereof mixed with those sugars, and sauces and preparations therefor.

Additional U.S. Note 7 to Chapter 17, HTSUS, reads the following:

The aggregate quantity of articles containing over 65 percent by dry weight of sugars described in additional U.S. note 2 to chapter 17, entered under subheadings 1701.91.44, 1702.90.64, 1704.90.64, 1806.10.24, 1806.10.45, 1806.20.71, 1806.90.45, 1901.20.20, 1901.20.55, 1901.90.52, 2101.12.44, 2101.20.44, 2106.90.74 and 2106.90.92 during the 12-month period from October 1 in any year to the following September 30, inclusive, shall be none and no such articles shall be classifiable therein.

Additional U.S. Note 8 to Chapter 17, HTSUS, reads the following:

The aggregate quantity of articles containing over 10 percent by dry weight of sugars described in additional U.S. note 3 to chapter 17, entered under subheadings 1701.91.54, 1704.90.74, 1806.20.75, 1806.20.95, 1806.90.55, 1901.90.56, 2101.12.54, 2101.20.54, 2106.90.78 and 2106.90.95 during the 12-month period from October 1 in any year to the following September 30, inclusive, shall not exceed 64,709 metric tons (articles the product of Mexico shall not be permitted or included under this quantitative limitation and no such articles shall be classifiable therein).

Additional U.S. Note 2 (b) to Section IV, HTSUS, reads the following:

For the purposes of this section, unless the context otherwise requires, the term “capable of being further processed or mixed with similar or other ingredients” means that the imported product is in such condition or container as to be subject to any additional preparation, treatment or manufacture or to be blended or combined with any additional ingredient, including water or any other liquid, other than processing or mixing with other ingredients performed by the ultimate consumer prior to consumption of the product.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. While not dispositive or legally binding, the ENs provide a commentary on the scope of each heading of the Harmonized System at the international level. CBP believes the ENs should always be consulted. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The EN to heading 1701, HTSUS, states, in pertinent part, the following:

It should be noted that cane and beet sugar fall in this heading **only** when in the solid form (including powders); such sugar may contain added flavouring or colouring matter.

Sugar syrups of cane or beet sugar, consisting of aqueous solutions of sugars, are classified in **heading 17.02** when not containing added flavouring or colouring matter and otherwise in **heading 21.06**.

The heading further **excludes** preparations in solid form (including granules or powders) which have lost the character of sugar, of a kind used for making beverages (**heading 21.06**).

The heading also includes chemically pure sucrose in solid form, whatever its origin. Sucrose (other than chemically pure sucrose) obtained from sources other than sugar cane or sugar beet is **excluded (heading 17.02)**.

The EN to heading 1702, HTSUS, states, in pertinent part, the following:

This heading covers other sugars in solid form, sugar syrups and also artificial honey and caramel.

(A) **OTHER SUGARS**

This part covers sugars, other than sugars of heading 17.01 or chemically pure sugars of heading 29.40, in solid form (including powders), whether or not containing added flavouring or colouring matter. The principal sugars of this heading are:...

(6) Malto-dextrins (or dextri-maltoses), obtained by the same process as commercial glucose. They contain maltose and polysaccharides in variable proportions. However, they are less hydrolysed and therefore have a lower reducing sugar content than commercial glucose. The heading covers only such products with a reducing sugar content, expressed as dextrose on the dry substance, exceeding 10 % (but less than 20 %). Those with a reducing sugar content not exceeding 10 % fall in heading 35.05. Malto-dextrins are generally in the form of white powders, but they are also marketed in the form of a syrup (see Part (B)). They are used chiefly in the manufacture of baby food and low-calory dietetic foods, as extenders for flavouring substances or food colouring agents, and in the pharmaceutical industry as carriers.

(7) Maltose (C12H22O11) which is produced industrially from starch by hydrolysis with malt diastase and is produced in the form of a white crystalline powder. It is used in the brewing industry. This heading covers both commercial and chemically pure maltose.

The EN to heading 2106, HTSUS, states, in pertinent part, the following: Provided that they are not covered by any other heading of the Nomenclature, this heading covers:...

(B) Preparations consisting wholly or partly of foodstuffs, used in the making of beverages or food preparations for human consumption. The heading includes preparations consisting of mixtures of chemicals (organic acids, calcium salts, etc.) with foodstuffs (flour, sugar, milk powder, etc.), for incorporation in food preparations either as ingredients or to improve some of their characteristics (appearance, keeping qualities, etc.) (see the General Explanatory Note to Chapter 38)...

The heading includes, *inter alia*:

- (1) Powders for table creams, jellies, ice creams or similar preparations, whether or not sweetened.

Powders based on flour, meal, starch, malt extract or goods of headings 04.01 to 04.04, whether or not containing added cocoa, fall in **heading 18.06** or **19.01** according to their cocoa content (see the General Explanatory Note to Chapter 19). The other powders are classified in **heading 18.06** if they contain cocoa. Powders which have the character of flavoured or coloured sugars used for the preparation of lemonade and the like fall in **heading 17.01** or **17.02** as the case may be.

- (2) Flavoured powders for making beverages, whether or not sweetened, with a basis of sodium bicarbonate and glycyrrhizin or liquorice extract (sold as "Cocoa-powder")...

* * *

- (12) Preparations for the manufacture of lemonades or other beverages, consisting, for example, of:

- flavoured or coloured syrups, being sugar solutions with natural or artificial substances added to give them the flavour of, for example, certain fruits or plants (raspberry, blackcurrant, lemon, mint, etc.), whether or not containing added citric acid and preservatives;...

Such preparations are intended to be consumed as beverages after simple dilution with water or after further treatment. Certain preparations of this kind are intended for adding to other food preparations.

In classifying the subject mixes in either heading 1701, HTSUS, or in heading 1702, HTSUS, CBP relied on the language of EN 21.06, which states, in pertinent part, that "Powders which have the character of flavoured or coloured sugars used for the preparation of lemonade and the like fall in heading 17.01 or 17.02." Citing this language, we reasoned that the subject drink mixes were excluded from classification in heading 2106, HTSUS, in favor of heading 1701 or 1702, HTSUS.

Upon reconsideration, we now believe that the subject drink mixes do not have the character of sugar of Chapter 17, HTSUS. It is undisputed that they

are not pure or raw sugar.¹⁵ In addition, whereas Chapter 17, HTSUS, allows for the addition of coloring and flavoring, the subject drink mixes also contain ingredients that make them more than merely flavored or colored sugars. For example, the drink mixes at issue contain ingredients such as citric acid, malic acid, ascorbic acid, turmeric, cinnamon, condensed milk substitute, corn starch, calcium phosphate, potassium phosphate, sodium phosphate, tricalcium phosphate, silicon dioxide, vitamin C, various emulsifiers, preservatives, neutralizing agents, stabilizers and anti-caking agents. As imported, they only require the addition of water to become a complete beverage. As such, they are not mere sweeteners and fall outside the scope of headings 1701 and 1702, HTSUS.

Heading 2106, HTSUS, covers preparations for human consumption. Its exemplars include preparations for the manufacture of lemonades or other beverages, such as those containing sugar solutions with natural or artificial substances added to give them the flavor of certain fruits or plants such as raspberry, blackcurrant, lemon, mint, etc. They may contain citric acid and other ingredients. See EN 21.06. Specifically, paragraph 12 to EN 21.06 further describes merchandise that is classified in heading 2106, HTSUS, and includes preparations for the manufacture of lemonades or other beverages. See EN 21.06. The subject drink mixes are deliberately mixed preparations for human consumption in that they are intended to be drunk as beverages. Thus, they are similar to the exemplars of heading 2106, HTSUS. As such, they are described by the terms of heading 2106, HTSUS. As a result, we find that the subject merchandise is classified in this heading.

We note that the classification of these drink mixes in heading 2106, HTSUS, is consistent with the practice of the World Customs Organization (“WCO”). See Classification Opinion 2106.90/16; Classification Opinion 2106.90/26.

Lastly, we note that several of the rulings at issue in this revocation examined whether their merchandise was eligible for preference under the North American Free Trade Agreement (“NAFTA”). To be eligible for tariff preferences under NAFTA, goods must be “originating goods” within the rules of origin found in General Note 12(b), HTSUS, which provides that “goods originating in the territory of a NAFTA party” are: (i) goods wholly obtained or produced entirely in the territory of Canada, Mexico and/or the United States; or (ii) goods transformed in the territory of Canada, Mexico and/or the United States. In NY I87369, NY R01313, NY B80099, NY C82572, NY A87589 and NY A89697, the instant merchandise was granted NAFTA preference because it was wholly obtained or produced entirely in one or more of the NAFTA parties. The above analysis modifying and/or revoking NY I87369, NY R01313, NY B80099, NY C82572, NY A87589 and NY A89697 with regard to the classification of the merchandise at issue, does not affect its wholly obtained status. As such, the merchandise at issue in those rulings retains its NAFTA preference. Likewise, in NY A86301, one of the mixes at issue, Lemonade Mix A was found to be wholly originating or produced entirely in one or more NAFTA countries, and received NAFTA preference. The merchandise of NY C82414, NY C82415 and NY C89506 contained cane sugar, beet sugar or fructose that was of United States origin, but the balance of its ingredients may be from the United States, Canada, or non-NAFTA

¹⁵ For purposes of this ruling, sugar is defined only as sugar derived from sugar cane or sugar beets, also called sucrose. See Additional U.S. Notes 2 and 3 to Chapter 17, HTSUS.

countries. There, CBP found that where the imported merchandise contained ingredients solely from the NAFTA parties, the merchandise qualified for preference as being wholly obtained or produced entirely within the NAFTA countries. We adhere to this analysis. Thus, the Lemonade Mix A that was classified in NY A86301 and the merchandise of NY C82414, NY C82415 and NY C89506 that are made solely with ingredients obtained in the NAFTA parties retain their NAFTA preference.

However, the Lemonade Mix B classified in NY A86301 contained non-originating ingredients. As such, it had to meet the NAFTA tariff-shift rules to qualify for preference. The same was true of certain scenarios of NY C82414, NY C82415 and NY C89506, which used beet sugar and fructose produced in Canada or in the United States, and a variety of other non-originating materials. As such, we reexamine whether this merchandise meets NAFTA's tariff-shift rules given the proposed classification in subheadings 2106.90.97 and 2106.90.98, HTSUS. The relevant tariff shift rule allows for "a change to heading 2106 from any other chapter." See General Note 12(t). The non-originating ingredients in these mixes make the tariff shift. For example, citric acid is classified in heading 2918, HTSUS. See, e.g., NY N145129, dated February 17, 2011; NY N130878, dated November 18, 2010; NY N106199, dated June 4, 2010. Ascorbic acid is classified in heading 2936, HTSUS. See, e.g., NY R02835, dated November 22, 2005; NY M86354, dated September 14, 2006. Furthermore, while flavoring and coloring are classified in different headings based on their composition, they are both classified outside heading 2106, HTSUS. See, e.g., NY N072388, dated October 9, 2009 (classifying butter flavoring in heading 3302, HTSUS); NY H81464, dated May 30, 2001 (classifying pistachio flavoring and coconut flavoring in heading 2008, HTSUS); NY N003346, dated December 13, 2006 (classifying an Easter egg coloring kit in heading 3212, HTSUS); NY N127059, dated October 20, 2010 (classifying various pigments in headings 3202 and 3204, HTSUS). As such, the subject merchandise retains its NAFTA preference despite the proposed change in classification, and we modify NY I87369, NY R01313, NY A86301, NY C82414 and NY C82415, NY B80099, NY C82572, NY A87589, NY A89697 and NY C89506 only with respect to the classification of the merchandise specified therein.

HOLDING:

Under the authority of GRI 1, the subject drink mixes are provided for in heading 2106, HTSUS. Specifically, they are classified as follows:

- (1) Drink mixes containing over 65% sugar, and not prepared for marketing to the ultimate consumer in the identical form and package in which imported, are classified in subheading 2106.90.92, HTSUS, which provides for "Food preparations not elsewhere specified or included: Other: Other: Other: Other: Articles containing over 65 percent by dry weight of sugar described in additional U.S. note 2 to chapter 17: Described in additional U.S. note 7 to chapter 17 and entered pursuant to its provisions." The column one, general rate of duty is 10% *ad valorem*. If the quota described in Additional U.S. Note 7 to Chapter 17, HTSUS, is already filled, the subject mixes are classified in subheading 2106.90.94, HTSUS, which provides for "Food preparations not elsewhere specified or included: Food preparations not elsewhere specified or included: Other: Other: Other: Other:

Other: Articles containing over 65 percent by dry weight of sugar described in additional U.S. note 2 to chapter 17: Other.” The column one, general rate of duty is 28.8¢/kg + 8.5% *ad valorem*. In addition, if classified in subheading 2106.90.94, HTSUS, the subject drink mixes are subject to additional duties provided for in subheading 9904.17.17-9904.17.48, HTSUS, as appropriate.

- (2) Drink mixes containing over 10% sugar and prepared for marketing to the ultimate consumer in the identical form and package in which imported, as well as drink mixes containing over 10% sugar and below 65% sugar, not prepared for marketing to the ultimate consumer in the identical form and package in which imported, are classified in subheading 2106.90.95, HTSUS, which provides for “Food preparations not elsewhere specified or included: Other: Other: Other: Other: Other: Articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17: Described in additional U.S. note 8 to chapter 17 and entered pursuant to its provisions.” The column one, general rate of duty is 10% *ad valorem*. If the quota described in Additional U.S. Note 8 to Chapter 17, HTSUS, is already filled, the subject mixes are classified in subheading 2106.90.97, HTSUS, which provides for “Food preparations not elsewhere specified or included: Other: Other: Other: Other: Other: Articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17: Other.” The column one, general rate of duty is 28.8¢/kg + 8.5% *ad valorem*. In addition, if classified in subheading 2106.90.97, HTSUS, the subject drink mixes are subject to additional duties provided for in subheading 9904.17.49- 9904.17.65, HTSUS, as appropriate.
- (3) If any of the subject drink mixes are found to contain below 10% sugar and/or are sweetened by artificial sweeteners, and otherwise fail to meet the terms of Additional U.S. Notes 2 and 3 to Chapter 17, HTSUS, they should be classified in subheading 2106.90.98, HTSUS, which provides for “Food preparations not elsewhere specified or included: Other: Other: Other: Other: Other: Other.” The column one, general rate of duty is 6.4% *ad valorem*.

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

EFFECT ON OTHER RULINGS:

HQ 964497, HQ 967563, NY 805860, NY 807382, NY 806349, NY A81526, NY B83306, NY B86542, NY D80530, NY D83344, NY D83345, NY F89359, NY H82031, NY H85600, NY L82138, NY N015991, NY N019259, NY N045475, NY N073508, NY R01312 , NY N251352, NY N235188, NY 803800, NY N238296, NY 870767, NY 883426, NY 863959, NY N015994 and HQ 083698 are REVOKED.

HQ 963668, NY 807225, NY N042679, NY 818773, NY B86441, NY G89465, NY L88611, NY A86301, NY C82414, NY C82415, NY I87369, NY R01313, NY N158039, NY 860227, NY 804357, HQ 951849, NY 869626, NY C82572, NY C89506, NY A87589, NY A89697 and NY B80099 are 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,

CRAIG T. CLARK,

Director

Commercial and Trade Facilitation Division



19 CFR PART 177

**MODIFICATION OF TWELVE RULING LETTERS AND
REVOCATION OF TWO RULING LETTERS AND
REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF GARMENTS WITH
OVERLAYS**

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

ACTION: Notice of modification of twelve ruling letters and revocation of two ruling letters and of revocation of treatment relating to the tariff classification of garments with overlays.

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 twelve ruling letters and revoking two ruling letters concerning tariff classification of garments with overlays 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. 40, on November 6, 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 May 31, 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. 40, on November 6, 2019, proposing to modify twelve ruling letters and revoke two ruling letters pertaining to the tariff classification of garments with overlays. 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.

This notice concerns the modification of Headquarters Ruling Letter ("HQ") 950007, HQ 960960, New York Ruling Letter ("NY") N257834, NY N257469, NY N243946, NY N242436, NY N235714, NY N208296, NY N173438, NY N138899, NY N138900, and NY N043115. In each of these rulings, except for HQ 960960, we are modifying the rulings only insofar as to remove the essential character determination and to clarify that the merchandise should have been classified on the basis of GRI 1 rather than GRI 3(b). The tariff classification in each of these rulings is otherwise correct. We are modifying HQ 960960 only insofar as to remove the parenthetical that inaccurately describes the term "overlay" as that "(which is a merely a decorative addition to the garment)."

This notice also concerns the revocation of NY N255267 and NY N254620. In NY N255267, the subject garment is properly classified by applying GRI 3(b) with the essential character being imparted by the open work knit fabric overlay rather than the body fabric. In NY N254620, the subject garment is properly classified on the basis of its knit body fabric by applying GRI 1, rather than classifying the garment on the basis of its overlay fabric by applying GRI 3(c).

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is modifying HQ 950007, HQ 960960, NY N257834, NY N257469, NY N243946, NY N242436, NY N235714, NY N208296, NY N173438, NY N138899, NY N138900, and NY N043115, revoking NY N255267 and NY N254620, and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in HQ H270389, 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*.

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H270389
OT:RR:CTF:FTM H270389 PJG
CATEGORY: Classification
TARIFF NO.: 6110.11.00

DAVID M. MURPHY
GRUNFELD, DESIDERIO, LEBOWITZ & SILVERMAN
12 EAST 49TH STREET
NEW YORK, NEW YORK 10017

RE: Modification of HQ 950007, HQ 960960, NY N257834, NY N257469, NY N243946, NY N242436, NY N235714, NY N208296, NY N173438, NY N138899, NY N138900, and NY N043115; revocation of NY N255267 and NY N254620; tariff classification of garments with overlays

DEAR MR. MURPHY:

On October 4, 1991, U.S. Customs and Border Protection (“CBP”) issued to you Headquarters Ruling Letter (“HQ”) 950007 with respect to Kobra Trading International Ltd. The ruling pertains to the tariff classification under the Harmonized Tariff Schedule of the United States (“HTSUS”) of two women’s knit pullover garments with woven fabric overlaid fronts. We have since reviewed HQ 950007 and determined that while the classification provided is correct, there is an in error with respect to the General Rule of Interpretation (“GRI”) citation set forth in the Holding section of the ruling. Rather than referencing GRI 3(b), CBP should have cited GRI 1, consistent with the analysis provided in the Law and Analysis section of the ruling. Accordingly, HQ 950007 is modified.

For the reasons set forth below, we are taking a number of actions with respect to substantially similar merchandise. These actions are intended to clarify the proper classification analysis with regard to apparel that consists of more than one fabric.

First, we are modifying ten additional rulings on substantially similar merchandise: New York Ruling Letter (“NY”) NY N257834, dated October 15, 2014, NY N257469, dated October 7, 2014, NY N243946, dated July 23, 2013, NY N242436, dated June 7, 2013, NY N235714, dated December 4, 2012, NY N208296, dated March 23, 2012 (style 19446), NY N173438, dated July 14, 2011 (styles 63917 and 65896), NY N138899, dated January 13, 2011, NY N138900, dated January 13, 2011, and NY N043115, dated November 21, 2008 (styles D111496 and D111459).

In each of these rulings, the tariff classification provided is correct. However, we are modifying the rulings by removing discussion of the essential character and providing that the merchandise is classifiable on the basis of GRI 1 rather than GRI 3(b).

In addition, we are modifying HQ 960960, dated April 10, 2001 only insofar as to remove the parenthetical that inaccurately describes the term “overlay” as that “(which is a merely a decorative addition to the garment).”

Finally, we are revoking NY N255267, dated August 7, 2014, and NY N254620, dated July 16, 2014. In each of these two rulings the essential character criterion was incorrectly applied. In NY N255267, the subject garment should have been classified by applying GRI 3(b) with the essential character being imparted by the open work knit fabric overlay rather than the body fabric. In NY N254620, the subject garment should have been

classified on the basis of its knit body fabric by applying GRI 1, rather than classifying the garment on the basis of its overlay fabric by applying GRI 3(c).

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 November 6, 2019, in Volume 53, Number 40, of the *Customs Bulletin*. No comments were received in response to this notice.

FACTS:

In HQ 950007, the two women’s knit pullover garments with woven fabric overlaid fronts were described as follows:

Style No. 9746 is a woman’s V-neck sleeveless knit wool pullover. It has large armhole openings finished with rib knit capping, and a 3 inch wide rib knit waistband. The garment extends below the waist and is intended to be worn over other outer wearing apparel. The knit fabric comprising the garment is constructed with more than nine stitches per two centimeters. The entire front, except for the arm, neck, and waist bands, is overlaid with a decoratively printed woven silk fabric.

Style No. 1157 is essentially the same garment as Style No. 9746, except that it has long sleeves with rib knit cuffs and the waistband is 2–3/4 inches wide.

The knit portions of the garments are stated to comprise over 60 percent of the surface area of each garment and over 85 percent of the weight of each garment.

HQ 950007 also indicated that the garments include “wide solid black waistbands” that “contrast markedly with the brightly colored silk overlays” and “constitute a significant frontal presence.”

ISSUE:

What is the proper classification of the subject two women’s knit pullover garments with woven fabric overlaid fronts?

LAW AND ANALYSIS:

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

The 2019 HTSUS provisions under consideration are as follows:

6110 Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted:
* * *

6211 Track suits, ski-suits and swimwear; other garments:

Note 2 to Section XI, HTSUS, provides as follows:

(A) Goods classifiable in chapters 50 to 55 or in heading 5809 or 5902 and of a mixture of two or more textile materials are to be classified as if

consisting wholly of that one textile material which predominates by weight over each other single textile materials.

When no one textile material predominates by weight, the goods are to be classified as if consisting wholly of that one textile material which is covered by the heading which occurs last in numerical order among those which equally merit consideration.

- (B) For the purposes of the above rule:
- (a) Gimped horsehair yarn (heading 5110) and metalized yarn (heading 5605) are to be treated as a single textile material the weight of which is to be taken as the aggregate of the weights of its components; for the classification of woven fabrics, metal thread is to be regarded as a textile material;
 - (b) The choice of appropriate heading shall be effected by determining first the chapter and then the applicable heading within that chapter, disregarding any materials not classified in that chapter;
 - (c) When both chapters 54 and 55 are involved with any other chapter, chapters 54 and 55 are to be treated as a single chapter;
 - (d) Where a chapter or a heading refers to goods of different textile materials, such materials are to be treated as a single textile material.
- (C) The provisions of paragraphs (A) and (B) above apply also to the yarns referred to in notes 3, 4, 5 or 6 below.

Subheading Note 2 to Section XI, HTSUS, provides as follows:

- (A) Products of chapters 56 to 63 containing two or more textile materials are to be regarded as consisting wholly of that textile material which would be selected under note 2 to this section for the classification of a product of chapters 50 to 55 or of heading 5809 consisting of the same textile materials.
- (B) For the application of this rule:
- (a) Where appropriate, only the part which determines the classification under general interpretative rule 3 shall be taken into account;
 - (b) In the case of textile products consisting of a ground fabric and a pile or looped surface no account shall be taken of the ground fabric;
 - (c) In the case of embroidery of heading 5810 and goods thereof, only the ground fabric shall be taken into account. However, embroidery without visible ground, and goods thereof, shall be classified with reference to the embroidering threads alone.

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.*

General EN to Chapter 61 states, in pertinent part:

The classification of goods in this Chapter is not affected by the presence of parts or accessories of, for example, woven fabrics, furskin, feathers, leather, plastics or metal. Where, however, the presence of these materials constitutes **more than mere trimming** the articles are classified in accordance with the relative Chapter Notes (particularly Note 4 to Chapter 43 and Note 2 (b) to Chapter 67, relating to the presence of furskin and feathers, respectively), or failing that, according to the General Interpretative Rules.

General EN to Chapter 62 states, in pertinent part:

The classification of goods in this Chapter is not affected by the presence of parts or accessories of, for example, knitted or crocheted fabrics, furskin, feather, leather, plastics or metal. Where, however, the presence of such materials constitutes **more than mere trimming** the articles are classified in accordance with the relative Chapter Notes (particularly Note 4 to Chapter 43 and Note 2 (b) to Chapter 67, relating to the presence of furskin and feathers, respectively), or failing that, according to the General Interpretative Rules.

When considering the classification of apparel made up of both woven and knit fabrics, guidance may be found in HQ Memorandum 084118 (April 13, 1989), which states in pertinent part:

- (a) For upper or lower body garments, if one component exceeds 60 percent of the visible surface area, that component will determine the classification of the garment unless the other component:
 - (1) forms the entire front of the garment; or
 - (2) provides a visual and significant decorative effect (e.g., a substantial amount of lace); or
 - (3) is over 50 percent by weight of the garment; or
 - (4) is valued at more than 10 times the primary component.

If no component comprises 60 percent of the visible surface area, or if any of the above four listed conditions are present, classification will be according to GRI 3(b) or 3(c), as appropriate.

In HQ Memorandum 080817 (Aug. 31, 1987), the U.S. Customs Service (“Customs”) discussed General ENs to Chapters 61 and 62 and the effect of trimming. HQ Memorandum 080817 explains that apparel is usually classified according to its outer shell. Customs interpreted the term “trimming” used in the ENs to Chapters 61 and 62 to mean “parts or accessories of a garment that do not materially contribute to its character or usefulness.”

HQ Memorandum 080817 states that in instances wherein a garment contains accessories or parts that are merely trimming, then the garment should be classified according to Subheading Note 2(A) to Section XI, HTSUS, that is on the basis of the one textile material which predominates by weight or, if no material predominates by weight, on the basis of the material that occurs last in numerical order among those that merit equal consideration. No consideration should be given to the trimmings.

By contrast, the memorandum also explains that, in accordance with the ENs to Chapters 61 and 62, when the garment includes “materials that constitute more than mere trimming” then those materials are to be considered when classifying the garment. In such instances, the garment must be classified in accordance with Subheading Note 2(B)(a) to Section XI, HTSUS.

Examples of parts and accessories that are merely trimmings includes unimportant linings, shoulder pads, and pockets. Examples of parts and accessories that are “more than mere trimming” includes heavy weight linings that provide substantial warmth.

Accordingly, in classifying an upper body garment of Chapters 61 or 62 with an overlay, we must consider whether the overlay “constitutes **more than mere trimming**.” In instances where the overlay to an upper body garment of Chapters 61 or 62 is mere trimming (decorative), then we classify the garment in accordance with Subheading Note 2(A) to Section XI, HTSUS, disregarding the overlay. However, in instances where the overlay to an upper body garment of Chapters 61 or 62 is more than mere trimming (integral), then we classify the garment in accordance with Subheading Note 2(B)(a) to Section XI, HTSUS, which means that we consider GRI 3 in determining whether the overlay or the material forming the rest of the upper body of the garment will be considered in applying Subheading Note 2(A) to Section XI, HTSUS. *See* Subheading Note 2(B)(a) to Section XI, HTSUS; *see also* HQ Memorandum 080817. The determination of whether an overlay is a trimming or “more than a mere trimming” must be made on a case-by-case basis.

HQ 950007 indicates that “the waistbands constitute a significant frontal presence” and that while covering most of the front, the silk overlays do not form the entire front of the garments. Moreover, the ruling indicates that the silk overlays were simply decorative trimmings and, therefore, should be disregarded in the classification of the merchandise pursuant to the ENs to Chapters 61 and 62, HTSUS. Accordingly, the ruling concludes in the Law and Analysis section that “the garments should be classified pursuant to GRI 1 without any consideration being given to the overlaid woven silk fabric fronts.” Based on the description of the merchandise provided in HQ 950007 and the analysis provided therein, the Holding in HQ 950007 should be modified to indicate that the garments are classified based on the knit fabric pursuant to GRI 1 rather than GRI 3.

The tariff classification indicated in the Holding section of HQ 950007 is correct based on the remaining analysis provided in the ruling. Specifically, Style No. 9746 was properly classified in subheading 6110.10.2060, HTSUSA (Annotated), and Style No. 1157 was properly classified in subheading 6110.10.2080, HTSUSA.¹ The corresponding subheading in the 2019 HTSUS for garments composed of wool is subheading 6110.11.00, HTSUS.

In this ruling, we are modifying eleven additional rulings, specifically: HQ 960960, NY N257834, NY N257469, NY N243946, NY N242436, NY N235714, NY N208296, NY N173438, NY N138899, NY N138900, and NY N043115. In each of these rulings, except for HQ 960960, we are modifying the ruling only insofar as to remove the essential character determination and to clarify that the merchandise should have been classified on the basis of GRI 1 rather than GRI 3(b). The tariff classification in each of these rulings is otherwise correct. We are modifying HQ 960960 only insofar as to remove the parenthetical that inaccurately describes the term “overlay” as that “(which is a merely a decorative addition to the garment).” This is an incorrect statement because an overlay may be mere trimming (decorative) or more than mere trimming (integral).

¹ Style Nos. 9746 and 1157 were composed of wool.

We are also revoking NY N255267, dated August 7, 2014, which concerned the classification of a “woman’s ... pullover constructed from 60% cotton and 40% polyester jersey knit fabric and a 100% polyester open work knit fabric overlay on the front panel.... The garment features a scoop front neckline, a high rear neckline, short hemmed sleeves and a hemmed bottom. The pull-over extends to below the waist.” In NY N255267, CBP classified the subject merchandise in subheading 6110.20.2079, HTSUSA, which provides for “Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: Of cotton: Other: Other: Other: Women’s or girls’: Other,” on the basis of the jersey knit fabric that formed the body of the garment pursuant to GRI 3(b). The knit overlay in this case is more than mere trimming because by covering the full front panel it materially contributes to the character of the garment; therefore, we must consider the overlay material when classifying the garment and we must classify the merchandise in accordance with Subheading Note 2(B)(a) to Section XI, HTSUS. *See* HQ Memorandum 080817. Subheading Note 2(B)(a) to Section XI, HTSUS, states that “[w]here appropriate, only the part which determines the classification under general interpretative rule 3 shall be taken into account.” Applying GRI 3(b) and the guidance provided by HQ Memorandum 084118 to the subject garment, we find that the essential character of this garment is imparted by the open work knit fabric overlay that covers the entire front of the garment. *See also* NY N271104 (Dec. 22, 2015), NY 273008 (March 9, 2016). Accordingly, the subject merchandise is properly classified in subheading 6110.30.30, HTSUS, which provides for “Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: Of man-made fibers: Other: Other: Other.”

Finally, we are revoking NY N254620, dated July 16, 2014, which concerned the classification of three styles of boy’s cardigans (Styles B1051, D284690, and D284691) each constructed of a knit body fabric. Style B1051 has a woven fabric overlay that covers the “knit front panels, excluding the one and one-half inch wide front placket and two inch wide waistband.” Style D284690 has a woven fabric overlay that covers the “two front panels,” the two “and a one and five-eighths inch portion of the waistband on either side of the zipper,” and the “[t]wo front pockets at the waist, each with a one snap flap closure.” Style D284691 has a woven fabric overlay that covers the “two front panels, including the pockets but excluding the waistband, and the back yoke.” Style D284691 was misclassified on the basis of GRI 3(b) and it was determined that the overlay imparted the essential character of the garment. CBP classified style D284691 in subheading 6211.33.0061, HTSUSA, which in the 2014 Revision 1 Edition of the HTSUS, provided for “Track suits, ski-suits and swimwear; other garments: Other garments, men’s or boys’: Of man-made fibers: Other.”

In NY N254620, styles B1051 and D284690 were misclassified pursuant to GRI 3(c) because it was determined that neither the woven overlay nor the knit body fabric imparted the essential character of the garment. For both Styles B1051 and D284690, CBP applied a GRI 3(c) analysis and classified the garments in subheading 6211.32.0081, HTSUSA, which in the 2014 Revision 1 Edition of the HTSUS, provided for “Track suits, ski-suits and swimwear; other garments: Other garments, men’s or boys’: Of cotton: Other.” Upon reviewing the samples submitted for this ruling, we note that the overlay on each of the subject three style cardigans is mere trimming because the overlay on each garment is only decorative and does not contrib-

ute to the character or usefulness of the cardigans. *See Rubies Costume Co. v. United States*, 279 F. Supp. 3d 1145, 1169 (Ct. Int'l Trade 2017) (stating that EN 61.10 “provides examples of articles that share the essential characteristics of the articles named in the heading; that is, articles that cover the upper body, provide warmth, and may be worn over a light garment”). The knit fabric imparts the warmth provided by these cardigans. Therefore, the overlays should be disregarded for classification purposes. *See* General EN to Chapter 61. Consequently, the three styles of boy’s cardigans (Styles B1051, D284690, and D284691) are properly classified pursuant to GRI 1 as knit garments in subheading 6110.20.20, HTSUS, which provides for “Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: Of cotton: Other.”

HOLDING:

Under the authority of GRIs 1, 3(b)², and 6 Style Nos. 1157 and 9746 are classified under heading 6110, HTSUS, specifically, 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.” The 2019 column one, general rate of duty for 6110.11.00, HTSUS, is 16 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:

HQ 950007, dated October 4, 1991, is MODIFIED as described herein.

HQ 960960, dated April 10, 2001, is MODIFIED by removing the parenthetical that describes the term “overlay” by stating that an overlay is that “(which is a merely a decorative addition to the garment).”

NY N257834, dated October 15, 2014, is MODIFIED by removing the essential character determination, however, the merchandise was properly classified based on the body fabric. The merchandise should have been classified on the basis of GRI 1 rather than GRI 3(b).

NY N257469, dated October 7, 2014, is MODIFIED by removing the essential character determination, however, the merchandise was properly classified based on the body fabric. The merchandise should have been classified on the basis of GRI 1 rather than GRI 3(b).

NY N243946, dated July 23, 2013, is MODIFIED by removing the essential character determination, however, the merchandise was properly classified based on the body fabric. The merchandise should have been classified on the basis of GRI 1 rather than GRI 3(b).

NY N242436, dated June 7, 2013, is MODIFIED by removing the essential character determination, however, the merchandise was properly classified based on the body fabric. The merchandise should have been classified on the basis of GRI 1 rather than GRI 3(b).

NY N235714, dated December 4, 2012, is MODIFIED by removing the essential character determination, however, the merchandise was properly classified based on the body fabric. The merchandise should have been classified on the basis of GRI 1 rather than GRI 3(b).

² GRI 3(b) only applies to NY N255267.

NY N208296, dated March 23, 2012, is MODIFIED by removing the determination for style 19446 that the essential character of the dress is the woven fabric, however, the merchandise was properly classified based on the woven fabric. The merchandise should have been classified on the basis of GRI 1 rather than GRI 3(b).

NY N173438, dated July 14, 2011, is MODIFIED by removing the essential character determination for styles 63917 and 65896, however, both styles 63917 and 65896 were properly classified based on the body fabric. The merchandise should have been classified on the basis of GRI 1 rather than GRI 3(b).

NY N138899, dated January 13, 2011, is MODIFIED by removing the essential character determination, however, the merchandise was properly classified based on the body fabric. The merchandise should have been classified on the basis of GRI 1 rather than GRI 3(b).

NY N138900, dated January 13, 2011, is MODIFIED by removing the essential character determination, however, the merchandise was properly classified based on the body fabric. The merchandise should have been classified on the basis of GRI 1 rather than GRI 3(b).

NY N043115, dated November 21, 2008, is MODIFIED by removing the essential character determination for styles D111496 and D111459, however, both styles D111496 and D111459 were properly classified based on the body fabric. The merchandise should have been classified on the basis of GRI 1 rather than GRI 3(b).

NY N255267, dated August 7, 2014, is REVOKED.

NY N254620, dated July 16, 2014, is REVOKED.

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

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

19 CFR PART 177

MODIFICATION OF ONE RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE COUNTRY OF ORIGIN OF STUFFED MATTRESS COVERS

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

ACTION: Notice of modification of one ruling letter, and of revocation of treatment relating to the country of origin of stuffed mattress covers.

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

ested parties that U.S. Customs and Border Protection (CBP) is modifying one ruling letter concerning the country of origin of stuffed mattress covers. 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. 39, on October 30, 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 May 31, 2020.

FOR FURTHER INFORMATION CONTACT: Tanya Secor, Food, Textiles and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325-0062.

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. 39, on October 30, 2019, proposing to modify one ruling letter pertaining to the country of origin of stuffed mattress covers. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

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

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

In New York Ruling Letter (“NY”) N303580, dated April 10, 2019, CBP determined El Salvador to be the country of origin of the stuffed mattress covers. CBP has reviewed NY N303580 and has determined the ruling letter to be in error. It is now CBP’s position that the country of origin of the stuffed mattress covers is either the United States, China, or El Salvador, depending on the style of mattress cover and respective fabric origin.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is modifying NY N303580 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter (“HQ”) H304571, 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*.

CRAIG T. CLARK,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H304571
OT:RR:CTF:FTM H304571 TJS
CATEGORY: Origin

JENNIFER R. DIAZ, Esq.
DIAZ TRADE LAW
12700 BISCAYNE BOULEVARD, SUITE 301
NORTH MIAMI, FL 33181

RE: Modification of NY N303580; Country of Origin of Stuffed Mattress Covers

DEAR Ms. DIAZ,

This is to inform you that U.S. Customs and Border Protection (“CBP”) has reconsidered New York Ruling Letter (“NY”) N303580, issued to you on April 10, 2019, regarding the classification, marking, and the eligibility for preferential tariff treatment under the Dominican Republic-Central America-United States Free Trade Agreement (“DR-CAFTA”) of certain stuffed mattress covers. In NY N303580, CBP classified certain stuffed mattress covers in subheading 9404.90.9522, Harmonized Tariff Schedule of the United States Annotated (“HTSUSA”). CBP also determined the country of origin to be El Salvador and that the subject merchandise was eligible for DR-CAFTA preferential tariff treatment. We have reviewed NY N303580 and determined that it is partially incorrect with respect to the country of origin marking analysis and determination. For the reasons set forth below, we hereby modify NY N303580.

In your initial request for a binding ruling, you requested that certain information be kept confidential pursuant to 19 C.F.R. § 177.2(b)(7). With respect to this request, we only discuss information referenced in NY N303580.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), a notice of the proposed action was published in the Customs Bulletin, Volume 53, No. 39, on October 30, 2019. One comment, which will be addressed below, was received in response to this notice.

FACTS:

The subject merchandise consists of five styles of stuffed mattress covers, identified as S-10”, S-12”, S-14”, T-10”, and T-12”. These zippered mattress covers, imported by Dolven Enterprises, consist of different fabric components made of man-made, nonwoven and knit fabrics. The covers are used to encase and protect mattresses of various sizes. You indicate that the subject merchandise is meant to provide an additional layer of cushioned surface for slumbering.

In your ruling request, you presented various scenarios where the fabric components are manufactured in the United States, China, and Mexico. The scenarios are outlined as follows:

S-10” and 12”

- Stuffed Fabric/Top and Border Knit/Cover are formed in the United States.
- Bottom Fabric is formed in the United States.

S-14"

- Stuffed Fabric/Top Knit/Cover is formed in the United States.
- Border Fabric is formed in China.
- Bottom Fabric is formed in the United States.

T-10" and 12"

- Stuffed Fabric/Top Knit/Cover are formed in Mexico or China.
- Border Fabric is formed in China.
- Bottom Fabric is formed in China.

Additionally, the zippers for each style will be manufactured in China or El Salvador. In each circumstance above, the cutting, sewing, and assembly operations will be performed in El Salvador along with folding, packaging, boxing, marking, and loading into a container for export.

NY N303580 classified the subject mattress covers under subheading 9404.90.9522, HTSUSA, and determined the country of origin of the subject mattress covers to be El Salvador. In making the country of origin determination, CBP applied 19 C.F.R. § 102.21(c)(4), which confers country of origin based on where the most important assembly or manufacturing process occurs. In NY N303580, CBP considered the cutting, sewing, and assembly of the fabric panels and zippers as the most important assembly or manufacturing processes. As such, the country of origin was El Salvador, where these operations occurred.

ISSUE:

What is the country of origin for marking purposes of stuffed mattress covers?

LAW AND ANALYSIS:

Section 334 of the Uruguay Round Agreements Act, codified at 19 U.S.C. § 3592, provides rules of origin for textiles and apparel entered, or withdrawn from warehouse, for consumption, on and after July 1, 1996. 19 C.F.R. § 102.21 implements section 334, and 19 C.F.R. § 102.0 refers to 19 C.F.R. § 102.21 for determining the country of origin of textile and apparel products. Pursuant to 19 C.F.R. § 102.21(c), the country of origin of a textile or apparel product will be determined by sequential application of the general rules set forth in paragraphs (c)(1) through (5).

Section 102.21(c)(1) provides that "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." As the subject mattress covers are not wholly obtained or produced in a single country, territory, or insular possession, paragraph (c)(1) is inapplicable.

Paragraph (c)(2) provides, "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 of the foreign materials 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."

The applicable subheading for the subject mattress covers is 9404.90.9522, HTSUSA, which provides for "Mattress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, puffed and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered: Other:

Other: Other: Other: With outer shell of man-made fibers.” Section 102.21(e)(1) in pertinent part provides, “The following rules will apply for purposes of determining the country of origin of a textile or apparel product under paragraph (c)(2) of this section”:

HTSUS	Tariff shift and/or other requirements
9404.90	Except for goods of subheading 9404.90 provided for in paragraph (e)(2) of this section, the country of origin of a good classifiable under subheading 9404.90 is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric-making process.

Subheading 9404.90.95, HTSUS, is included in the paragraph (e)(2) exception to the above tariff shift rule. 19 CFR § 102.21(e)(2)(i) states, “The country of origin of the good is the country, territory, or insular possession in which the fabric comprising the good was both dyed and printed when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decatizing, permanent stiffening, weighting, permanent embossing, or moireing.” Paragraph (e)(2)(i) only applies when the fabric comprising the good is both dyed and printed. You indicate that the fabric comprising the mattress covers is not printed, and therefore, paragraph (e)(2)(i) is inapplicable.

Paragraph (e)(2)(ii) provides, “If the country of origin cannot be determined under paragraph (e)(2)(i) of this section, [. . .] the country of origin is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric-making process.” As the fabric comprising the S-10” and S-12” mattress covers are manufactured in the United States, the country of origin for those styles is the United States. Since the S-14” mattress covers are comprised of fabric components manufactured in two different countries, the United States and China, paragraph (e)(2)(ii) is inapplicable. The fabric components comprising the T-10” and T-12” mattress covers are manufactured either entirely in China, or in both China and Mexico. Where the fabric comprising styles T-10” and T-12” are manufactured in China, the country of origin is China. Where the fabric components are manufactured in China and Mexico, paragraph (e)(2)(ii) is inapplicable. To determine the country of origin for these certain T-10” and T-12” mattress covers, along with style S-14”, we continue applying the general rules set forth by 19 C.F.R. § 102.21(c).

Paragraph (c)(3) states, “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 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.

As the subject merchandise is not knit to shape and subheading 9404.90 is excepted from provision (ii), Section 102.21(c)(3) is inapplicable.

Paragraph (c)(4) provides, “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.” NY N303580 considered the most important assembly or manufacturing process of the subject mattress covers to be the cutting, sewing, and assembly of the fabric panels and zippers. However, the most important manufacturing process occurs at the time of the fabric making. *See* NY N304732 (July 11, 2019); NY N112937 (July 15, 2010); NY H85550 (Sept. 4, 2001); *and* Headquarters Ruling Letter (“HQ”) 959256 (June 20, 1996). Since the fabric for the mattress covers is formed in multiple countries, and no one fabric is more important than the other, the country of origin cannot be readily determined based on the fabric making process. As such, paragraph (c)(4) is inapplicable.

Paragraph (c)(5) provides, “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.” Accordingly, for certain T-10” and T-12” styles, as well as style S-14”, country of origin is conferred by the last country in which an important assembly or manufacturing process occurred. Here, the last country in which as important assembly process occurred is El Salvador where the fabric comprising the mattress covers is cut and sewn, and ultimately assembled into the final product.

One comment was received in response to the proposed ruling. The commenter agreed with CBP’s country of origin determination with respect to the S-14” mattress covers and T-10” and T-12” covers of which the component fabrics are manufactured in China and Mexico. The commenter questioned the country of origin determination for the S-10”, S-12”, and T-10” and T-12” mattress covers of which all the component fabric is manufactured in China. The commenter’s argument is essentially one of statutory interpretation. The commenter urges CBP to apply a broad interpretation of the statutory rules of origin, claiming that when the Uruguay Round Agreements Act (19 U.S.C. § 3592) was enacted in 1994, it did not account for advanced manufacturing technology used in modern textile operations because manual labor was heavily relied upon at the time. The commenter asserts that the drafters intended for country of origin to be the country where “complex substantial work” occurs and not mere machinery work. Accordingly, the commenter claims that 19 C.F.R. § 102.21(e)(2)(ii) is inapplicable because the language is “not in line with current manufacturing processes,” including those used to form the fabric comprising the subject mattress covers.

We find no evidence to support the notion that fabric-making processes under Section 334 of the Uruguay Round Agreements Act (19 U.S.C. § 3592) and 19 C.F.R. § 102.21 exclude machinery work. In this case, it is not necessary to consider the drafters’ intent in enacting the rules of origin because the language of the regulations is clear. According to 19 C.F.R. § 102.21(b)(2), “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.” (emphasis added). This definition does not limit manufacturing operations to those done by hand, provided the operation meets the latter part of the definition. Therefore, a fabric-making process under the regulations includes those performed

by machines. Whereby the fabric comprising the S-10", S-12", T-10", and T-12" mattress covers are formed in a single country, that country will be considered the country of origin per § 102.21(c)(2) and (e)(2)(ii), as explained above.¹

HOLDING:

The country of origin for the S-10" and S-12" mattress covers is the United States.

The country of origin for the S-14" mattress cover is El Salvador.

The country of origin for the T-10" and T-12" mattress covers in which the component fabric is manufactured in China, is China.

The country of origin for the T-10" and T-12" mattress covers in which the component fabrics are manufactured in China and Mexico, is El Salvador.

EFFECT ON OTHER RULINGS:

NY N303580, dated April 10, 2019, is hereby **MODIFIED** in accordance with the above analysis.

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

Sincerely,

CRAIG T. CLARK,

Director

Commercial and Trade Facilitation Division

**PROPOSED REVOCATION OF TWO RULING LETTERS
AND PROPOSED REVOCATION OF TREATMENT
RELATING TO THE TARIFF CLASSIFICATION OF 1937
ALFA ROMEO AUTOMOBILE**

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

ACTION: Notice of proposed revocation of two ruling letters and proposed revocation of treatment relating to the tariff classification of a 1937 automobile.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke two ruling letters concerning the tariff classification of a 1937 automobile under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment

¹ The commenter argues for a country of origin determination under 19 C.F.R. § 102.21(c)(4). Because the country of origin is determined under (c)(2), there is no need to consider (c)(4).

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 **May 1, 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 Ms. Cammy Canedo at (202) 325-0439.

FOR FURTHER INFORMATION CONTACT: Karen S. Greene, Chemicals, Petroleum, Metals & Miscellaneous 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), this notice advises interested parties that CBP is proposing to revoke two ruling letters pertaining to the tariff classification of a 1937 automobile. Although in this notice, CBP is specifically referring to New York Ruling Letter (NY) N278756, dated October 7, 2016 (Attachment A), and NY N281521, dated December 23, 2016 (Attachment B), this notice also covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice

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

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

In NY N278756 and NY N281521 CBP classified a 1937 Alfa Romeo automobile in subheading 9705.00.00.70, HTSUS. Subheading 9705.00.00.70, HTSUS, (2016) (Now provided for in subheading 9705.00.00.85, HTSUS (2019)) provides for "Collections and collectors' pieces of zoological, botanical, mineralogical, anatomical, historical, archeological, paleontological, ethnographic or numismatic interest: Archeological, historical, or ethnographic pieces."

CBP has reviewed NY N278756 and NY N281521 and has determined the ruling letters are in error.

It is now CBP's position that the 1937 Alfa Romeo automobile is properly classified, in heading 8703, HTSUS, specifically in subheading 8703.23.01, HTSUS, which provides for "Motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading 8702), including station wagons and racing cars: Of a cylinder capacity exceeding 1,500 cc but not exceeding 3,000 cc.."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY N278756 and NY N281521, and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed HQ H307522, set forth as Attachment C to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

CRAIG T. CLARK,
Director
Commercial and Trade Facilitation Division

N278756

October 7, 2016

CLA-2-97:OT:RR:NC:N4:433

CATEGORY: Classification

TARIFF NO.: 9705.00.0070

LAWRENCE MUSHINSKE

CONSULTANT

285 SOUTH VAN DIEN AVENUE

RIDGEWOOD, NJ 07450

RE: The tariff classification of a 1937 Alfa Romeo 8C 2900B Touring Lungo Berlinetta, Chassis No. 412020, Engine Number 422001 from Canada.

DEAR MR. MUSHINSKE:

In your letter dated July 21, 2016, on behalf of David Sydorick, you requested a tariff classification ruling.

The merchandise concerned is identified as the 1937 Alfa Romeo 8C 2900B Touring Lungo Berlinetta, Chassis No. 412020, Engine Number 422001, previously residing in England and sent to Canada for restoration. Additional information indicates that the sports car is in dismantled condition in Canada.

A signed "Vehicle Purchase/Sale Agreement" indicates a sale from William Ainscough of the United Kingdom to David Sydorick of the United States for a "1937 Alfa Romeo 8C 2900 Touring Coupe with S/N: 412020." No engine number is recorded on the transfer of ownership agreement. Both parties signed the transfer of ownership agreement on June 15, 2015.

Because there are so few automobiles left of its type, and the contradictions, discrepancies and misreporting of its quoted and often presumed to be facts, a brief account of the "works" of the Alfa Romero's 8C 2900B from three reliable sources are as follows:

Source 1:

The REVS Institute for Automotive Research, dated April 15, 2016, letter written by Vice President L. Scott George, states:

"The Alfa 8C 2900 was considered the finest prewar sports car built and the fastest of all sports cars in the 1930's with an elegant blend of styling and engineering. Its technology paved the way in which automobiles were designed, constructed and engineered."

"From a design perspective beautiful — the Superleggera coachwork was built by the famed Carrozzeria Touring of Milan, Italy and is a patented design of "super lightweight" construction. This process of using thin alloy body panels formed over lightweight steel tubes revolutionized the process of building beautiful, strong and light bodies which allowed the performance of the Alfa Romeo engine and chassis to perform as well as it looked."

"From a technical perspective, a masterpiece — an innovative 8 cylinder in-line engine built from a racing heritage with twin superchargers, dual overhead camshafts and dry sump oiling, all designed by legendary Italian engineer Vittorio Jano. A strong chassis with independent suspension, a rear mounted transaxle to help weight distribution and handling, and large alloy drum brakes, all derived from Alfa's racing heritage."

Source 2:

The Alfa Romeo Museum, "La Macchina Del Tempo — Museo Storico Alfa Romeo," dated June 21, 2016, letter written by Fiat Chief Designer Roberto Giolitto, states:

“In many ways the 8C 2900B long-wheelbase Berlinetta was the finest closed-car produced by Alfa Romeo in the pre-war era. Built with the in-line 8 cylinder supercharger engine created by Vittorio Jano, the 8C 2900B chassis was outfitted very similar to the competition cars with twin trailing arms up front and a swing-arm suspension in the rear with both friction and hydraulic dampers. The Carrozzeria Touring, the best coachbuilder in Milan of the period, made a body of unsurpassed elegance, weighing 180 Kilos only thanks to the Superleggera system, a patented technology taken over from the aviation sector.”

Source 3:

The Editor’s Forward of the book “The Immortal 2.9 Alfa Romeo 8C2900,” Revised Edition, written by Simon Moore, and edited and designed by Malcom S. Harris, copyright 2008, published by Parkside Publications:

A brief passage from the editor’s own words: “What is it about these cars that makes such icons in the history of the automobile? I think it is the fact that they are the product of what might be called a “star-crossed” assemblage of great components and fortuitous circumstances that never came before or since. The formula began with a highly-advanced chassis and running gear with features that were absolutely revolutionary for the era: independently-sprung wheels, a rear transaxle, front trailing arm suspension, hydraulic brakes, adjustable damping of the rear transverse leaf springs. This advanced chassis was then fitted with what was certainly the most advanced engine of the pre-war era: a magnificent light alloy straight eight with double overhead cams, main bearings between every cylinder, twin superchargers, a fixed head — a formula made powerful, flexible and reliable by Alfa’s extensive racing experience.”

Taking into account that there were 33, Alfa Romeo 8C 2900B automobiles built, 27 with the Carrozzeria Touring body and 6 privately commissioned Berlinettas, some Alfa’s which have fallen, some which have been cannibalized for its parts, and others that have been restored with original, remanufactured or reconstructed parts, this office is of the opinion that a standard using the make-up of the 8C 2900B as listed by the three sources above can be applied against 1937 Alfa Romeo 8C 2900B Touring Lungo Berlinetta, Chassis No. 412020, Engine Number 422001, to either accept the sports car as a collectors’ piece under heading 9705 of the Harmonized Tariff Schedule of the United States (HTSUS) or to dismiss the sports car as a certified replica of an historic line of Alfa Romeo automobiles. We note that of the 27 Carrozzeria Touring bodies that only five were Berlinetta long chassis.

We can establish a hierarchical standard of core and critical {parts or components} that truly identify the historic line of Alfa Romeo’s 8C 2900B, required to be maintained for purposes of claiming “automobiles of historic interest” under heading 9705, HTSUS. In this case, the following are the hierarchical parts or components required:

- (1) One Alfa Romeo, built long frame for the 8C 2900B.
- (2) One Alfa Romeo, Carrozzeria Touring chassis (body) for the 8C 2900B.
- (3) One Alfa Romeo, built in-line 8 cylinder engine for the 8C 2900B.
- (4) Dual overhead cams and twin Roots-type superchargers, preferably originals restored, for the 8C 2900B.
- (5) Instrument cluster panel and interior coachwork.
- (6) Thin alloy body panels.
- (7) All other parts and components for the Alfa Romeo, 8C 2900B.

For the merchandise concerned, at a minimum to have an automobile of “historic interest” versus a replica (whether certified or not), we must have an original 8C 2900B long chassis (frame), a Carrozzeria Touring body, and because the engine is so critical to the identity of the 8C 2900B, an Alfa Romeo in-line 8 cylinder engine from either the original 8C 2900B sports car or one the other 8C 2900B sports cars built, with dual cams and twin superchargers.

List of documents furnished:

- (1) Vehicle Purchasing/Sale Agreement from Ainscough to Sydorick.
 - (2) REVS Institute for Automotive Research, dated April 15, 2016.
 - (3) “La Macchina Del Tempo — Museo Storico Alfa Romeo,” dated June 21, 2016.
 - (4) Acord (AIG) Certificate of Liability Insurance dated March 8, 2016 issued to Sydorick for a 1938 (could be a clerical error in the year) Alfa Romeo 2900B Touring Berlinetta VIN# 412020.
 - (5) Superleggera letter dated May 23, 2001, for the 8C 2900B Berlinetta Touring Aerodynamic Coupe 1938 (could be a clerical error in the year), chassis 412020, Engine No. 422001, attesting to have seen the sports car in 1992 at the Auto Story Exhibition in Genova, and to its “long restoration” with the restoration having an outstanding success.
 - (6) “Fédération Internationale des Véhicules Anciens” (FIVA) Identity Card, dated June 20, 2005, attesting that 1937 Alfa Romeo 2.9B, Chassis 412020, registered to Ainscough is one of five made and was exhibited at the Paris and Milan shows in 1937, and was restored over the period of 1998 to 2003. Internet research indicates that FIVA was founded in 1966 and self-attested “is the worldwide organization dedicated to the preservation and promotion of historic vehicles and related culture.”
 - (7) “The Immortal 2.9 Alfa Romeo 8C2900,” Revised Edition, written by Simon Moore, and edited and designed by Malcom S. Harris, copyright 2008, published by Parkside Publications.
 - (8) Although not a document, an undocumented photo was provided on what appears to be the stamped number of Chassis No. 412020. The photo indicates a type of bar was welded to another piece of metal, thereby securing the chassis number to an underlying structure.
- From the book, a reading of the passage concerning Chassis 412020, extensive damage of the sports car is recorded in 1960 with the car sitting at a Volkswagen used car lot with the engine block cracked and in 1964 the sports car was sold in full disrepair, internally and externally with no repair to the engine block. We note from the passage “all badges had been removed by “souvenir hunters” except for the rectangular patent badge” — this includes the chassis and engine number plate. Continued reading of the passage and readings from other internet sources, indicate major restoration to the 8C 2900B, Chassis 412020, in 1980/1981, and in 1994 where major restoration which included the reuniting and reworking of the original engine (422001) to Chassis 412020 was performed by Tony Merrick of the UK, a leading restorer of rare and historic sports cars.

Upon a review of number (5) above, we find confirmation going back to 2001 by means of Superleggera’s letter referencing that Lukas Huni supervised Tony Merrick in the long restoration of the 1937 Alfa Romeo 2.9B, Chassis 412020. This letter supports the fact that major restoration work was undertaken in 1994 and onwards, paying-off by winning best in class at Pebble Beach in 2001 and best in show at the 2003 European Concours d’Elegance.

For purposes of this ruling, because the Alfa Romeo 8C 2900B Touring Lungo Berlinetta, Chassis No. 412020, Engine Number 422001, is dismantled, and because of its extensive reworks/restorations, this office will review the documents furnished and the photo provided, and propose at a minimum the proof necessary for claiming the duty-free classification of subheading 9705.00.0070, HTSUS.

By review of documents 1 through 7 above and 8 being the photo, none satisfy the proof to corroborate that the merchandise concerned is the Alfa Romeo 8C 2900B Touring Lungo Berlinetta, Chassis No. 412020, Engine Number 422001. Document 1 above demonstrates the purchase of an expensive automobile, but has no supporting documents, such as the rework/restoration undertaken by Tony Merrick and other before or after him. Documents 2 and 3 above, describe the classic and historic Alfa Romeo 8C 2900B and its attributes, but does not confirm the authenticity of the merchandise concerned. Document 4 above, the insurance certificate acknowledges the value of a purchased, expensive automobile, but does not confirm the authenticity of the merchandise concerned. Document 5 above, the Supperleggera letter simply accepts the merchandise concerned as being authentic, without going into any processes of establishing its authenticity; it is a letter that acknowledges the showing of the merchandise concerned and its long successful restoration. Document 6 above, by itself, the FIVA Identity Card lacks the supporting documents/records which would have justified the issuance of the card to Mr. Ainscough. Document 7 above the "book" provides an account of Chassis 412020, but does not go to authenticating the merchandise concerned. As for the photo, it is not placed in context with the merchandise concerned, or its surrounding parts and components, and it too, at this time, does not lend to the authenticity of the merchandise concerned; further the welding of the bar with chassis number gives the impression that it was added to the automobile, rather than part of the automobile.

Nevertheless, when properly documented and photographed, unassembled and reassembled, this office is of the opinion that the Alfa Romeo 8C 2900B Touring Lungo Berlinetta, Chassis No. 412020, Engine Number 422001, could be classified in subheading 9705.00.0070, HTSUS. Although the badges and plate are long gone for the 412020, other evidence can establish the authenticity of the merchandise concerned, such as photographs of (1) the stamping on the frame or elsewhere on the body of Chassis No. 412020, (2) the stamping on the engine of Engine No. 422001, (3) the stamping on the frame or elsewhere on the body Touring No. 2029, (4) the stamping on the frame of Frame No. 432018, (5) the 8-inline cylinder engine and dual cams and twin Roots-type superchargers, (6) the tubular steel shell. Besides photographs, one may go back to Lukas Huni or Tony Merrick or their estates or to previous owners and obtain records and photographs authenticating the reconstruction of the merchandise concerned. Also one can reach out to FIVA and obtain documents and records that caused the issuance of the identity card for historical vehicles.

We recognize that parts and components can be interchanged on the Alfa Romeo 8C 2900B sports cars, leading to stamped numbers found not on the original sport cars produced. There is no one document or record or photograph that establishes a claim for collectors' pieces classified in subheading 9705.00.0070, HTSUS; it is the totality of evidence that supports the claim.

The applicable subheading for the 1937 Alfa Romeo 8C 2900B Touring Lungo Berlinetta, Chassis No. 412020, Engine Number 422001, upon sup-

porting documentation/records and associated photographs confirming the authenticity of the sports car, will be 9705.00.0070, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Collections and collectors’ pieces of zoological, botanical, mineralogical, anatomical, historical, archeological, paleontological, ethnographic or numismatic interest: Archaeological, historical, or ethnographic pieces.” 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

N281521

December 23, 2016

CLA-2-97:OT:RR:NC:N4:433

CATEGORY: Classification

TARIFF NO.: 9705.00.0070

LAWRENCE MUSHINSKE
CONSULTANT
285 SOUTH VAN DIEN AVENUE
RIDGEWOOD, NJ 07450

RE: The tariff classification of a 1937 Alfa Romeo 8C 2900B Touring Lungo Berlinetta, Chassis No. 412020, Engine Number 422001, from Canada.

DEAR MR. MUSHINSKE:

In your letter dated November 27, 2016, on behalf of David Sydorick, you requested a tariff classification ruling. We note that on October 7, 2016, N278756, this office already issued a classification opinion for the merchandise concerned, the 1937 Alfa Romeo 8C 2900B Touring Lungo Berlinetta, Chassis No. 412020, Engine Number 422001. You are presenting additional information for purposes of authenticating that the 1937 Alfa Romeo 8C 2900B Touring Lungo Berlinetta, Chassis No. 412020, Engine Number 422001, is entitled to duty-free treatment as a collectors' piece of historical interest, under 9705.00.0070 of the Harmonized Tariff Schedule of the United States (HTSUS).

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).

In light of this, we turn to the ENs to inform and shape our understanding of the scope of the heading, but with the caveat that the ENs are used for guidance only in interpretation of the HTSUS.

The ENs explain the scope of headings, often by means of exemplars, of which these examples are not necessarily all inclusive or all restrictive. The ENs should not restrict or expand the scope of headings, rather, they should describe and elaborate on the nature of goods falling within those headings, as well as the nature of goods falling outside of those headings. Thus, items purporting to be classified in heading 9705 must be examined on a case-by-case basis, considering all the relevant factors involved.

The ENs to heading 9705, HTSUS, states, in pertinent part, the following:

These articles are very often of little intrinsic value but derive their interest from their rarity, their grouping or their presentation. The heading includes:

* * *

(B) Collections and collectors' pieces of historical, ethnographic, paleontological or archaeological interest, for example:

- (1) Articles being the material remains of human activity suitable for the study of the activities of earlier generations, such as: mummies, sarcophagi, weapons, objects of worship, articles of apparel, articles which have belonged to famous persons.

There is no dispute that the subject merchandise is a motor car, specifically known in car circles as a "Touring Berlinetta," or simply a touring coupe sports car. Therefore, the question before us is whether the subject car is also described as a collectors' piece, in which case, pursuant to Note 4 (a) to Chapter 97, it must be classified there, and not in heading 8703, HTSUS.

There exists no strict standard or enumerated criteria for articles classified in heading 9705, HTSUS. The word "historic" is not defined by the tariff, nor by the ENs, and the dictionary definition is quite broad. The *OXFORD ENGLISH DICTIONARY* states it is, "A historical work or subject; a history. Now rare", and "relating to history; concerned with past events." "historic, n. and adj." *OED Online*. Oxford University Press, December 2014. Web. 23 February 2015.

Cars present an interesting conundrum in a heading 9705 analysis, as motor cars and racing cars (even luxury ones) are generally-speaking mass-produced for commercial consumption. Goods produced as a commercial undertaking to commemorate, celebrate, illustrate, or depict an event or any other matter, whether or not production is limited in quantity or circulation, do not fall in this heading as collections or collectors' pieces of historical interest [unless the goods themselves] have subsequently attained that status by reason of their age or rarity. With regard to the aforementioned sentence, noting goods obtain the level of collectors' pieces by reason of their age or rarity, we also note that goods obtain the level of collectors' pieces by their (1) placement along the time spectrum as recorded in the annals of historical accountings, (2) recognized accomplishments as documented and recorded in the pages of historical facts, and (3) association to famous persons with or without a nexus to an historical time.

For purposes of entitlement of duty-free status under heading 9705, goods need only show they reach the level of collectors' pieces as set by one of the three "parameters" as listed in the last paragraph, last sentence above. If goods qualify by their placement in time to be of historical interest, then there is no requirement that those same goods be deed-worthy or belong to famous persons. In the event and outcome that the 1937 Alfa Romeo 8C 2900B Touring Lungo Berlinetta, Chassis No. 412020, Engine Number 422001, qualifies by its placement in time to be of historical interest, this office will not rule upon whether the deeds of the sports car, or relationship of the manufacturer or previous owners to the sports car, rise to the level of historical importance.

The Cité de l'Automobile Museum in Mulhouse, France is claimed to be the largest car museum in the world, and showcases 98 brands and over 400 classic and prestigious racing cars that trace the history of the automobile. The Cité de l'Automobile Museum is built around the Schlumpf collection of Bugatti classic automobiles and contains the largest and most comprehensive collection of Bugatti motor vehicles in the world. Specific to Alfa Romeo sports cars, the museum has showcased and displayed the following: an Alfa Romeo,

1931, 6C 1750; an Alfa Romeo, 1932, 8C 2; an Alfa Romeo, 1936, 8C 2900 A Pinin Farina Berlinett; an Alfa Romeo, 1938, 8C 2900 SPA 24H; and an Alfa Romeo, 1938, 8C 2900B Due Posti.

One realizes that the Cité de l'Automobile Museum affords a unique and impressive panorama glorifying the automobile industry from its very beginnings to modern times. The museum is segmented into three periods of time: the first being "the forerunners" 1878 to 1920, the second being "the golden age of the car" 1920 to 1950, and the third being "modern times" cars after 1950. This museum offers numerous classic automobiles, throughout the ages, showcased and displayed for public viewing.

Another prominent museum located in Philadelphia, Pennsylvania, is the Simeone Foundation Automotive Museum, in which they claim to have one of the world's greatest collections of racing sports cars. A listing of the museum's cars indicate the following: an Alfa Romeo, 1925 RLSS; Alfa Romeo, 1929, 6C 1750 SS; an Alfa Romeo, 1933 8C 2300 Mille Miglia Spyder; an Alfa Romeo 1933, 8C 2300 Monza; and an Alfa Romeo, 1937 8C 2900A. All of the Alfa Romeo sports cars listed above belong to "the golden age of the car," as delineated by the Cité de l'Automobile Museum in Mulhouse. Like the museum in Mulhouse, one would find in this museum numerous classic automobiles, throughout the ages, showcased and displayed for public viewing.

We find that, Alfa Romeo sports cars from 1920 to 1950 falling into the category of the golden age of the car; these sports cars are: (1) housed for public display in some of the finest museums around the world, some of which are also captured by placement of time according to historical periods; (2) quite often showcased and displayed for public viewings in numerous "Concours d'Elegance" events and similar type events held domestically and internationally, regardless if publically retained or privately owned; and (3) kept in private collections throughout the world. We are further of the mind-set that authentic sports cars (frames, chassis with their engine, and other key mechanical components, as well as body characteristics) belonging to the golden age of the car represent some of the finest "material remains of human activity" of historical interest, which are placed along the time spectrum suitable for both human observation and study.

With case in point and also referencing back to N278756, we turn to the additional information furnished. We find that the 1937 Alfa Romeo 8C 2900B Touring Lungo Berlinetta, Chassis No. 412020, Engine Number 422001: (1) remains in Canada still in dismantled condition; (2) in 1964 the sports car was in full disrepair, including having cracked engine block; and (3) the sports car had been completely rebuilt at least twice. Because the merchandise concerned is in dismantled condition, we maintain that a hierarchical standard as proposed in N278756 can be applied for purposes of authenticating that the rebuilt 8C 2900B Touring Lungo Berlinetta, Chassis No. 412020, Engine Number 422001, remains upon reassembly an original Alfa Romeo belonging to the golden age of the car.

We observe from recorded accountings that there were 33, Alfa Romeo 8C 2900B sports cars built. Twenty-seven of these sports cars were built with the Carrozzeria Touring body of which five were the Berlinetta long chassis, and 6 were privately commissioned Berlinettas. Some Alfa Romeo 8C 2900B sports cars have fallen, some have be cannibalized for their parts, and others have been restored with original, remanufactured or reconstructed parts. With so few Alfa Romeo 8C 2900B sports cars built and fewer original cars

remaining our hierarchy of core and critical parts (components) which truly identify this historic line of sports cars from the golden age of the car is as follows:

Core and Critical, Parts/Components:

(1) One Alfa Romeo, built long frame for the 8C 2900B.

(2) One Alfa Romeo, Chassis (built in-line 8 cylinder engine, drivetrain and other key mechanical parts and components) for the 8C 2900B.

(3) Dual overhead cams and twin Roots-type superchargers, preferably originals restored, for the 8C 2900B.

(4) One Alfa Romeo, Carrozzeria Touring body for the 8C 2900B.

(5) Instrument cluster panel and interior coachwork for the 8C 2900B.

(6) Thin alloy body panels for the 8C 2900B.

Non-Core and Critical, Parts/Components:

(7) Other parts and components for the 8C 2900B.

For the merchandise concerned, at a minimum to have an automobile of “historic interest” of the golden age of the car versus a replica (whether certified or not), we must have an original Alfa Romeo 8C 2900B long chassis frame or modified Alfa Romeo short frame, a built in-line 8 cylinder engine with dual overhead cams and twin Roots-type superchargers, and a Carrozzeria Touring body.

We have been asked by the filer of this ruling to undertake a second review for purposes of substantiating the authenticity of the 1937 Alfa Romeo, 8C 2900B Touring Lungo Berlinetta, Chassis No. 412020, Engine Number 422001, as a collectors’ piece of historical interest. New information was presented by means of a declaration from the “Fédération Internationale des Véhicules Anciens” (FIVA) dated November 11, 2016, in regard to the merchandise concerned and by means of eleven photographs of the merchandise concerned in its disassembled condition.

The November 2016 declaration continues to reference the “FIVA Identity Card dated June 20, 2005” issued to previous owner, “William Ainscough,” certifying the 1937 Alfa Romeo, 8C 2900B Touring Lungo Berlinetta, Chassis No. 412020, Engine Number 422001, as an historic vehicle. This declaration states that Mr. Sydorick can obtain a new FIVA Identity Card when entered into the United States through the Historic Vehicle Association — FIVA national authority for the United States. Neither the FIVA Identity Card of 2005 nor the declaration of 2016, have any supporting documents in which to substantiate that the merchandise concerned is an authentic Alfa Romeo sports car belonging to the golden age of the car. Even if we had supporting documentation of the 1994 major restoration undertaken by Tony Merrick of the United Kingdom, a prominent restorer of rare and historic sports cars, maintaining the sports car as authentic, which most likely aided in the issuance of the FIVA Identity Card of 2005, this card would be invalid today because the sports car is in dismantled condition at RX Autoworks of Canada. As such, the FIVA Identity Card of 2005 and the declaration of 2016 hold no weight in determining whether or not the merchandise concerned today is entitled to being classified as a collectors’ piece of historical interest in subheading 9705.00.0070, HTSUS.

This office does not dispute the fact that Tony Merrick “reunited and reworked” the original Engine (422001) to Chassis No. 412020, most likely impacting in the favorable outcome of the issuance of the FIVA Identity Card of 2005 for the 1937 Alfa Romeo 8C 2900B Touring Lungo Berlinetta, Chassis No. 412020, Engine Number 422001. Because the merchandise concerned is

in dismantled condition in Canada, not knowing what core and critical, parts and components will be maintained or replaced or replicated, the designation of [historic vehicle] by FIVA does not bestow onto the merchandise concerned.

Photographs of the merchandise concerned in its dismantled condition indicates various inscribed identification numbers and badges, either on the frame or chassis, of which we know from a reading of “The Immortal 2.9 Alfa Romeo 8C2900” (see N278756) that only the rectangular patent badge survived, which included chassis and engine number, all other badges were removed by salvagers. Observation of eleven photographs indicate inscribed numbers on the frame or chassis, no inscription on the engine block for 422001, and a reproduced graphic badge with the printed words “Carrozzeria Touring N 2029.” We note that parts and components from other authentic Alfa Romeo, 8C 2900, sports cars have been used for purposes of preserving and honoring this limited line of historic cars.

RX Autoworks of Canada is in the unique position, to issue a certification or declaration upon reassembly that the “reunited and reworked” Engine Number 422001 remains attached to Chassis No. 412020, as well as confirming Frame Number 2029, original or modified, will remain as the structure onto which all other parts and components will be attached. Furthermore, RX Autoworks of Canada is in the unique position to provide a complete listing of new, reworked or replicated, parts and components, mechanical as well as related to the body, of the reassembled 1937 Alfa Romeo 8C 2900B Touring Lungo Berlinetta, Chassis No. 412020, Engine Number 422001, sports car.

Upon certification or declaration by RX Autoworks of Canada that the 1937 Alfa Romeo 8C 2900B Touring Lungo Berlinetta, Chassis No. 412020, Engine Number 422001, remains intact after reassembly or a like engine from the original 33 sports cars was reworked and used as a replacement, as well as identifying the coachwork performed to maintain the Carrozzeria body, we are of the opinion that the merchandise concerned will be entitled to be classified as a collectors’ piece under 9705.00.0070, HTSUS.

The applicable subheading for the 1937 Alfa Romeo 8C 2900B Touring Lungo Berlinetta, Chassis No. 412020, Engine Number 422001, upon certification or declaration by RX Autoworks of Canada, will be 9705.00.0070, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Collections and collectors’ pieces of zoological, botanical, mineralogical, anatomical, historical, archeological, paleontological, ethnographic or numismatic interest: Archaeological, historical, or ethnographic pieces.” 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

HQ H307522
OT:RR:CTF:CPMM H307522 KSG
CATEGORY: Classification
TARIFF NO.: 8703.23.01

LAWRENCE MUSHINSKE
285 SOUTH VAN DIEN AVENUE
RIDGEWOOD NJ 07450

RE: Revocation of NY N278756 and NY N281521; tariff classification of 1937 automobile

DEAR MR. MUSHINSKE:

This letter is in reference to New York Ruling Letters (NY) N278756, dated October 7, 2016, and NY N281521, dated December 23, 2016, regarding the classification of a 1937 Alfa Romeo automobile in the Harmonized Tariff Schedule of the United States (HTSUS).

In NY N278756 and NY N281521, U.S. Customs & Border Protection (CBP) classified a 1937 Alfa Romeo automobile in heading 9705, HTSUS, which provides for collections and collectors' pieces of historical interest.

We have reviewed NY N278756 and NY N281521 and determined that the rulings are in error. Accordingly, for the reasons set forth below, CBP is revoking NY N278756 and NY N281521.

FACTS:

The merchandise discussed in both rulings, NY N278756 and NY N281521, is the same dismantled 1937 Alfa Romeo 8C 2900B Touring Lungo Berlinetta automobile, VIN #412020. The car underwent many major restorations having been dismantled many times. It is described in these rulings as containing engine #422001 amongst its dismantled components. There were 33 Alfa Romeo 8C 2900B automobiles built. Five of them have the Berlinetta long chassis.

ISSUE:

Whether this automobile is properly classified in heading 9705 as a collectors' piece of historical interest or in heading 8703 as a used automobile with an 8 cylinder engine.

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:

- 8703 Motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading 8702), including station wagons and racing cars: Other vehicles, with only spark-ignition internal combustion reciprocating piston engines
- 9705 Collections and collectors' pieces of zoological, botanical, mineralogical, anatomical, historical, archeological, paleontological, ethnographic or numismatic interest

Note 4(a) of Chapter 97, HTSUS, provides that "...articles of this chapter are to be classified in this chapter and not in any other chapter of the tariff schedule." Consequently, classification in heading 9705, HTSUS, must be considered before resorting to any other heading in the HTSUS. See Headquarters Ruling Letter ("HQ") H021886, dated August 6, 2008.

The Explanatory Note (EN) for heading 9705 states, in pertinent part, the following:

These articles are very often of little intrinsic value but derive their interest from their rarity, their grouping or their presentation....

(B) Collections and collectors' pieces of historical, ethnographic, palaeontological or archaeological interest, for example:

- (1) Articles being the material remains of human activity suitable for the study of the activities of earlier generations, such as: mummies, sarcophagi, weapons, objects of worship, articles of apparel, articles which have belonged to famous persons.
- (2) Articles having a bearing on the study of the activities, manners, customs and characteristics of contemporary primitive peoples, for example, tools, weapons or objects of worship.
- (3) Geological specimens for the study of fossils (extinct organisms which have left their remains or imprints in geological strata), whether animal or vegetable....

Goods produced as a commercial undertaking to commemorate, celebrate, illustrate or depict an event or any other matter, whether or not production is limited in quantity or circulation, **do not fall** in this heading as collections or collectors' pieces of historical or numismatic interest unless the goods themselves have subsequently attained that interest by reason of their age or rarity.

In Headquarters Ruling Letter ("HQ") H260566, dated July 7, 2016, CBP classified a 1955 Maserati that finished first in 1956 in the Coupe du Salon Montlhery race¹, and had been owned and driven by Paco Godia, a famous race car driver, in heading 9705, HTSUS. CBP stated that "[T]ypically, motor vehicles are mass-produced for commercial consumption and as such, would not fall under heading 9705 as a collectors' piece. However, in circumstances where a care (sic) is very rare and satisfies the conditions for items of historical significance, then it may be considered a collectors' item for the

¹ Further, this was an infamous car race in which one driver, Benoit Musy, was killed and another one crashed. The Coupe du Salon Montlhery is a famous French race track outside of Paris that dates back to 1925, when the 1925 French Grand Prix was held there.

purposes of tariff classification.” Clearly, the Maserati described in HQ H260566 that won a famous car race and was owned by a famous race car driver is of historical significance.

CBP held in HQ 088031, dated October 8, 1991, that jewelry owned by the Duke and Duchess of Windsor was eligible for classification in subheading 9705.00.0090, HTSUS. Some of the pieces were marked with inscriptions and dates. The focus of this ruling was whether the jewelry was considered articles which have belonged to famous persons. CBP stated that the phrase in EN 97.05 (B)(1), “articles that have belonged to famous persons,” is susceptible to a broad interpretation that would be impossible to administer. We further noted that the EN describes only examples so as to illustrate the scope of the heading, and concluded that “since there is no strict rule, items such as this must be examined on a case-by-case basis, considering all the facts involved” with regard to the historical interest of the good.²

In HQ 088031, the factors considered were: 1) the articles belonged to famous people; 2) the individuals were not only famous, but historically significant; 3) the articles had a markedly increased value because of their historical significance³; 4) the jewelry was not just owned by the Duke and Duchess but was very closely associated with them⁴; 5) Jewelry in general, and this jewelry in particular, is useful in the study of earlier generations.⁵ Several of the pieces of jewelry in this collection bear inscriptions containing dates and relating to historic events.⁶ CBP also considered the opinion of experts knowledgeable in the area.

Two collector automobiles, one produced in 1929 and the other produced in 1936, were determined in HQ 961279, dated November 5, 1998, to be not qualified for classification in heading 9705, HTSUS. One automobile was a 1929 Bentley racing car. The other automobile was a 1936 Mercedes-Benz Special Roadster. Only 50 Bentleys of this type were produced; the first five were produced for racing purposes. It is estimated that less than 15 of the 1936 Mercedes-Benz Special Roadsters still exist. Both automobiles were owned by the Connor Living Trust that maintains a collection of rare and unusual automobiles, mainly produced during the late 1920’s through the 1950’s, that are exhibited at Museums and public exhibitions. There was no claim that these automobiles were connected to famous persons or a historical event.⁷ In NY N138298, dated January 7, 2011, CBP ruled that a 1955 Mercedes Benz driven as a practice car at famous race tracks and driven as a practice car in the historic 1955 Le Mans race was not properly classified in

² We note that in HQ 960986, dated February 24, 1999, that CBP ruled that rock n’ roll memorabilia imported by the Hard Rock Café was not included in heading 9705, HTSUS, as the heading does not include all classes of famous persons, only famous persons of historical interest.

³ For instance, the importer paid \$117,000 for a pair of cufflinks that normally sell of \$800.

⁴ The Duke personally designed many of the pieces.

⁵ A Sotheby expert in charge of this collection stated that the Duchess was among the first to wear yellow gold jewelry after 1945 instead of platinum, which soon became a popular fashion in France. Gold had been rationed and hence hoarded during WW II.

⁶ In addition, a pair of cufflinks featured a portrait of Queen Alexandria and a portrait of King Edward VII.

⁷ See NY 815818, dated December 7, 1995, in which CBP classified a 1938 Talbot Lago T-150 C Ficoni Falaschi Goutte d’ Eau automobile in heading 8703, HTSUS.

heading 9705, HTSUS, but rather in heading 8703, HTSUS. This is despite the fact that only nine such cars were built.

In contrast to HQ 961279, CBP held in HQ 962234, dated July 17, 2000, that a 1936 Bugatti race car that was the winner of the Le Mans race in 1937, the French Grand Prix at Montlhery in 1936, the Marine Grand Prix and the Comings Grand Prix, was properly classified in heading 9705, HTSUS. CBP noted that not all of the automobiles designed and built by the Bugatti Family might qualify for classification in heading 9705, HTSUS, so the importer should consider future importations under subheading 9812.00.20, HTSUS, as articles imported by a non-profit foundation for public exhibition.

Based on HQ 961279, NY N138298 and the *dicta* in HQ 962234, the automobile in this case would not be eligible for classification in heading 9705, HTSUS, as it was not owned or driven by a famous person or of historical interest. The automobile has no connection with a historic car race. Merely being produced in a small quantity or being of a certain age is not sufficient to make an article eligible for classification in heading 9705. As indicated in HQ 088031, heading 9705 is construed narrowly rather than broadly.

Based upon the information in NY N278756 and NY N281521, the automobile would be classified in subheading 8703.23.0190, HTSUS, as a used automobile with an 8 cylinder engine.

HOLDING:

Pursuant to GRI's 1 and 6, the automobile provided for in NY N278756 and NY N281521 is classified in subheading 8703.23.0190, HTSUS, which provides for "Motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading 8702), including station wagons and racing cars: Other vehicles, with only spark-ignition internal combustion reciprocating piston engines; Of a cylinder capacity exceeding 1,500 cc but not exceeding 3,000 cc: Other:Used." The column one, general rate of duty is 2.5%.

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 N278756 and NY N281521 are revoked in accordance with the above analysis.

Sincerely,

CRAIG T. CLARK,

Director

Commercial and Trade Facilitation Division

cc: NIS Matthew Sullivan
NIS Dharmendra Lilia