

U.S. Customs and Border Protection



GENERAL NOTICE

19 CFR PART 177

PROPOSED REVOCATION OF ONE RULING LETTER, PROPOSED MODIFICATION OF ONE RULING LETTER, AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE CLASSIFICATION OF DVDS AND BLU-RAY DISCS

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

ACTION: Notice of proposed revocation of one ruling letter, proposed modification of one ruling letter, and proposed revocation of treatment relating to the classification of DVDs and Blu-ray discs.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP proposes to revoke one ruling letter and modify one ruling letter concerning the classification of DVDs and Blu-ray discs 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 are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before February 2, 2015.

ADDRESSES: Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulation and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K Street, N.E.-10th Floor, Washington, DC 20229–1179. Comments submitted may be inspected at 799 9th St. N.W. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Tamar Anolic,
Tariff Classification and Marking Branch: (202) 325-0036.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “informed compliance” and “shared responsibility.” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that CBP proposes to revoke one ruling letter and modify one ruling letter pertaining to the classification of DVDs and Blu-ray discs. Although in this notice CBP is specifically referring to New York Ruling (“NY”) N058455, dated April 29, 2009 (Attachment A), and HQ H083275, dated June 17, 2010 (Attachment B), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise CBP during this notice period.

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

In NY N058455, CBP classified Blu-ray discs and DVDs in subheading 8523.49.50, HTSUS, as other types of optical media. We now believe that they meet the definition of "proprietary format recorded discs" of subheading 8523.49.40, HTSUS. In HQ H083275, CBP properly classified media optical discs in as "proprietary format recorded discs" subheading 8523.49.40, HTSUS, but failed to set forth a definition of that term. We now modify HQ H083275 to reflect our new legal analysis.

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to revoke NY N058455 and modify HQ H083275, and any other ruling not specifically identified, pursuant to the analysis set forth in Proposed Headquarters Ruling Letter H236026 (see Attachment "C" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: December 15, 2014

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachments

ATTACHMENT A

N058455

April 29, 2009

CLA-2-85:OT:RR:E:NC:1:108

CATEGORY: Classification

TARIFF NO.: 8523.40.5000

MR. CHINGYU TSOI
8840 COSTA VERDE BLVD.
APT. 3356
SAN DIEGO, CA 92122

RE: The tariff classification of Blu-ray disc movies from an unknown country.

DEAR MR. TSOI:

In your letter dated April 22, 2009, you requested a tariff classification ruling.

The merchandise under consideration is Blu-ray disc movies, which are referred to as the "Planet Earth: Complete BBC series [Blu-ray]." Blu-ray discs are optical disc storage mediums that use high-definition video. Each optical disc, being a nature/wildlife movie, covers a specific geographical region and/or wildlife habitat (mountains, caves, deserts, shallow seas, seasonal forests, etcetera).

In your letter, you express the opinion that these Blu-ray discs are properly classified under subheading 8523.40.4000, which provides for Optical media: Other: For reproducing representations of instructions, data, sound, and image, recorded in a machine readable binary form, and capable of being manipulated or providing interactivity to a user, by means of an automatic data processing machine; proprietary format recorded discs. Since the inherent characteristics within these discs do not provide interactivity and cannot be manipulated, classification under this subheading is inapplicable.

The applicable subheading for the Blu-ray disc movies will be 8523.40.5000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Discs, tapes, solid-state non-volatile storage devices, "smart cards" and other media for the recording of sound or of other phenomena, whether or not recorded, including matrices and masters for the production of discs, but excluding products of Chapter 37: Optical media: Recorded optical media: Other: Other. The rate of duty will be 2.7 percent ad valorem.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Lisa Cariello at (646) 733-3014.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

ATTACHMENT B

HQ H083275

June 17, 2010

CLA-2:OT:RR:CTF:TCM H083275 TNA

CATEGORY: Classification

TARIFF NO.: 8523.40.40

MR. STEVEN W. BAKER

250 BEL MARTIN KEYS BLVD, SUITE 8-6

NOVATO, CA 94949-5707

RE: Modification of NY M86614; Classification of media optical discs

DEAR MR. BAKER:

This letter concerns New York Ruling Letter (“NY”) M86614, which the National Commodity Specialist Division of U.S. Customs and Border Protection (“CBP”) issued to you on behalf of your client, Nintendo of America, Inc., on October 11, 2006. In NY M86614, a Nintendo Wii video game system, wireless controllers and “proprietary media optical disks” were classified in heading 9504, Harmonized Tariff Schedule of the United States (HTSUS), as a video game, its parts and accessories, “whether imported separately or together.” We have reconsidered this ruling and now believe that it is incorrect with respect to the classification of the media optical discs when imported separately.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to modify NY M86614 was published on March 31, 2010, in Volume 44, Number 14, of the *Customs Bulletin*. CBP received one comment in response to this notice, which is addressed in the ruling.

FACTS:

The optical discs at issue are slightly less than 5 inches in diameter and are produced using single-layer technology. They contain proprietary Wii software and can only be used with Wii game consoles and not with personal computers (“PCs”) or other gaming machines.

ISSUE:

Whether optical discs that contain video game software should be classified under heading 8523, HTSUS, as optical discs, or under heading 9504, as parts and accessories of video games?

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 may then be applied.

The HTSUS headings at issue are as follows:

8523 Discs, tapes, solid-state non-volatile storage devices, “smart cards” and other media for the recording of sound or of other phenomena,

whether or not recorded, including matrices and masters for the production of discs, but excluding products of Chapter 37:

- 9504 Articles for arcade, table or parlor games, including pinball machines, bagatelle, billiards and special tables for casino games; automatic bowling alley equipment; parts and accessories thereof:

Note 3 to Chapter 95, HTSUS, states, in pertinent part:

Subject to note 1 above, parts and accessories which are suitable for use solely or principally with articles of this chapter are to be classified with those articles.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. While not legally binding, and therefore not dispositive, 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 8523, HTSUS, states, in pertinent part:

This heading covers different types of media, whether or not recorded, for the recording of sound or of other phenomena (e.g., numerical data; text; images, video or other graphical data; software). Such media are generally inserted into or removed from recording or reading apparatus and may be transferred from one recording or reading apparatus to another. In particular, this heading covers:

(B) OPTICAL MEDIA

Products of this group are generally in the form of discs made of glass, metal or plastics with one or more light-reflective layers. Any data (sound or other phenomena) stored on such discs are read by means of a laser beam. This group includes recorded discs and unrecorded discs whether or not rewritable.

This group includes, for example, compact discs (e.g., COs, VCOs, CO-ROMs, CO-RAMs), digital versatile discs (DVDs).

The EN to heading 9504, HTSUS, states, in pertinent part, that:

This heading includes:

(2) Video game consoles and other electronic games which can be used with a television receiver, a video monitor or an automatic data processing machine monitor ...

The heading also includes parts and accessories of video game consoles (for example cases, game cartridges, game controllers, steering wheels), provided they fulfil the conditions of Note 3 to this Chapter.

The heading **excludes**:

(b) Optical discs recorded with game software and used solely with a game machine of this heading (**heading 85.23**).

Heading 9504, HTSUS, provides for, among other things, parts and accessories of video games. Note 3 to Chapter 95, HTSUS, requires that parts and accessories which are suitable for use solely or principally with articles of the chapter are to be classified with those articles. The Court of Appeals for the

Federal Circuit has found that “an imported item dedicated solely for use with another article is a ‘part’ of that article within the meaning of the HTSUS.” *Bauerhin Technologies v. United States* (“*Bauerhin*”), 110 F.3d 774, 779 (citations omitted), (Fed. Cir. 1997). An accessory is a subordinate article that bears “a direct relationship to the primary article that it accessorizes.” *Rollerblade Inc. v. United States* (“*Rollerblade*”), 282 F.3d 1349, 1352 (citations omitted) (Fed. Cir. 2002), *citing with approval* the Court of International Trade’s consultation of the common (dictionary) meaning of the term “accessory.” *See id.*; 116 F. Supp. 2d 1247, 1253 (Ct. Int’l Trade 2000).

In the case of optical discs containing video game software, the good to be classified is the disc itself and not the software recorded on it. There is nothing inherent in an optical disc that makes it a part or accessory of a game system. Optical discs are not solely used with video game consoles and do not bear a direct relationship to them. Such discs can also be used with, for example, CD players, DVD players, and ADP machines. As such, we find that they are not provided for in heading 9504, HTSUS, and that Note 3 to Chapter 95, HTSUS, is not applicable to their classification. This finding is supported by EN 95.04 2(b), which explains that optical discs recorded with game software and used solely with a game machine of heading 9504, HTSUS, are classified in heading 8523, HTSUS. The ENs are especially persuasive “when they specifically include or exclude an item from a tariff heading.” *H.I.M./Fathom. Inc. v. United States*, 981 F. Supp. 610, 613 (1997).

Heading 8523, HTSUS, provides *eo nomine* for discs for the recording of sound and other phenomena. The discs at issue here have software recorded on them. Thus, they are described by heading 8523, HTSUS, and must be classified there.

CBP received one comment in response to the proposed modification. The commenter argues that, contrary to CBP’s position, anyone who purchases the subject optical discs buys them, not as optical discs, but for the game software programmed on it. Citing to *Data General v. U.S.*, 4 CIT 182 (1982) and HQ 651011, dated September 22, 1998, the commenter argues that the programming of electronic media has long been held to substantially transform the blank media into an article with a specific function. In response, we note that *Data General* and HQ 651011 are marking cases that discuss whether the programming of media optical discs is a substantial transformation for the purposes of country of origin marking under 19 C.F.R. §10.14(b), the precursor to 19 C.F.R. Part 134, the current country of origin marking regulations. The rules for country of origin marking do not apply to the classification of merchandise.

The commenter also noted that CBP has previously taken up the issue of reclassifying video game software from heading 9504, HTSUS, as parts of video games, to heading 8523, HTSUS, as media optical discs in HQ 965759, dated August 30, 2002. There, CBP published a notice in Customs Bulletin Volume 36, No. 33, on August 14, 2002 proposing to modify NY 813932, which classified a memory card that plugs into the front of the PlayStation in heading 9504, HTSUS, in order to reclassify the memory card in heading 8523, HTSUS. The proposed modification never went into final form, however, and NY 813932 remained unchanged. The commenter argues that this outcome speaks against reclassification of the subject media optical discs. In

response, we note that the merchandise at issue in proposed HQ 965759 was a memory card for video game machines, distinguishable in form from the subject optical discs, which are provided for *eo nomine* in heading 8523, HTSUS.

HOLDING:

Under the authority of GRI 1, the media optical discs are provided for in heading 8523, HTSUS. Specifically, they are classified in subheading 8523.40.40, HTSUS, which provides for “Discs, tapes, solid-state non-volatile storage devices, ‘smart cards’ and other media for the recording of sound or of other phenomena, whether or not recorded ... : Optical media: Recorded optical media: Other: ... proprietary format recorded discs.” The 2010 column one, general rate of duty is free.

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

EFFECT ON OTHER RULINGS:

NY M86614, dated October 11, 2006, is modified with respect to the classification of optical discs when imported separately. The classification of the other items described therein remains unchanged.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

ATTACHMENT C

HQ H236026

CLA-2 OT:RR:CTF:TCM H236026 TNA**CATEGORY:** Classification**TARIFF NO.:** 8523.49.40

MR. CHINGYU TSOI
8840 COSTA VERDE BLVD.
APT. 3356
SAN DIEGO, CA 92122

Re: Revocation of NY N058455; Modification of HQ H083275; Classification of DVDs and Blu-Ray Discs

DEAR MR. TSOI:

This letter is in reference to New York Ruling Letter (“NY”) N058455, issued to you on April 29, 2009, concerning the tariff classification of blu-ray discs with movies on them. There, U.S. Customs and Border Protection (“CBP”) classified the merchandise under subheading 8523.49.50, Harmonized Tariff Schedule of the United States (“HTSUS”), as “Discs, tapes, solid-state nonvolatile storage devices, “smart cards” and other media for the recording of sound or of other phenomena, whether or not recorded, including matrices and masters for the production of discs, but excluding products of Chapter 37: Optical media: Recorded optical media: Other: Other.”¹ We have reviewed this ruling and found it to be in error.

This ruling letter also concerns HQ H083275, dated June 17, 2010, classifying similar merchandise in subheading 8523.49.40, HTSUS, of the 2010 tariff, as other recorded media capable of being manipulated by an ADP machine. Although we adhere to the conclusion set forth in HQ H083275, we have reviewed this ruling and have found its analysis to be incorrect. For the reasons set forth below, we hereby revoke NY N058455 and modify HQ H083275.

FACTS:

NY N058455 classified Blu-ray discs that were prerecorded with movies on them in digital form. A Blu-ray disc is an optical disc storage medium. Blu-ray discs are plastic discs that are 120 mm in diameter and 1.2 mm thick, the same size as DVDs and COs. The format of Blu-ray discs allows their movies to be played on both televisions and computers.

Blu-ray discs also contain a comprehensive content management system designed to protect the material on the discs from piracy-i.e., the sale of unauthorized copies of pre-recorded media. This system contains three primary components: Advanced Access Content System (AACS); “BD Plus”; and ROM Mark. AACS allows the user to manage copies in an authorized and secure manner. ROM Mark embeds a unique and undetectable identifier in prerecorded BD-ROM media such as movies, music and games. The ROM Mark is invisible to consumers and can only be mastered with equipment available to licensed BD-ROM manufacturers, essentially preventing unau-

¹ We note that NY N058455 classified its merchandise in subheading 8523.40.50, HTSUS. Subheadings 8523.40.40 and 8523.40.50 have become subheadings 8523.49.40 and 8523.49.50, respectively, under the 2012 (and 2014) tariff. This ruling will apply the 2014 subheadings throughout.

thorized copies of a disc. “BD Plus”, sometimes called “BD+”, is a Blu-ray-specific content protection. Instead of preventing the discs themselves from being copied, it checks the player to *see* if it has been hacked and then locks down the media.

Content that is recorded on DVDs, such as movies, contain a similar system of content protection as do the subject Blu-ray discs. In addition, movies that are recorded on the subject DVDs are done so within a restricted system of licensing and authorization. Companies that seek to duplicate these movies, as well as manufacturers that produce conforming movie players that descramble the encrypted data file content, are required to obtain a license to the material. The DVDs that are duplicated in this manner are protected from further duplication by a copy prevention system encoded in the data, which protects the intellectual property rights of the studios. Furthermore, DVDs, like Blu-ray discs, are encoded in such a way so that they can only be played in certain regions of the world, as both DVDs and Blu-ray discs are formatted differently for different regions. This encryption and regional formatting have become standard features on DVDs, and are now present whether the DVDs contain motion pictures or the types of instructional videos contained on the subject DVDs.

NY N058455 classified the subject merchandise in subheading 8523.49.50, HTSUS, as “Discs, tapes, solid-state non-volatile storage devices, “smart cards” and other media for the recording of sound or of other phenomena, whether or not recorded, including matrices and masters for the production of discs, but excluding products of Chapter 37: Optical media: Recorded optical media: Other: Other.” HQ H083275 classified media optical discs for Wii machines that contain Wii software in subheading 8523.49.40, HTSUS, which provides for: “Discs, tapes, solid-state non-volatile storage devices, ‘smart cards’ and other media for the recording of sound or of other phenomena, whether or not recorded ... : Optical media: Recorded optical media: Other: ... proprietary format recorded discs.”

ISSUE:

Do the subject Blu-ray discs and DVDs constitute proprietary format recorded discs of subheading 8523.49.40, HTSUS?

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States (HTSUS) is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related sub-heading notes and, *mutatis mutandis*, to the GRIs 1 through 5.

The HTSUS provisions under consideration are as follows:

- 8523 Discs, tapes, solid-state non-volatile storage devices, “smart-
o”smarto”smarto”smarto”smart cards” and other media for the re-
cording of sound or of other phenomena, whether or not recorded,
including matrices and masters for the production of discs, but
excluding products of Chapter 37
- 8523.49 Optical media:
Recorded optical media:
Other:
- 8523.49.40 For reproducing representations of instruc-
tions, data, sound, and image, recorded in
a machine readable binary form, and ca-
pable of being manipulated or providing
interactivity to a user, by means of an au-
tomatic data processing machine; propri-
etary format recorded discs
- 8523.49.50 Other

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

It is not in dispute that the subject merchandise is classified in heading 8523, HTSUS, as discs for the recording of sound or of other phenomena, excluding products of Chapter 37, HTSUS. It is also not in dispute that the subject merchandise is described by the terms of subheading 8523.49, HTSUS, as other optical media. Rather, the dispute is at the eight-digit level.

While we agree with the reasoning in HQ 968124, dated June 19, 2006, declining to classify such discs in subheading 8523.49.40, HTSUS, as “capable of being manipulated by an ADP machine,” we neglected to analyze possible classification, in any of CBP’s rulings of substantially similar merchandise, as “proprietary format discs” of the same subheading.

The term “proprietary format” is not defined in the tariff or the ENs. As a result, CBP is permitted to consult dictionaries and other lexicographic materials to determine the term’s common meaning. *See, e.g., Lanza, Inc. v. United States*, 46 F.3d 1098 (Fed. Cir. 1995). The term in question is then construed in accordance with its common and commercial meanings, which are presumed to be the same. *See, e.g., Nippon Kogaku (USA). Inc. v. United States*, 69 CCPA 89, 673 F.2d 380 (1982); *Toyota Motor Sales. Inc. v. United States*, 7 C.I.T. 178 (Ct. Int’l Trade 1984); *Carl Zeiss. Inc. v. United States*, 195 F.3d 1375 (Fed. Cir. 1999); *Lanza*, 46 F.3d 1098.

Technical sources state that:

a file format is proprietary if the mode of presentation of its data is opaque and its specification is not publicly available. Proprietary formats are developed by software companies in order to encode data produced by their applications: only the software produced by a company who owns the specification of the file format will be able to read correctly and completely the data contained in this file. Proprietary formats can be

further protected through the use of patents and the owner of the patent can ask for royalties for the use or implementation of the forms in third-party's software.

See www.openformats.org/en1.

Other lexicographic sources note that:

a file format defines the structure and type of data stored in a file ... A file format also defines whether the data is stored in a plain text or binary format. ... Some file formats are proprietary, while others are universal, or open formats. Proprietary file formats can only be opened by one or more related programs. For example, a compressed StuffIt X (.SITX) archive can only be opened by StuffIt Deluxe or StuffIt Expander. If you try to open a StuffIt X archive with WinZip or another file decompression tool, the file will not be recognized. Conversely, open file formats are publicly available and are recognized by multiple programs. For example, StuffIt Deluxe can also save compressed archives in a standard zipped (.ZIP) format, which can be opened by nearly all decompression utilities.

See www.techterms.com/definition/file_format. See also <http://warp.povusers.org/grrr/proprietaryvideoformats.html> ("closed proprietary format... means that officially they can only be played with one player (provided by the owner of the format). There exist other players which also can play them, but only using third-party hacks."); http://en.wikipedia.org/wiki/Proprietary_format ("A proprietary format is a file format of a company, organization, or individual that contains data that is ordered and stored according to a particular encoding-scheme, designed by the company or organization to be secret, such that the decoding and interpretation of this stored data is only easily accomplished with particular software or hardware that the company itself has developed. The specification of the data encoding format is not released, or underlies non-disclosure agreements.")

Furthermore, while courts have not examined this issue in the context of tariff classification, courts that have examined DVDs in copyright cases have studied the factors that make them proprietary format. *Universal City Studios v. Reimerdes*, 111 F. Supp. 2d 294 (S.D. N.Y. 2000), for example, involved the decryption of DVDs with movies on them that are substantially the same merchandise at issue here. See *Universal City Studios*, 111 F.Supp.2d 294, 303–304. There, the court noted that the DVDs at issue were five-inch wide disks capable of storing more than 4.7 GB of data, whose relevant application to this case was that they were used to hold full-length motion pictures in digital form. *Id.* at 307. In addition, they were protected by CSS, an encryption program that involved two layers. First, CSS encrypted the digital sound and graphics files on a DVD that, together, constituted a motion picture; this encryption was according to a specific encryption algorithm. Secondly, a CSS-protected DVD can only be decrypted by an appropriate decryption algorithm that employs a series of keys stored both on the DVD and the DVD player. Thus, only players and drives containing the appropriate keys are able to decrypt DVD files and thereby play movies stored on DVDs. *Id.* at 309–310. The technology necessary to configure DVD players and drives to

play CSS-protected DVDs must be licensed to manufacturers before they can produce compliant DVD players and drives; hundreds of manufacturers in the United States and around the world have received this license. *Id.* at 308.

Hence, “proprietary format” is encrypted in such a way that it can only read data if the devices with which the media are used contain a decryption algorithm that is not publicly available. We note that the question of whether merchandise is “proprietary format” is not necessarily tied to the content of the merchandise, which, like the movies on the subject DVDs and Blu-Ray discs, can be copyrighted. Copyright is a form of content protection, and the tariff term at issue is “proprietary format” rather than “proprietary content.”

This characterization of “proprietary format” is consistent with descriptions found in international agreements on similar merchandise. The Ministerial Declaration on Trade in Information Technology Products (“ITA”), which was concluded in December 1996 and to which the U.S. is a party, states that specific products are covered by this agreement, wherever they are classified in the HTS. This list includes “proprietary format storage devices, including media therefore for automatic data processing machines, with or without removable media and whether magnetic, optical or other technology, including Bernouli Box, Syquest, or Zipdrive cartridge storage units.” See Ministerial Declaration on Trade in Information Technology Products, December 1996, at Annex B. The Bernouli Box, Syquest, or Zipdrive, all technologies that were prevalent at the time this agreement was signed, are storage devices whose data is stored and read in a certain way that can only be read by devices that specifically contained the algorithm to decode the data. This decoding ability was unique to these devices and therefore was not publicly available.

In the present case, the subject DVDs and Blu-ray discs contain data in the form of full-length feature films, which is encrypted in such a manner that the DVDs can only be played by a DVD player, computer, or Blu-ray player that contains the decryption algorithm to decode the data. These machines must be specifically encoded so as to be able to read the data properly. In fact, Blu-Ray discs can only be read by a Blu-Ray player. Thus, many devices, such as Wii stations or X-boxes, cannot read these discs because they lack the decryption algorithm for both BluRay discs and encoded DVDs. Even most personal computers cannot play a Bluray disc without special software being installed. Furthermore, the encryption system is such that it is region-specific. As such, DVDs and Blu-ray discs that are formatted for use in North America could not be played in other regions of the world, as the encryption system differs abroad. DVD and Blu-ray disc players are similarly formatted with region-specific decryption algorithms whose manufacturers must be licensed in order to produce players with the algorithm on them. As a result, we find that the subject DVDs and Blu-ray discs are “proprietary format recorded discs” within the meaning of subheading 8523.49.40, HTSUS. This conclusion is consistent with *Universal City Studios, supra*.

These DVDs and Blu-Ray discs are in contrast to the instructional DVDs of rulings such as HQ 968124, NY N060016, dated May 20, 2009, NY N030310, dated July 9, 2008, NY N016372, dated September 12, 2007, NY N065586, dated July 15, 2009, and NY N075356, dated October 2, 2009. As imported, these instructional DVDs were not encrypted and could be played by computers and other media players regardless of whether those players contained a licensed decryption algorithm. As a result, we distinguish HQ

968124, NY N060016, NY N030310, NY N016372, NY N065586, and NY N075356 on this basis. The merchandise of these rulings were properly classified in subheading 8523.49.50, HTSUS, as other recorded optical media.

Lastly, HQ H083275 classified media optical discs containing Wii software that could only be used with Wii game consoles and not with PCs or other gaming machines as proprietary format discs of subheading 8523.49.40, HTSUS. While we affirm this classification, we modify the ruling's reasoning. In HQ H083275, we explained why optical discs containing proprietary software were classified in heading 8523, HTSUS. However, we did not explain why, pursuant to HQ 968124, the discs did not meet the definition of "interactivity" and "capable of being manipulated" as those terms appear in subheading 8523.49.40, HTSUS. Applying the reasoning in HQ 968124, we now find that the media optical discs of HQ H083275 do not meet these terms for the same reasons that the DVDs and Blu-ray discs discussed above do not meet them. Furthermore, as stated in HQ H083275, and for the same reasons as the DVDs and Blu-ray discs discussed above meet these definitions, the subject media optical discs meet the definition of the term "proprietary" of subheading 8523.49.40, HTSUS.

HOLDING:

By application of GRI 1, the subject DVDs, Blu-ray discs, and media optical discs with Wii software are classified under heading 8523, HTSUS. They are specifically provided for under subheading 8523.49.40, HTSUS, which provides for: "Discs, tapes, solid-state non-volatile storage devices, "smart cards" and other media for the recording of sound or of other phenomena, whether or not recorded, including matrices and masters for the production of discs, but excluding products of Chapter 37: Optical media: Recorded optical media: Other: ... proprietary format recorded discs." The general, column one, rate of duty is free.

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

EFFECT ON OTHER RULINGS:

NY N058455 is REVOKED.

HQ H083275 is MODIFIED with respect to its analysis, while the classification of its merchandise remains the same.

Sincerely,

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

GENERAL NOTICE**19 CFR PART 177****PROPOSED MODIFICATION OF A RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF A TEXTILE SPONGE
CONTAINING TALC**

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

ACTION: Notice of proposed modification of a ruling letter and treatment relating to the tariff classification of a textile sponge containing talc.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that CBP intends to modify a ruling concerning the tariff classification of a regenerated cellulose sponge that contains talc on its non-scratch woven cloth side. Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before February 2, 2015.

ADDRESSES: Written comments are to be addressed to the U.S. Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K Street, N.E. 10th Floor, Washington, D.C. 20229-1177. Submitted comments may be inspected at the address stated above during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-1008.

FOR FURTHER INFORMATION CONTACT: Nerissa Hamilton-vom Baur, Tariff Classification & Marking Branch, (202) 325-0104.

SUPPLEMENTARY INFORMATION:**BACKGROUND**

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

103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility on carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP is proposing to modify one ruling letter pertaining to the tariff classification of a cellulose sponge with a nonwoven cloth side that contains talc. Although in this notice CBP is specifically referring to New York Ruling Letter (NY) 875045, dated June 16, 1992 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to those identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

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

It is now CBP's position that the cellulose sponge with a nonwoven cloth that contains talc identified in NY 875045 is classified in heading 6805, HTSUS, which provides for "Natural or artificial abrasive

powder or grain on a base of textile material, of paper, of paperboard or of other materials, whether or not cut to shape or sewn or otherwise made up.”

Pursuant to 19 U.S.C. 1625(c)(1), CBP is proposing to modify NY 875045, and any other ruling not specifically identified, to reflect the tariff classification of the subject merchandise according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H258156, as set forth as Attachment B to this notice. Additionally, pursuant to 19 U.S. C. 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: December 17, 2014

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

Attachments

ATTACHMENT A

NY 875045

June 16, 1992

CLA-2-39:S:N:N3G:221 875045

CATEGORY: Classification

TARIFF NO.: 3921.14.0000; 5603.00.3000;
6805.30.5000

MR. RICHARD E. JARVIS
R.E. JARVIS & ASSOCIATES, INC.
5 HANNAN RIDGE ROAD
HAVERHILL, MASSACHUSETTS 01832

RE: The tariff classification of cellulose sponges with and without abrasive non-woven cloths from various countries.

DEAR MR. JARVIS:

In your letter dated May 26, 1992, you requested a tariff classification ruling.

Three types of sponges will be imported. The first type is a rectangular sponge composed of regenerated cellulose. The second and third types are also rectangular and composed of regenerated cellulose. These types, however, have either a rough or non-scratch nonwoven cloth on one surface of the sponge. The non-scratch cloth contains talc. Talc is not considered an abrasive substance for tariff purposes. The rougher nonwoven cloth contains a mixture of silicon carbide, silica, aluminum oxide and quartz. This mixture is considered an abrasive substance.

The applicable subheading for the sponges composed of regenerated cellulose that do not have a nonwoven cloth backing will be 3921.14.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for other plates, sheets, film, foil and strip, of plastics, cellular, of regenerated cellulose. The rate of duty will be 8.1 percent ad valorem.

The applicable subheading for the sponges that are backed with a nonwoven cloth containing talc will be 5603.00.3000, HTS, which provides for nonwovens, whether or not impregnated, coated, covered or laminated, other: laminated fabrics. The rate of duty will be 16 percent ad valorem.

The applicable subheading for the sponges that are backed with a nonwoven cloth containing the abrasive mixture is 6805.30.5000, HTS, the provision for natural or artificial abrasive powder or grain, on a base of textile material, of paper, of paperboard or of other materials, whether or not cut to shape or sewn or otherwise made up, other. Products classified under this subheading are free of duty.

These sponges will be imported from various countries, such as France, Switzerland, Norway, Taiwan and China. The rates of duty shown above apply to products from all these countries.

The sponge with a nonwoven backing containing talc falls within textile category designation 223. Based upon international textile trade agreements, products of Taiwan and China are subject to visa and quota requirements.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest that you check,

close to the time of shipment, the Status Report On Current Import Quotas (Restraint Levels), an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

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

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

Sincerely,

JEAN F. MAGUIRE
Area Director
New York Seaport

ATTACHMENT B

HQ H258156

CLA-2 OT:RR:CTF:TCM H258156 HvB**CATEGORY:** Classification**TARIFF NO.:** 6805.30.50

RICHARD E. JARVIS
R.E. JARVIS & ASSOCIATES, INC.
5 HANNAN RIDGE ROAD
HAVERHILL, MA 01832

RE: Revocation of NY 875045; Classification of a cellulose sponge with non-woven cloth side containing talc

DEAR MR. JARVIS:

This letter is in reference to New York Ruling Letter (“NY”) 875045, issued to you on June 16, 1992, concerning the tariff classification of three rectangular cellulose regenerated sponges. One of the sponges was described as a cellulose sponge that had a non-scratch non-woven cloth on one surface which contained talc.

U.S. Customs and Border Protection (CBP) has reviewed NY 875045, and finds it to be in error with respect to the classification of the regenerated cellulose sponge that contains talc on its non-scratch non-woven cloth side. For the reasons that follow, we hereby modify NY 875045, with regard to the cellulose sponge attached to a non-woven cloth that contains talc.

FACTS:

In NY 875045, CBP classified the rectangular cellulose sponge attached to a nonscratch non-woven cloth that contained talc in subheading 5603.00.30, Harmonized Tariff Schedule of the United States (“HTSUS”), which provided for “Nonwovens, whether or not impregnated, coated, covered or laminated, other: laminated fabrics.”¹ The subject sponge is made from regenerated cellulose.

ISSUE

Whether the subject sponge is classifiable in heading 5603, HTSUS, which provides for “Nonwovens, whether or not impregnated, coated, covered or laminated”, or in heading 6805, HTSUS, as “Natural or artificial abrasive powder or grain, on a base of textile material, paper, of paperboard or of other materials, whether or not cut to shape or sewn or otherwise made up.”

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.

The HTSUS provisions under consideration are as follows:

¹ The subheading structure of heading 5603, HTSUS has changed since 1992. As the background file for NY 875045 was destroyed on 09/11/2001, we do not have information on the product’s weight.

5603 Nonwovens, whether or not impregnated, coated, covered or laminated

6805 Natural or artificial abrasive powder or grain, on a base of textile material, paper, of paperboard or of other materials, whether or not cut to shape or sewn or otherwise made up:

Section XI, HTSUS, which covers Chapter 56, provides in pertinent part:

1. This section does not cover:

(q) Abrasive-coated textile material (heading 6805) and also carbon fibers or articles of carbon fibers of heading 6815[.]

Chapter 68, HTSUS, provides in pertinent part:

1. This chapter does not cover:

(c) Coated, impregnated or covered textile fabric of chapter 56 or 59 (for example, fabric coated or covered with mica powder, bituminized or asphalted fabric)[.]

* * *

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

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

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

The EN to 68.05 states, in pertinent part:

This heading covers textile material, paper, paperboard, vulcanised fibre, leather or other materials, in rolls or cut to shape (sheets, bands, strips, discs, segments, etc.), or in threads or cords, on to which crushed natural or artificial abrasives have been coated, usually by means of glue or plastics. The heading also covers similar products of nonwovens, in which abrasives are uniformly dispersed throughout the mass and fixed on to textile fibres by the bonding substance. The abrasives used include emery, corundum, silicon carbide, garnet, pumice, flint, quartz, sand and glass powder. The bands, discs, etc., may be sewn, stapled, glued or otherwise made up; the heading includes, for example, tools such as buffsticks, made by permanently fixing abrasive paper or cloth onto blocks or strips of wood, etc ...

The goods of this heading are mainly used (by hand or mechanically) for smoothing or cleaning up metal, wood, cork, glass, leather, rubber (hardened or not) or plastics; also for smoothing or polishing varnished or lacquered surfaces, or for sharpening card clothing.

* * * * *

The instant sponge is composed of regenerated cellulose sponge which has a non-woven textile cloth side that contains talc. Thus, heading 5603, HTSUS, does not completely describe the article, since the sponge is also composed of cellulose and talc, in addition to the non-woven textile backing. Nor is the classifiable under GRI 1 in heading 6805, HTSUS, as the terms “abrasive grain, on a base of textile material”, describes only part of the good. Since the instant article is not classifiable by GRI 1, and because the sponge is a composite good which consists of different materials, GRI 3 governs.

GRI 3 provides, in pertinent part:

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

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

The relevant EN for GRI 3(b) provides:

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

GRI 3(b) requires that classification be based on the component that provides the article with its essential character. As noted above, EN (VIII) to GRI 3(b) provides that when performing an essential character analysis, the factors that should be considered are the bulk, quantity, weight or value, or the role of a constituent material in relation to the use of the goods. There have been several court decisions on “essential character” for purposes of classification under GRI 3(b). See, *e.g.*, *Conair Corp. v. United States*, 29 C.I.T. 888 (2005); *Structural Industries v. United States*, 360 F. Supp. 2d 1330, 1337-1338 (Ct. Int’l Trade 2005); and *Home Depot USA, Inc. v. United States*, 427 F. Supp. 2d 1278, 1295–1356 (Ct. Int’l Trade 2006), *affd* 491 F.3d 1334 (Fed. Cir. 2007). “[E]ssential character is that which is indispensable to the structure, core or condition of the article, i.e., what it is.” *Home Depot USA, Inc. v. United States*, 427 F. Supp. 2d at 1293 *quoting* *A.N. Deringer, Inc. v. United States*, 66 Cust. Ct. 378, 383 (1971). In particular, in *Home Depot USA, Inc. v. United States*, the court stated “[a]n essential character inquiry

requires a fact intensive analysis.” 427 F. Supp. 2d 1278, 1284 (Ct. Int’l Trade 2006). Therefore, a case-by-case determination on essential character is warranted in this situation.

In this case, the textile cloth layer plays the most important role in the use of the sponge. As a “non-scratch” sponge, the product is designed to clean and scour dishes and other kitchen surfaces. The textile cloth layer plays the most important role in that activity because it is the component that performs the cleaning and scrubbing function. Without this layer, the sponge is simply a regenerated cellulose sponge, which we note are sold to the consumer as separate products. Thus, the textile cloth layer has a more important role in the sponge because without it, the product is simply a sponge that has a different use, in that it that does not have a scouring/scrubbing function. The surface textile layer incorporates talc which provides the subject scrub sponge with its essential character, or the ability to clean household surfaces without scratching them. Accordingly, we find that the textile layer is the component that provides the essential character of the sponge, because the cloth layer plays a vital role in cleaning. Hence, it is the classification of the textile layer, which imparts the good with its essential character that governs classification of the entire composite good.

Insofar as Note 1(q), Section XI, HTSUS, excludes abrasive-coated textiles, if the textile layer is classified as such in heading 6805, HTSUS, it cannot be classified in Section XI, the HTSUS section where textiles and textile articles are classified. Therefore, we turn first to the terms of heading 6805, “artificial abrasive powder or grain, on a base of textile material.” Although the term “abrasive” is not defined in the HTSUS, the courts provided guidance on the term in the context of the TSUS provision for “crude artificial abrasives.” See Tariff Act of 1930, 19 U.S.C. 1940 ed. § 1201, par. 1672. In *C.J. Tower & Sons v. United States* (“C.J. Tower”), 17 Gust. Ct. 72 (1946), the issue before the U.S. Custom Courts was whether “Alundum” was classifiable in the TSUS provision for “crude artificial abrasives, not specially provided for.” The court concluded that alundum was classifiable as an abrasive, based upon legislative history to the Tariff Act of 1922 which showed that Congress knew of alundum as an artificial abrasive, when contemplating what commodities the Tariff Act should provide for:

ARTIFICIAL ABRASIVES-*description and uses* -Artificial abrasives are of two kinds (1) silicon carbides, sold under the trade names of carborundum ; and (2) aluminum oxides, sold as alundum ...

Ibid, at 18–19. In *C.J. Tower*, the importer claimed that its merchandise fell into a class of merchandise which was chiefly used for abrasive purposes. The court found that Webster’s definition of “abrasive” supported the importer’s claim:

Any substance used for abrading, as for grinding, polishing, etc. It is often made into grinding wheels with a binder, or attached to paper or cloth or glue. The principal natural abrasives are *emery, corundum, garnet, pumice, Tripoli and quartz sand*. The principal manufactured abrasives are *silicon carbide* and fused aluminum oxide.

Id., at 13. While the provision for “crude artificial abrasives” under the TSUS no longer exists, the term “abrasive” remains in the heading at issue.

The analysis in *C.J. Tower* is echoed by the exemplars in the EN 68.05, which states “The abrasives used include emery, corundum, silicon carbide, garnet, pumice, flint, quartz, sand and glass powder” Furthermore, under the uniform usage rule of statutory construction, terms ordinarily have the same meaning throughout the statute, unless there is such variation in connection in which the words are used. See *Gen. Dynamics Land Syst. v. Cline*, 540 U.S. 581, 591–596 (2004), *Roberts*, 132 S. Ct. 1350 (2012). For example, heading 2513, HTSUS, provides for natural abrasives: “pumice; emery; natural corundum, natural garnet and other natural abrasives, whether or not heat treated.” EN 25.13, HTSUS, explains that “artificial abrasives such as artificial corundum and silicon carbide” are provided for in other headings.² Therefore, under the uniform usage rule of statutory construction, the term “abrasives” in heading 6805, HTSUS, refers to the natural mineral abrasives covered by heading 2513, and other headings of chapter 25, HTSUS, and artificial (i.e., synthetic chemical) versions (i.e., imitations) of those natural abrasives. Articles classifiable in heading 6805, HTSUS, consist of a textile base covered with a natural mineral abrasive or with an artificial abrasive powder or grain. For example, a product classifiable in heading 6805, HTSUS, could be coated with the natural mineral abrasive corundum or with a synthetic chemical version of corundum (i.e., aluminum oxide). Hence, between the court in *C.J. Tower*, the tariff terms and the ENs we now have the following exemplars of abrasives: emery, corundum, silicon carbide, garnet, pumice, flint, quartz sand and glass powder, silicon carbide, aluminium oxide, and Tripoli. Many of these exemplars are mentioned two or three times. Talc is notably absent.

However, these exemplars are further described by the next paragraph in the EN 68.05 which reads: “goods ... mainly used (by hand or mechanically) for smoothing or cleaning up metal, wood, cork, glass, leather, rubber (hardened or not) or plastics; also for smoothing or polishing varnished or lacquered surfaces, or for sharpening card clothing.” For instance, emery is a variety of corundum (also listed) and is the hardest mineral after diamonds. It is used to make abrasive powder and coated abrasives such as emery cloth and emery paper which are used to abrade metal. They remove metal particles and rust from steel and other metals. But it also has a well-known use in emery boards used to file finger-nails. Pumice, a stone composed of volcanic ash, is used as an abrasive to “stone-wash” denim which abrades the fabric. It is also used to abrade callused skin and in toothpaste to remove plaque without removing enamel. Tripoli is used in polishing. Tripoli has had unique uses as an abrasive and the deburring of metal and plastic castings. The automobile industry uses it in buffing and included uses in sharpening tools for wood polishing compounds in lacquer finishing. Garnet is often used as an

² Heading 2513, HTSUS, provides for “pumice stone; emery; natural corundum, natural garnet and other natural abrasives, whether or not heat treated”. This conforms with requestor’s own citation to Reade. See http://www.reade.com/Particle_Briefings/mohs_hardness_abrasive_grit.html (last accessed June 13, 2012).

abrasive because of how hard it is. It can be used as an abrasive blasting material in “water jet cutting,” but has also been used in more simple grinding tools such as sandpaper to finish metals and wood.³

Under the doctrine of “*noscitur a sociis*” meaning “it is known by its associates” which, as a rule of construction, “has the effect of declaring that the meaning of a word may be ascertained by reference to the meaning of words associated with it.” See Ruth F. Sturm, *Customs Law and Administration*, Third Ed. section 32.11 at 63 (2007). Though not listed as an exemplar, talc, too, can be used to clean up and smooth wood after sanding. It is also used in nylon grinding wheels. These uses provide evidence that talc is similar to some of the named exemplars above, particularly Tripoli in that it is a relatively soft abrasive mineral used on wood or lacquer, and to pumice and emery which, in addition to abrading the EN listed materials, are known for their ability to abrade skin, teeth or fingernails.

Furthermore, CBP has previously addressed the classification of abrasive articles on backings such as textile and paper. See, e.g., HQ 954857, dated December 8, 1993, in which we ruled that the “Scotchbrite Flap Brush and Combi Wheels” which was described as “surface conditioning abrasive products which are designed to clean and condition a surface for painting or plating operations, deburr drilled, punched or machined parts and/or provide a decorative scratch pattern on a workpiece” was classified in heading 6805, HTSUS.

By application of GRI3(b), the subject sponge composed of an abrasive grain (talc) on a textile, is classified in heading 6805, HTSUS. Specifically, it is classified in subheading 6805.30.50, HTSUS, which provides for “Natural or artificial abrasive powder or grain, on a base of textile material, of paper, of paperboard or of other materials, whether or not cut to shape or sewn or otherwise made up: On a base of other materials: Other.” The column one general rate of duty is Free.

HOLDING:

Under the authority of GRI 3(b), the subject cellulose sponge containing talc is classified in heading 6805, HTSUS. It is specifically provided for in subheading 6805.30.50 HTSUS, which provides for “Natural or artificial abrasive powder or grain, on a base of textile material, paper, of paperboard or of other materials, whether or not cut to shape or sewn or otherwise made up: On a base of other materials: Other.” The applicable duty rate is Free.

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

³ See <http://www.people.carleton.edu/~cdavidso/Geo110/MinUse05.htm>

EFFECT ON OTHER RULINGS:

NY 875045 is MODIFIED.

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

GENERAL NOTICE**19 CFR PART 177****PROPOSED REVOCATION OF TWO RULING LETTERS,
MODIFICATION OF TWO RULING LETTERS, AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE CLASSIFICATION OF PLUSH ANIMALS WITH GEL
PACKS**

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

ACTION: Notice of proposed revocation of two ruling letters, proposed modification of two ruling letters, and proposed revocation of treatment relating to the classification of plush animals with gel packs.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP proposes to revoke two ruling letters and modify two ruling letters concerning the classification of plush animals with gel packs 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 are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before February 2, 2015

ADDRESSES: Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulation and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K Street, N.E.-10th Floor, Washington, DC 20229–1179. Comments submitted may be inspected at 90 K Street, N.E. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Tamar Anolic, Tariff Classification and Marking Branch: (202) 325–0036.

SUPPLEMENTARY INFORMATION:**Background**

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “informed compliance” and “shared responsibility.” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP proposes to revoke two ruling letters and modify two ruling letters pertaining to the classification of plush animals with gel packs. Although in this notice CBP is specifically referring to New York Ruling (“NY”) L83691, dated April 15, 2005 (Attachment A); NY L82259, dated January 26, 2005 (Attachment B); NY F85438, dated April 25, 2000 (Attachment C); and NY G80850, dated September 5, 2000 (Attachment D), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP pro-

poses to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to this notice.

In NY L83691, NY L82259, NY F85438, and NY G80850, CBP classified plush animals with gel packs fitted into zipper compartments in subheading 9503.00.00, Harmonized Tariff Schedule of the United States ("HTSUS"), as "Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls, other toys; reduced-scale ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof." We now believe that they are properly classified in subheading 6307.90.98, HTSUS, which provides for "Other made up articles, including dress patterns: Other: Other: Other."

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to revoke NY L83691 and NY L82259, and modify NY F85438, and NY G80850, and any other ruling not specifically identified, pursuant to the analysis set forth in Proposed Headquarters Ruling Letter HH253885 (see Attachment "E" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: December 16, 2014

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachments

ATTACHMENT A

NY L83691

April 15, 2005

CLA-2-95:RR:NC:2:224 L83691

CATEGORY: Classification

TARIFF NO.: 9503.49.0000

MS. STEPHANIE DE SILVA
AVON PRODUCTS, INC.
1251 AVENUE OF THE AMERICAS
NEW YORK, NY 10020

RE: The tariff classification of a Boo Boo Pack from China

DEAR MS. DE SILVA:

In your letter dated March 29, 2005, you requested a tariff classification ruling.

You submitted descriptive literature and a product sample with your request. The subject merchandise is described as a Boo Boo Pack, reference PP1027708. The product is comprised of a fabric toy animal, in this case a teddy bear, and a gel pack that may be frozen or boiled, and inserted into the toy animal, before use by the consumer. The item may be used to provide cool comfort to a child with a cut or scrape, or to soothe aches and pains or fevers with hot/cold pack therapy. However, this function is a minimal one when compared to the play value of the toy animal. The toy and gel pack will be sold and marketed as a set, and the product will also be considered a set for tariff purposes. No one heading in the tariff schedule covers these components in combination; GRI 1 cannot be used as a basis of classification. GRI 3 provides for goods that are, prima facie, classifiable in two or more headings. GRI 3 (b) provides that mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale shall be classified as if they consisted of the material or component which gives them their essential character.

Noting GRI-3 (b), the component that gives the set the essential character would dictate the classification of the set. The toy animal portion of the Boo Boo Pack would exemplify the essential character. Therefore, the applicable subheading for the Boo Boo Pack (PP1 027708), will be 9503.49.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for toys representing animals or non-human creatures ... and parts and accessories thereof: other. The rate of duty will be free.

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

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

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

ATTACHMENT A

NY L82259

January 26, 2005

CLA-2-95:RR:NC:2:224 L82259

CATEGORY: Classification

TARIFF NO.: 9503.49.0000

MR. ROBERT J. RUTLAND, JR.
SENATOR INTERNATIONAL
1469 HAMILTON PARKWAY
ITASCA, IL 60143

RE: The tariff classification of a Huggable Booboo Buddy from China

DEAR MR. RUTLAND:

In your letter dated January 11, 2005, on behalf of Sassy Baby Products, you requested a tariff classification ruling.

You submitted descriptive literature and a product sample with your request. The subject merchandise is described as a Huggable Booboo Buddy, #030509. The product is comprised of a fabric toy animal, in this case a hippo, and a gel pack that may be frozen before use by the consumer. The item may be used to provide cool comfort to a child with a cut or scrape, however this function is a minimal one when compared to the play value of the toy animal. The toy and gel pack will be sold and marketed as a set, and the product will also be considered a set for tariff purposes.

Noting GRI-3 (b), the component that gives the set the essential character would dictate the classification of the set. The toy animal portion of the Huggable Booboo Buddy would exemplify the essential character. Therefore, the applicable subheading for the Huggable Booboo Buddy (#030509), will be 9503.49.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for toys representing animals or non-human creatures ... and parts and accessories thereof: other. The rate of duty will be free.

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

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

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

ATTACHMENT C

NY F85438

April 25, 2000

CLA-2-14:RR:NC:2:228 F85438

CATEGORY: Classification

TARIFF NO.: 1404.90.0000, 9503.49.0025

MS. KAREN MCKEE
WARM BUDDY Co.
1095 CHURCHILL CRESCENT
NORTH VANCOUVER, BC V7P1P9

RE: The tariff classification of a neck wrap and a plush toy from Canada.

DEAR MS. MCKEE:

In your letters dated August 4, 1999, and March 21, 2000, you requested a tariff classification ruling.

Illustrative literature was submitted with your August letter. Samples submitted with your March letter were examined and disposed of. The Radiant Touch Soothing Aromatherapy Neck Wrap measures approximately 18-1/4 inches long and 4-1/2 inches wide and is filled with lavender and rice. The wrap may be used with or without aromatherapy oils, heated in a microwave oven, or cooled in a freezer prior to use. Warm Buddy Sleep Pet is an acrylic plush toy representing a brown bear. There is an opening at the bottom into which a warm/cold pack measuring approximately 6-1/2 inches by 5 inches, filled with a rice/lavender mix, is inserted and secured with Velcro. The warm/cold pack may be removed to heat or cool, or to insert a hand facilitating use of the toy as a puppet.

The applicable subheading for the Radiant Touch Soothing Aromatherapy Neck Wrap and the warm/cold pack insert for the Warm Buddy Sleep Pet will be 1404.90.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for vegetable products not elsewhere specified or included...other. The rate of duty will be free. The applicable subheading for the plush toy/puppet part of the Warm Buddy Sleep Pet will be 9503.49.0025, HTS, which provides for toys representing animals or non-human creatures ... and parts accessories thereof...other...toys. The rate of duty will be free. This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Stanley Hopard at 212-637-7065.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

ATTACHMENT D

NY G80850

September 5, 2000

CLA-2-95:RR:NC:2:224 080850

CATEGORY: Classification

TARIFF NO.: 9503.41.0010

TERESA A. GLEASON
BAKER & MCKENZIE
815 CONNECTICUT AVENUE, N.W.
WASHINGTON, D.C. 20006-4078

RE: The tariff classification and country of origin marking of a Hot & Cold Cuddly Bear made in China.

DEAR Ms. GLEASON:

In your ruling request on behalf of R.G. Barry Corporation dated July 20, 2000, you asked that Customs rule on the tariff classification and country of origin marking of an animal figure imported from Mexico.

The Hot & Cold Cuddly Bear is an amusing, cartoon-like representation of an animal with plush skin, stuffed head and appendages, and a torso compartment that is filled with what is termed energy packs. The Cuddly Bear figure is assembled and stuffed in China. It is exported to Mexico with a hollow torso and a Velcro opening in its back. In Mexico a Hot Pack consisting of dry, white, long-grain rice encased in a textile pouch and a Cold Pack consisting of a mixture of 70 percent water and 30 percent glycol, and polyurethane foam sealed in a water-tight polyurethane film bag are inserted into the animal compartment to form the completed Hot and Cold Cuddly Bear. The article is considered stuffed for tariff purposes.

The Cuddly Bear figure is designed for use in conjunction with the so-called energy packs primarily as a toy plaything for the amusement of children or adults. The Hot Pack component is designed to be heated in a microwave oven and thereafter retain and radiate heat for a number of hours. The Cold Pack can be refrigerated and will remain cold for a period of time. We assume the purpose of the energy packs is to impart warmth or cold to the figure to promote a utility attribute as well as enhance the play value of the Cuddly Bear.

Tariff Classification

The General Rules of Interpretation (GRI) governs classification of goods under the Harmonized Tariff Schedule of the United States (HTSUS). GRI 1 provides that classification shall be determined according to the terms of the headings and relative section or chapter notes. Where goods cannot be classified solely on the basis of GRI 1, the remaining GRIs will be applied, in the order of their appearance.

The Cuddly bear component, with or without the energy packs, is a whimsical and cartoon representation and in our opinion primarily used in the hands of the ultimate consumer as a plaything and a source of amusement. We find that it is a toy for tariff purposes notwithstanding any other secondary utility it may offer. The applicable heading for the toy Cuddly Bear component is heading 9503, HTSUS. The applicable heading for the Hot Pack component is heading 1404, HTSUS. Custom's classification of the Cold Pack in heading 2905, HTSUS, is currently under review before Customs Head-

quarters. As the tariff does not contain a heading that specifically provides for toys and rice-filled or water/glycol-filled packs, together, classification cannot be based on GRI 1.

GRI 3 applies to goods that prima facie classifiable under two or more headings. GRI 3 states, in pertinent part, the following:

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

In determining the essential character of the subject good in accordance with GRI 3(b), Customs looks to various factors for guidance. Such factors include, but are not limited to, the nature of the component, its bulk, weight or value, or by the role of the constituent material in relation to the use of the good. After examining the Hot & Cold Cuddly Bear article, it is our opinion that the toy Cuddly Bear component imparts the essential character of the whole good. By bulk and cost and its primary role in the use of the article, the toy comprises the essentiality of the article. The packs, on the other hand, simply enhance or amplify the toy character of the toy bear. Thus, the merchandise is classifiable in Heading 9503, HTSUS, which is the provision for, inter alia, toys. The applicable subheading for the Hot & Cold Cuddly Bear will be 9503.41.0010, HTSUS, the provision for other toys; stuffed toys representing animals or non-human creatures (for example, robots and monsters) and parts and accessories thereof. The general rate of duty is free.

Country of Origin Marking

The marking statute, section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin (or its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article. Part 134, Customs Regulations (19 CFR Part 134), implements the country of origin marking requirements and exceptions of 19 U.S.C 1304.

Section 134.1 (b), of the Customs Regulations defines the term “country of origin” as:

the country of manufacture, production, or growth of any article of foreign origin entering the U.S. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the ‘country of origin’ within this part; however, for a good of a NAFTA country, the NAFTA Marking Rules will determine the country of origin. (Emphasis added).

Section 134.10) of the regulations provides that the “NAFTA Marking Rules” are the rules promulgated for purposes of determining whether a good is a good of a NAFTA country. Section 134.1 (g) defines a “good of a NAFTA country” as an article for which the country of origin is Canada, Mexico or the U.S. as determined under the NAFTA Marking Rules. Part 102, Customs Regulations (19 CFR Part 102), sets forth the “NAFTA Marking Rules.” Section 102.11, Customs Regulations sets forth the required hierarchy for determining the country of origin for marking purposes. Section 102.11 (a) states that “the country of origin of a good is the country in which:

The good is wholly obtained or produced; The good is produced exclusively from domestic materials: or Each foreign material incorporated in that good undergoes an applicable change in tariff classification set out in section 102.20 and satisfies any other applicable requirements of that section, and all other applicable requirements of these rules are satisfied.” “Foreign material” is defined in section 102.1(e) as “a material whose country of origin as determined under these rules is not the same country as the country in which the good is produced.”

In the instant case, a partially stuffed toy bear figure produced in China is imported into Mexico for processing and then imported into the U.S. The imported Hot & Cold Cuddly Bear is neither “wholly obtained or produced,” or “produced exclusively from domestic (Mexican) materials.” Therefore, for purposes of determining the origin of the imported good, section 102.11(a)(3) is the applicable rule that next must be applied. Under this rule, the country of origin of a good is the country in which each foreign material incorporated in that good undergoes an applicable change in tariff classification set out in section 102.20 of the regulations. Section 102.20 of the rules sets forth the specific tariff classification changes and/or other operations which are specifically required in order for country of origin to be determined on the basis of operations performed on the foreign material(s) contained in a good.

As indicated above, the Hot & Cold Cuddly Bear article imported from Mexico is classifiable in subheading 9503.41.0010, HTSUS. Thus, the applicable change in tariff classification is set out in section 102.20(s), Section XX, Chapter 95 as follows:

9503.41–9504.49...A change to toys classified in subheading 9503.41 through 9503.49 from any other heading; or ... a change to toys classified in subheading 9503.41 through 9503.49 from parts and accessories classified in subheading 9503.41 through 9503.49; or ... a change to parts and accessories classified in subheading 9503.41 through 9503.49 from any other heading, except from heading 9502, 6111, or 6209.

The toy bear figure (absent the torso packs) when imported into Mexico from China is classifiable in subheading 9503.41.0010, HTSUS. In this case, we find that the toy Cuddly Bear article does not undergo any of the applicable changes in tariff classification set out in section 102.20(s) and, as a result, section 102.11(b) of the hierarchical rules must be applied next to determine the country of origin of the finished Hot & Cold Cuddly Bear.

Section 102.11 (b) of the interim Customs Regulations provides that:

Except for a good that is specifically described in the Harmonized System as a set, or is classified as a set pursuant to General Rule of Interpretation 3, where the country of origin cannot be determined under paragraph (a), the country of origin of the good:

Is the country or countries of origin of the single material that imparts The essential character of the good, or

If the material that imparts the essential character of the good is fungible, has been commingled, and direct physical identification of the origin of the commingled material is not practical, the country or countries of origin may be determined on the basis of an inventory management method provided under the Appendix to Part 181 of the Customs Regulations.

The imported article is not described in the Harmonized System as a set, nor is it classified as a set pursuant to General Rule of Interpretation 3. Thus, section 102.11(c) is not applicable. Further, section 102.11(b)(2) is not appli-

cable to the circumstances. In consequence, the rule that must be applied to determine the country of origin of the imported article is section 102.11(b)(1).

Applying section 102.11(b)(1) to the facts of this case, we find that the single material that imparts the essential character of the finished Hot & Cold Cuddly Bear is the textile toy likeness. Since the origin of this component does not change as a result of the processing performed in Mexico under section 102.20(s), as explained above, the country of origin of the imported Hot & Cold Cuddly Bear for marking purposes is the country of origin of the textile toy likeness when imported into Mexico. Accordingly, the individual toy Hot & Cold Cuddly Bear or its retail container in which the toy is sold to the ultimate purchaser in the U.S. must be marked to indicate China as the country of origin in accordance with the marking requirements of 19 U.S.C. 1304.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Tom McKenna at 212.637.7015.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

ATTACHMENT E

HQ H253885

CLA-2 OT:RR:CTF:TCM H253885 TNA

CATEGORY: Classification

TARIFF NO.: 6307.90.98

Ms. STEPHANIE DE SILVA
AVON PRODUCTS, INC.
1251 AVENUE OF THE AMERICAS
NEW YORK, NY 10020

RE: Revocation of NY L83691 and NY L82259 and Modification of NY F85438 and NY G80850; Classification of a “Boo Boo Pack”

DEAR Ms. DE SILVA:

This letter is in reference to New York Ruling Letter (“NY”) L83691, dated April 15, 2005, issued to you concerning the tariff classification of “Boo Boo Pack” from China. There, U.S. Customs and Border Protection (“CBP”) classified Boo Boo Pack in subheading 9503.00.00, Harmonized Tariff Schedule of the United States (“HTSUS”), which provides for “Tricycles, scooters, pedal cars and similar wheeled toys; dolls’ carriages; dolls, other toys; reduced-scale (“scale”) models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof.”¹ We have reviewed NY L83691 and found it to be incorrect. For the reasons set forth below, we hereby revoke NY L83691.

This letter also concerns NY L82259, dated January 26, 2005, NY F85438, dated April 25, 2000, and NY G80850, dated September 5, 2000. We have reviewed these rulings as well and found them to be incorrect. For the reasons that follow, we revoke NY L82259, and modify NY F85438² and NY G80850³.

FACTS:

The subject merchandise consists of plush fabric animals in the form of teddy bears, a hippo, and a brown bear. Each animal contains an opening in which to insert a gel pack that can either be heated or frozen. Once the gel pack is inside the animal, they are used together to treat minor scrapes, bruises, etc. in children. Each animal is imported with the gel pack.

In NY L83691, the hot/cold pack consists of a gel that contains 70 percent distilled water and 30 percent propylene glycol. In L82259, the cool pack is a reusable, flexible ice pack that consists of a non-toxic gel and a soft, washable cover that protects the skin from direct contact with the frozen gel pack. In NY F85438, the warm/cold pack consists of a rice/lavender mix. In NY

¹ We note that NY L83691 classified its merchandise in subheading 9503.49.00, HTSUS, which provides for “toys representing animals or non-human creatures ...and parts and accessories thereof: other.” Following technical changes to the tariff schedule in 2007, subheading 9503.49.00, HTSUS, became subheading 9503.00.00, HTSUS. Because subheading 9503.00.00, HTSUS, remains in the 2014 nomenclature, it is the subheading we consider here.

² NY F85438 classified two Items: the Warm Buddy Sleep Pet, a plush toy in the shape of a brown bear with a hot/cold gel pack, and a Radiant Touch Soothing Aromatherapy Neck Wrap. Only the classification of the Warm Buddy Sleep Pet is at Issue here.

³ NY G80850 dealt with the classification and country of origin of the Hot & Cold Cuddly Bear. Only the classification of this item is at issue here.

G80850, the hot pack consisted of dry, white, long-grained rice encased in a textile pouch. The Cold Pack consists of a mixture of 70 percent water, 30 percent glycol, and polyurethane foam sealed in a water-tight polyurethane film bag.

In NY L83691, NY L82259, NY F85438, and NY G80850, CBP the subject merchandise in 9503.49.00, HTSUS, which provides for “toys representing animals or non-human creatures ... and parts and accessories thereof: other.”

ISSUE:

Whether fabric animals with hot or cold packs inside of them are classified as toys of heading 9503, HTSUS, or in various headings depending on the chemical makeup of the hot and cold packs?

LAW AND ANALYSIS:

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

The HTSUS provisions under consideration are as follows:

- 1404 Vegetable products not elsewhere specified or included:
- 2905 Acyclic alcohols and their halogenated, sulfonated, nitrated or nitrated derivatives
- 3824 Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included:
- 6307 Other made up articles, including dress patterns:
- 9503 Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls, other toys; reduced-scale (“scale”) models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof

Note 1 to Chapter 29, HTSUS, provides the following:

Except where the context otherwise requires, the headings of this chapter apply only to:

- (a) Separate chemically defined organic compounds, whether or not containing impurities;
- (b) Mixtures of two or more isomers of the same organic compound (whether or not containing impurities), except mixtures of acyclic hydrocarbon isomers (other than stereoisomers), whether or not saturated (chapter 27);
- (c) The products of headings 2936 to 2939 or the sugar ethers, sugar acetals and sugar esters, and their salts, of heading 2940, or the products of heading 2941, whether or not chemically defined;

(d) Products mentioned in (a), (b) or (c) above dissolved in water;

Note 1 to Chapter 95, HTSUS, states, in pertinent part, the following:

This chapter does not cover: ...

(v) Tableware, kitchenware, toilet articles, carpets and other textile floor coverings, apparel, bed linen, table linen, toilet linen, kitchen linen and similar articles having a utilitarian function (classified according to their constituent material).

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

The EN to heading 1404, HTSUS, provides, in pertinent part, the following:

This heading covers all vegetable products, not specified or included elsewhere in the Nomenclature.

The EN to heading 2905, HTSUS, provides, in pertinent part, the following:

Acyclic alcohols are derivatives of acyclic hydrocarbons obtained by replacing one or more atoms of hydrogen by the hydroxyl group. They are oxygenated compounds which react with acids giving the compounds known as esters.

The alcohols may be primary (containing the characteristic group -CH₂OH), secondary (containing the characteristic group >CHOH) or tertiary (containing the characteristic group COH)

(C) DIOLS AND OTHER POLYHYDRIC ALCOHOLS

(I) Diols

(1) Ethylene glycol (ethanediol). A colourless, syrupy liquid with a faint, pungent odour. Used in the manufacture of nitroglycerol (explosive), as a solvent for varnishes, as an anti-freeze agent or in organic synthesis.

(2) Propylene glycol (propane-1,2-diol). Colourless, viscous and hygroscopic liquid.

The EN to heading 6307, HTSUS, provides, in pertinent part, the following:

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

The EN to heading 3824, HTSUS, provides, in pertinent part:

This heading covers: ...

(B) CHEMICAL PRODUCTS AND CHEMICAL OR OTHER PREPARATIONS

With only three exceptions (see paragraphs (7), (19) and (32) below), this heading does not apply to separate chemically defined elements or compounds.

The chemical products classified here are therefore products whose composition is not chemically defined, whether they are obtained as by-products of the manufacture of other substances (this applies, for example, to naphthenic acids) or prepared directly.

The chemical or other preparations are either mixtures (of which emulsions and dispersions are special forms) or occasionally solutions. Aqueous solutions of the chemical products of Chapter 28 or 29 remain classified within those Chapters, but solutions of these products in solvents other than water are, apart from a few exceptions, excluded therefrom and accordingly fall to be treated as preparations of this heading.

The preparations classified here may be either wholly or partly of chemical products (this is generally the case) or wholly of natural constituents (see, for example, paragraph (24) below).

The EN to heading 9503, HTSUS, provides, in pertinent part:

This heading covers:

...

(D) Other toys.

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

...

(i) Toys representing animals or non-human creatures even if possessing predominantly human physical characteristics (e.g., angels, robots, devils, monsters), including those for use in marionette shows.

In NY L83691, NY L82259, NY F85438, and NY G80850, the subject merchandise was classified as toys of heading 9503, HTSUS. In several court cases that have defined the term “toy,” heading 9503, HTSUS, has been found to be a principal use provision. The CIT has provided factors which are indicative but not conclusive, to apply when determining whether merchandise falls within a particular class or kind. They include: general physical characteristics, the expectation of the ultimate purchaser, channels of trade, environment of sale (accompanying accessories, manner of advertisement and display), use in the same manner as merchandise which defines the class, economic practicality of so using the import, and recognition in the trade of this use. See *United States v. Carborundum Company*, 63 CCPA 98, C.A.D. 1172, 536 F. 2d 373 (1976), cert. denied, 429 U.S. 979 (hereinafter *Carborundum*).

In *United States v. Topps Chewing Gum, Inc.*, 58 C.C.P.A. 157, CAD 1022 (1971), however, the court defined “toy” as “any article chiefly used for the amusement of children or adults.” *United States v. Topps Chewing Gum, Inc.*, 58 C.C.P.A. 157, CAD 1022 (1971). In *Minnetonka Brands v. United States*, 24 C.I.T. 645; 110 F. Supp. 2d 1020; 2000 Ct. Int. Trade LEXIS 87; SLIP OP. 2000–86 (Ct. Int’l. Trade 2000) (“*Minnetonka*”), the court held that “an object is a toy only if it is designed and used for amusement, diversion or play,

rather than practicality.” *Minnetonka Brands v. United States*, 24 C.I.T. 645; 110 F. Supp. 2d 1020; 2000 Ct. Inti. Trade LEXIS 87; SLIP OP. 2000–86 (Ct. Int’l. Trade 2000). For articles that are both amusing and functional, we look to *Ideal Toy Corp. v. United States*, 78 Gust. Ct. 28 (1977), in which the court stated that “when amusement and utility become locked in controversy, the question becomes one of determining whether amusement is incidental to the utilitarian purpose, or whether the utility purpose is incidental to the amusement.” Thus, not all merchandise that provides amusement is properly classified in a toy provision. See also HQ H040737, dated July 23, 2009.

In the present case, the subject merchandise has a utilitarian purpose. It is heated or chilled to decrease the pain and provide healing to children’s scrapes, bruises and other minor injuries. As a result, it cannot be classified in heading 9503, HTSUS. This conclusion is consistent with prior CBP rulings, as CBP has consistently precluded classification of items with a utilitarian function from Chapter 95, HTSUS, because of this utilitarian purpose, under both the authority of *Ideal Toy Corp.* and Note 1(v) to Chapter 95, HTSUS. See, e.g., HQ H238475, dated May 14, 2013 (“Note 1(v) to excludes merchandise from the heading when it has a utilitarian function. Courts have also held that “an object is a toy only if it is designed and used for amusement, diversion or play, rather than practicality.” *Minnetonka Brands v. United States*, 24 C.I.T. 645 (2000). See also *Ideal Toy Corp. v. United States*, 78 Gust. Ct. 28 (1977)); NY N24881 0, dated January 13, 2014 (precluding a handbag from classification in heading 9503, HTSUS, because of its utilitarian function); NY N219280, dated June 25, 2012 (precluding classification of novelty tote bags from Chapter 95, HTSUS, because of their utilitarian function); NY N217537, dated June 1, 2012 (precluding children’s novelty tote bags from Chapter 95, HTSUS, via Note 1 (v) because of their utilitarian function); NY N198255, dated January 26, 2012 (precluding a child’s novelty handbag from Chapter 95, HTSUS, via note 1 (v) because of its utilitarian function); NY N141795, dated February 2, 2011 (precluding a novelty travel bag from classification in Chapter 95, HTSUS, because of its utilitarian function); NY N138557, dated January 7, 2011 (precluding children’s novelty handbags from classification in Chapter 95, HTSUS, because of their utilitarian function); NY N048845, dated February 4, 2009 (precluding various tote bags from classification in Chapter 95 via Note 1 (v) to Chapter 95, HTSUS).

In addition, an analysis of the *Carborundum* factors supports the conclusion that the subject “Boo-Boo Packs” are not toys. In terms of physical characteristics, the fabric components of the subject merchandise are imported with a gel pack. They also contain an opening into which the gel pack is inserted. This is a clear indication that the subject merchandise is intended to be used with the gel packs for healing minor wounds, not by themselves as stuffed animals. Furthermore, these “Boo Boo Packs” are often sold as cold packs in stores’ health and personal care sections, not in their toy sections. See, e.g., http://www.amazon.com/Boo-Buddy-Cat-ColdPack/dp/B002122WWY/ref=sr_1_1?ie=UTF8&qid=1410442483&sr=81&keywords=boo+boo+buddies;
<http://www.target.com/p/sesame-street-boo-boo-buddy-cold-pack/-/A-13345776>. Consumer reviews also show that consumers are purchasing and using these items as ice or hot

packs first and foremost. The fact that the fabric component makes the item more attractive to children is secondary to the items' use as an ice or hot pack. See, e.g., http://www.amazon.com/Stephan-Baby-Fuzzy-Bunnie-Pack/dp/B002CRT2GM/ref=sr_1_1?ie=UTF8&qid=1410443428&sr=81&keywords=Stephan+baby+fuzzy+boo+bunnie+ice+pack. Thus, an analysis of the *Carborundum* factors supports the conclusion that the subject merchandise is used as an ice or hot pack rather than as a toy. As a result, we examine alternate headings.

The subject "Boo Boo Packs" contain both a pack that can be heated or cooled, and fabric components. Thus, they contain two components that cannot be described by the terms of a single heading. As a result, they cannot be classified under GRI 1. GRI 2 is not applicable here, and neither is GRI 3(a), because none of the headings at issue describe the whole good more specifically than any other. As such, we turn to GRI 3(b), which states, in pertinent part, the following:

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

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

For purposes of GRI 3(b), EN IX to GRI 3(b) explains, in relevant part, that:

For the purposes of this Rule, composite goods made up of different components shall be taken to mean not only those which the components are attached to each other to form a practically inseparable whole, but also those with separable components, provided these components are adapted to one another and are mutually complementary and that together they form a whole which would not normally be offered for sale in separate parts.

With respect to the essential character of composite goods, EN (VIII) to GRI 3(b) provides the following guidance:

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

In HQ 957478, dated September 7, 1995, CBP stated that:

In Headquarters Ruling Letter (HRL) 956845, issued December 22, 1994, we discussed the classification of articles equipped with a heating or cooling element. The ruling articulated the proposition that the heating/cooling element of articles of this kind will not always impart essential character to the article. The ruling explained that where an article as a whole appears to function primarily as a means to employ the heating or cooling element, the heating/cooling element will usually be considered to impart essential character on the basis of its more predominant function or role. In such an instance, it is relatively clear that the heating/cooling element is the predominant component for GRI 3(b) purposes. However, where the article as a whole performs an ordinary function that merely incorporates the heating or

cooling function, it is not clear that the heating/cooling element is predominant. A closer examination of the components, their functions/roles, and other factors is required.

See HQ 957478.

In HQ 966262, dated May 29, 2003 we classified a heated head therapy wrap consisting of a terry head cover or hood of knit 100% polyester terry fabric and plastic covered gel packs that can be heated in a microwave and placed inside specially shaped pockets in the terry cloth as headgear of heading 6505, HTSUS. We did so because the headgear portion of the article kept the gel packs in place. The unique shape of the fabric component was paramount in the functioning of the articles. See also HQ 964851, dated April 18, 2001 (classifying the plastic eye mask is filled with chemicals and can be heated or chilled which the user places the plastic in a textile packet containing an elastic band to keep the article over his or her eyes as an article of plastic of heading 3924, HTSUS); HQ 964877, dated May 17, 2001 (classifying an eye patch consisting of a vinyl plastic eye patch filled with solution consisting of 58% propylene glycol, and 41.98% distilled water and 0.02% dyeing material that can be heated or chilled as an article of plastic of heading 3924, HTSUS); HQ 964878, dated May 17, 2001 (classifying four different styles of vinyl plastic eye masks and one vinyl plastic head compress designed to be heated or cooled and worn over the eyes or the forehead and temple as plastic articles of heading 3924, HTSUS); HQ 963725, dated May 17, 2001 (classifying a vinyl plastic eye mask filled with 59.8 percent propylene glycol, 40 percent distilled water and 0.02 percent color pigment that is intended to be chilled and placed over the user's eyes as articles of plastic of heading 3924, HTSUS); and HQ 963852, dated May 17, 2001 (classifying one facial mask consisting of a vinyl plastic facial mask filled with water, 0.3% Poly Aery/Sod ion, 0.5% salt, 0.2% 2-Phenoxyaethanol and 0.05% food color, and one eye mask consisting of a vinyl plastic mask filled with a 60% glycerin and 40% distilled water mixture as articles of plastic of heading 3924, HTSUS).

In the present case, the subject "Boo Boo Packs" consist of a gel pack that is placed inside a fabric component. It is then placed on a child's injury and serves as a barrier between the hot or cold gel pack and the child's skin. The familiar shape and soft fabric of the animal theoretically function to soothe the child such that he or she will not be adverse to allowing the hot or cold pack to stay on the injured body part for the requisite amount of time. However, the shape of the fabric components is not particularly conducive to placement on a particular body part. Hence, this merchandise is not completely analogous to that in HQ 966262, but the fabric component here still plays a relatively important role in delivering the heat or cold for the required amount of time. Thus, the fabric component and the gel packs, in this limited scenario, equally contribute to the use of the goods. As such, the subject merchandise will be classified according to the last tariff provision at issue.⁴

Lastly, we note that the subject merchandise is distinguishable from the ice packs and heating packs that CBP has classified in heading 3824, HTSUS, according to the chemical makeup of the gel inside the packs. See. e.g., NY

⁴ While the fabric component appears bulkier than the gel packs, we have no information regarding comparative weight or value.

N070376, dated August 11, 2009 and NY N057817, dated April 22, 2009. These rulings classified vinyl-covered gel packs that were put directly on bruises and cuts and were not first inserted into fabric components. As a result, these articles are fundamentally different than the items at issue in the present case.

HOLDING:

Under the authority of GRI 3(c), the Warm Buddy Sleep Pet, the Hot & Cold Cuddly Bear, Boo Boo Pack, and the Huggable Booboo Buddy are all classified in heading 6307, HTSUS. Specifically, they are provided for in subheading 6307.90.98, HTSUS, which provides for “Other made up articles, including dress patterns: Other: Other: Other.” The column one general rate of duty is 7% *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY L83691, dated April 15, 2005, NY L82259, dated January 26, 2005 are REVOKED.

NY F85438, dated April 25, 2000, and NY G80850, dated September 5, 2000 are MODIFIED.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**REVOCAION OF A RULING LETTER AND REVOCAION
OF TREATMENT RELATING TO THE TARIFF
CLASSIFICATION OF STEEL SHOWER ESCUTCHEONS**

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

ACTION: Notice of revocation of a ruling letter and revocation of treatment relating to the tariff classification of steel shower escutcheons.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking a ruling letter relating to the tariff classification of steel shower escutcheons under the Harmonized Tariff Schedule of the United States (HTSUS). CBP is also revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the Customs Bulletin, Vol. 48, No. 45, dated November 12, 2014. No comments were received in response to the notice.

DATES: Comments must be received on or before March 2, 2015.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after March 2, 2015.

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

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

Pursuant to section 625 (c)(1), Tariff Act of 1930, as amended (19 U.S.C. §1625 (c)(1)), a notice was published in the *Customs Bulletin*, Volume 48, No. 45, on November 12, 2014, proposing to revoke New York Ruling Letter (NY) L89621, dated January 5, 2006, in which CBP determined that the subject steel shower escutcheon was classified in subheading 7324.90.00, HTSUS, which provides for: "Sanitary ware and parts thereof, of iron or steel: Other, including parts ..." No comments were received in response to this notice.

As stated in the proposed notice, this action will cover any rulings on the subject merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the rulings identified above. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

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

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY L89621, in order to reflect the proper classification of the steel escutcheon under subheading 7326.90.85, HTSUS, which provides for "Other articles of iron or steel: Other: Other: Other ... ," according to the analysis contained in HQ H201156, set forth as an attachment to this document.

In accordance with 19 U.S.C. §1625(c)(1), this ruling will become effective 60 days after publication in the *Customs Bulletin*.

Dated: December 16, 2014

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division
GREG CONNOR

Attachment

HQ H201156

December 16, 2014

CLA-2 OT:RR:CTF:TCM H201156 EGJ**CATEGORY:** Classification**TARIFF NO.:** 7326.90.85

JAMIE L. DAVIS
IMPORT COORDINATOR
INTERLINE BRANDS
3333 LENOX AVENUE
JACKSONVILLE, FL 32254

RE: Revocation of New York Ruling Letter L89621; Classification of Steel Escutcheons

DEAR MR. DAVIS:

This is in reference to New York Ruling Letter (NY) L89621, dated January 5, 2006, issued to you concerning the tariff classification of steel escutcheons under the Harmonized Tariff Schedule of the United States (HTSUS). In that ruling, U.S. Customs and Border Protection (CBP) classified the subject article in heading 7324, HTSUS, which provides for steel sanitary ware and parts thereof. We have reviewed NY L89621 and find it to be in error. For the reasons set forth below, we hereby revoke NY L89621.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice of the proposed revocation was published on November 12, 2014, in the *Customs Bulletin*, Volume 48, No. 45. CBP received no comments in response to this notice.

FACTS:

In bathroom showers, the shower's system is used indoors to deliver water from outside water lines. The body of the shower system, consisting of a valve and other connecting parts, is generally installed behind a wall. In contrast, the shower's trim components are installed on the shower's surface. Certain trim components enable the user to control the flow of water from the valve and into the shower. Generally, the trim components tend to be ornamental so as to enhance the décor of the bathroom.

The subject merchandise is a chrome-plated steel escutcheon, also known as a shower arm flange. It is designed to cover the hole on the bathroom shower wall where the shower arm projects. The escutcheon is 2.5 inches in diameter. It is not imported together with a shower faucet system or a shower. The escutcheon is imported in bulk and is sold to plumbers and contractors. The escutcheon does not contribute to the function of the shower system. The escutcheon's function is to hide the hole in the wall around the shower arm and to contribute to the bathroom's décor.

ISSUE:

What is the tariff classification of the steel shower escutcheon?

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States (HTSUS) is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined

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

The relevant HTSUS provisions are:

7324 Sanitary ware and parts thereof, of iron or steel...

* * *

7326 Other articles of iron or steel ...

* * *

8302 Base metal mountings, fittings and similar articles suitable for furniture, doors, staircases, windows, blinds, coachwork, saddlery, trunks, chests, caskets or the like; base metal hat racks, hat-pegs, brackets and similar fixtures; castors with mountings of base metal; automatic door closers of base metal; and base metal parts thereof ...

* * *

Note 3 to Section XV (which includes Chapters 72–83) states that:

Throughout the schedule, the expression “base metals” means: iron and steel, copper, nickel, aluminum, lead, zinc, tin, tungsten (wolfram), molybdenum, tantalum, magnesium, cobalt, bismuth, cadmium, titanium, zirconium, antimony, manganese, beryllium, chromium, germanium, vanadium, gallium, hafnium, indium, niobium (columbium), rhenium and thallium.

* * *

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

EN 73.24 provides, in pertinent part, that:

This heading comprises a wide range of iron or steel articles, **not more specifically covered** by other headings of the Nomenclature, used for sanitary purposes ... The heading includes, baths, bidets, hip-baths, foot-baths, sinks, wash basins, toilet sets; soap dishes and sponge baskets; douche cans, sanitary pails, urinals, bedpans, chamber-pots, water closet pans and flushing cisterns whether or not equipped with their mechanisms, spittoons, toilet paper holders.

* * *

EN 73.26 provides, in pertinent part, that:

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

* * *

EN 83.02 provides, in pertinent part, that:

This heading covers general purpose classes of base metal accessory fittings and mountings, such as are used largely on furniture, doors, windows, coachwork, etc. Goods within such general classes remain in this heading even if they are designed for particular uses (e.g., door handles or hinges for automobiles). The heading **does not**, however, **extend** to goods forming an essential part of the structure of the article, such as window frames or swivel devices for revolving chairs.

The heading covers ...

(D) Mountings, fittings and similar articles suitable for buildings

This group includes:

(1) Door guards fitted with chains, bars, etc.; espagnolette or casement bolts and fittings; casement fasteners and stays; fanlight or skylight openers, stays and fittings; cabin hooks and eyes; hooks and fittings for double windows; hooks, fasteners, stops, brackets and roller ends for shutters or blinds; letter-box plates; door knockers, spy holes, etc. (**other than** those fitted with optical elements).

(2) Catches (including ball spring catches), bolts, fasteners, latches, etc., (**other than** key-operated bolts of **heading 83.01**), for doors.

(3) Fittings for sliding doors or windows of shops, garages, sheds, hangars, etc. (e.g., grooves and tracks, runners and rollers).

(4) Keyhole plates and finger-plates for doors of buildings.

(5) Curtain, blind or portière fittings (e.g., rods, tubes, rosettes, brackets, bands, tassel hooks, clips, sliding or runner rings, stops); cleat hooks, guides and knot holders for blind cords, etc.; staircase fittings, such as protectors for staircase treads; stair carpet clips, stair rods, banister knobs. Rods, tubes and bars, suitable for use as curtain or stair rods, etc., merely cut to length and drilled, remain classified according to the constituent metal.

(6) Corner braces, reinforcing plates, angles, etc., for doors, windows or shutters.

(7) Hasps and staples for doors; handles and knobs for doors, including those for locks or latches.

(8) Door stops and door closers (**other than** those of (H) below).

(E) Mountings, fittings and similar articles suitable for furniture
This group includes:

(1) Protective studs (with one or more points) for legs of furniture, etc.; metal decorative fittings; shelf adjusters for book-cases, etc.; fittings for cupboards, bedsteads, etc.; keyhole plates.

(2) Corner braces, reinforcing plates, angles, etc.

(3) Catches (including ball spring catches), bolts, fasteners, latches, etc. (**other than** key-operated bolts of **heading 83.01**).

(4) Hasps and staples for chests, etc.

(5) Handles and knobs, including those for locks or latches.

(F) (1) Fittings and similar articles for trunks, chests, suit-cases or similar travel goods, e.g., lid guides (but **not including** fasteners); handles; corner protectors; lid struts and runners; closing rods for basket-trunks; fittings for expanding cases; however, ornaments for handbags fall in **heading 71.17** ...

(G) **Hat-racks, hat-pegs, brackets** (fixed, hinged or toothed, etc.) and **similar fixtures** such as coat racks, towel racks, dish-cloth racks, brush racks, key racks. Coat racks, etc., having the character of furniture, such as coat racks incorporating a shelf, are classified in **Chapter 94** ...

* * *

Heading 7324, HTSUS, provides for steel sanitary ware and parts of sanitary ware. The term “sanitary ware” is not defined in the HTSUS.¹ The *Macmillan Dictionary*, available at www.macmillandictionary.com, defines “sanitary” as “relating to people’s health, especially to the system of supply water and dealing with human waste.” *Merriam-Webster’s Collegiate Dictionary*, 1033 (10th Ed. 2001), defines sanitary ware as “ceramic plumbing fixtures (as sinks, lavatories or toilet bowls).” These definitions are consistent with EN 73.24, which states, *inter alia*, that “baths, bidets ..sinks, wash basins ... soap dishes and sponge baskets ... urinals, bedpans, chamber-pots, water closet pans and flushing cisterns ... spittoons, toilet paper holders” are all sanitary ware.

The subject steel escutcheon is a component of a shower system. Baths and showers are types of sanitary ware. Thus, if the steel escutcheon constitutes a “part” within the meaning of the HTSUS, we could classify it as a part of sanitary ware under heading 7324, HTSUS.

In *Bauerhin Techs. Ltd. P’ship. United States*, 110 F. 3d 774 (Fed. Cir. 1997), the court identified two distinct lines of cases defining the word “part.” Consistent with *United States v. Willoughby Camera Stores, Inc.*, 21 C.C.P.A. 322, 324 (1933), one line of cases holds that a part of an article “is something necessary to the completion of that article without which the article to which it is to be joined, could not function as such article.” The other line of cases evolved from *United States v. Pompeo*, 43 C. C.P.A. 9, 14 (1955), which held that a device may be a part of an article even though its use is optional and the article will function without it, if the device is dedicated for use upon the article, and, once installed, the article will not operate without it. Under either line of cases, an imported item is not a part if it is “a separate and distinct commercial entity.” *ABB, Inc. v. United States*, 28 Ct. Int’l Trade 1444, 1452–53 (2004).

¹ When, as in this case, a tariff term is not defined by the HTSUS or its legislative history, “the term’s correct meaning is its common meaning.” *Mita Copystar Am. v. United States*, 21 F.3d 1079, 1082 (Fed. Cir. 1994). The common meaning of a term used in commerce is presumed to be the same as its commercial meaning. *Simod Am. Corp. v. United States*, 872 F.2d 1572, 1576 (Fed. Cir. 1989). To ascertain the common meaning of a term, a court may consult “dictionaries, scientific authorities, and other reliable information sources” and “lexicographic and other materials.” *C.J. Tower & Sons v. United States*, 673 F.2d 1268, 1271 (CCPA 1982); *Simod*, 872 F.2d at 1576.

Applying the case law, the steel escutcheon is not a “part” under the HTSUS. This trim component is of a strictly decorative nature. The escutcheon does not contribute to the function of the shower into which it is installed, nor does it mount any other necessary parts to the shower system.² Accordingly, we cannot classify it as a “part” of sanitary ware under heading 7324, HTSUS.

Heading 8302 provides, in pertinent part, for “Base metal mountings, fittings and similar articles suitable for furniture, doors, staircases, windows, blinds, coachwork, saddlery, trunks, chests, caskets or the like; base metal hat racks, hat-pegs, brackets and similar fixtures ... automatic door closers of base metal.” The terms “and the like” and “similar fixtures” require that we apply the rule of *ejusdem generis* to determine the scope of heading 8302, HTSUS. Under the rule of *ejusdem generis*, where an enumeration of specific things is followed by a general word or phrase, the general word or phrase is held to refer to things of the same kind as those specified. With respect to classification analysis, *ejusdem generis* requires that the imported merchandise possess the essential characteristics or purposes that unite the articles enumerated *eo nomine* in order to be classified under the general terms. See *Sports Graphics, Inc. v. United States*, 24 F.3d 1390, 1392 (Fed. Cir. 1994).

First, we note that all of the named articles in heading 8302, HTSUS, are of base metal. Note 3 to Section XV (which includes Chapter 83) states that base metal includes steel. Therefore, the steel escutcheon consists of a base metal.

Next, we find that the terms base metal “mountings” and “fittings” must be read in conjunction with the rest of the words of heading 8302. The words “suitable for furniture, doors, staircases, windows, blinds, coachwork, saddlery, trunks, chests, caskets or the like” qualify the meaning of “mountings” and “fittings.” EN 83.02 categorizes these articles into mountings suitable for buildings, mountings suitable for furniture, mountings suitable for trunks and other travel goods as well as hat-racks, hat-pegs and brackets.

The steel escutcheon is immediately distinguishable from mountings suitable for furniture, trunks, chests and travel goods because it does not attach to such articles. Moreover, hat racks, hat pegs and brackets all mount on the wall and support hats or other articles, such as shelves. In contrast, the steel escutcheon attaches to a shower and does not serve as a support. Thus, in order to be classified in heading 8302, HTSUS, the steel escutcheon must be a base metal mounting or fitting for a building.

The steel escutcheon attaches to a shower stall and hides the hole in the shower around the shower arm. Shower stalls are distinguishable from doors, staircases, and windows because they are not architectural elements of a building. In Headquarters Ruling Letter (HQ) 960428, dated December 15, 1997, we found that the grille cover for an air duct was not classified in heading 8302, HTSUS, because an air vent is distinguishable from the enumerated building components. Similarly, the steel escutcheon does not attach to an article similar to doors, staircases or windows. As a result, the scope of heading 8302, HTSUS, is too narrow to cover all of the escutcheons at importation.

² CBP has found that an escutcheon which contributes to a faucet’s function by mounting the faucet valves and water spout is classifiable as a “part” of a valve under heading 8481, HTSUS. See NY N19120, dated December 2, 2011.

Heading 7326, HTSUS, provides for other articles of iron or steel. EN 73.26 states that this heading covers articles of steel which are not classified elsewhere in the tariff schedule. Based upon the foregoing, the steel shower escutcheon is classified in heading 7326, HTSUS.

HOLDING:

By application of GRI 1, the steel shower escutcheon is classified in heading 7326, HTSUS. It is specifically classified under subheading 7326.90.85, HTSUS, which provides for "Other articles of iron or steel: Other: Other: Other . . ." The 2015 column one, general rate of duty is 2.9 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.usits.gov/tata/hts/.

EFFECT ON OTHER RULINGS:

NY L89621, dated January 5, 2006, is hereby revoked.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

GREG CONNOR

MODIFICATION OF TWO RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF BRASS ESCUTCHEONS

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

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

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is modifying two ruling letters relating to the tariff classification of brass escutcheons under the Harmonized Tariff Schedule of the United States (HTSUS). CBP is also revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the Customs Bulletin, Vol. 48, No. 45, on November 12, 2014. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after March 2, 2015.

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility**.” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff

Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625 (c)(1), Tariff Act of 1930, as amended (19 U.S.C. §1625 (c)(1)), a notice was published in the *Customs Bulletin*, Volume 48, No. 45, on November 12, 2014, proposing to modify New York Ruling Letter (NY) 186062, dated September 26, 2002, and NY 803902, dated November 29, 1994. In NY 186062, CBP determined that the subject brass escutcheons were classified in subheading 8481.90.10, HTSUS, which provides for: “Taps, cocks, valves and similar appliances ... parts thereof: Parts: Of hand operated and check appliances: Of copper” In NY 803902, CBP determined that the subject brass escutcheons were classified in subheading 7418.20.10, HTSUS, which provides for “[S]anitary ware and parts thereof, of copper: Sanitary ware and parts thereof: Of copper-zinc base alloys (brass) . . .” No comments were received in response to this notice.

As stated in the proposed notice, this action will cover any rulings on the subject merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the rulings identified above. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

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

Pursuant to 19 U.S.C. §1625(c)(1), CBP is modifying NY 186062 and NY 803902, in order to reflect the proper classification of the brass escutcheons under subheading 7419.99.50, HTSUS, which provides for “Other articles of copper: Other: Other: Other: Other ... ,” according to the analysis contained in HQ H201157, set forth as an attachment to this document.

In accordance with 19 U.S.C. §1625(c)(1), this ruling will become effective 60 days after publication in the *Customs Bulletin*.

Dated: December 16, 2014

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division
GREG CONNOR

Attachment

HQ H201157

December 16, 2014

CLA-2 OT:RR:CTF:TCM H201157 EGJ**CATEGORY:** Classification**TARIFF NO.:** 7419.99.50

FRANCISCO GOMEZ JR.
484 *TECATE ROAD*
P.O. *BOX 970*
TECATE, CA 91980

RE: Modification of New York Ruling Letters 186062 and NY 803902; Classification of Brass Escutcheons

DEAR MR. GOMEZ:

This is in reference to New York Ruling Letters (NY) 186062, dated September 26, 2002, issued to you concerning the tariff classification of a brass escutcheon under the Harmonized Tariff Schedule of the United States (HTSUS). In that ruling, U.S. Customs and Border Protection (CBP) classified the subject article in heading 8481, HTSUS, which provides for parts of valves. We have reviewed NY 186062 and find it to be in error. For the reasons set forth below, we hereby modify NY 186062 one other ruling with substantially similar merchandise: NY 803902, dated November 29, 1994.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice of the proposed modifications was published on November 12, 2014, in the *Customs Bulletin*, Volume 48, No. 45. CBP received no comments in response to this notice.

FACTS:

The subject merchandise is a chrome-plated brass escutcheon. This is a trim component for use in bathtubs and showers. The brass escutcheon is not imported as part of a valve assembly set; it is incorporated into a valve set after importation into the United States. The escutcheon's function is to hide the hole in the wall around a shower arm or bathtub spout, and to contribute to the bathroom's décor.

In bathroom showers, the shower's system is used indoors to deliver water from outside water lines. The body of the shower system, consisting of a valve and other connecting parts, is generally installed behind a wall. In contrast, the shower's trim components are installed on the shower's surface. Certain trim components enable the user to control the flow of water from the valve and into the shower. Generally, the trim components tend to be ornamental so as to enhance the decor of the bathroom.

ISSUE:

What is the tariff classification of the brass shower escutcheon?

LAW AND ANALYSIS:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

The relevant HTSUS provisions are:

7418 Table, kitchen or other household articles and parts thereof, of copper; pot scourers and scouring or polishing pads, gloves and the like, of copper; sanitary ware and parts thereof, of copper:

* * *

7419 Other articles of copper ...

* * *

8302 Base metal mountings, fittings and similar articles suitable for furniture, doors, staircases, windows, blinds, coachwork, saddlery, trunks, chests, caskets or the like; base metal hat racks, hat-pegs, brackets and similar fixtures; castors with mountings of base metal; automatic door closers of base metal; and base metal parts thereof ...

* * *

8481 Taps, cocks, valves and similar appliances, for pipes, boiler shells, tanks, vats or the like, including pressure-reducing valves and thermostatically controlled valves; parts thereof:

* * *

Note 3 to Section XV (which includes Chapters 72–83) states that:

Throughout the schedule, the expression “base metals” means: iron and steel, copper, nickel, aluminum, lead, zinc, tin, tungsten (wolfram), molybdenum, tantalum, magnesium, cobalt, bismuth, cadmium, titanium, zirconium, antimony, manganese, beryllium, chromium, germanium, vanadium, gallium, hafnium, indium, niobium (columbium), rhenium and thallium.

* * *

Subheading Note 1 (a) to Chapter 74 states that:

Subheading Note

1. In this chapter the following expressions have the meanings hereby assigned to them:

(a) Copper-zinc base alloys (brasses)

Alloys of copper and zinc, with or without other elements.
When other elements are present:

- zinc predominates by weight over each of such other elements;
- any nickel content by weight is less than 5 percent (see copper-nickel-zinc alloys (nickel silvers)); and
- any tin content by weight is less than 3 percent (see copper-tin alloys (bronzes)) ...

* * *

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System

at the international level. While not legally binding and, therefore not dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are thus useful in ascertaining the classification of merchandise under the Harmonized System. CBP believes the ENs should always be consulted. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

EN 7 4.18 provides, in pertinent part, that:

The Explanatory Notes to headings 73.21, 73.23 and 73.24 apply, *mutatis mutandis*, to this heading.

* * *

EN 73.24 provides, in pertinent part, that:

This heading comprises a wide range of iron or steel articles, **not more specifically covered** by other headings of the Nomenclature, used for sanitary purposes ... The heading includes, baths, bidets, hip-baths, foot-baths, sinks, wash basins, toilet sets; soap dishes and sponge baskets; douche cans, sanitary pails, urinals, bedpans, chamber-pots, water closet pans and flushing cisterns whether or not equipped with their mechanisms, spittoons, toilet paper holders.

* * *

EN 74.19 provides, in pertinent part, that:

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

* * *

EN 83.02 provides, in pertinent part, that:

This heading covers general purpose classes of base metal accessory fittings and mountings, such as are used largely on furniture, doors, windows, coachwork, etc. Goods within such general classes remain in this heading even if they are designed for particular uses (e.g., door handles or hinges for automobiles). The heading **does not**, however, **extend** to goods forming an essential part of the structure of the article, such as window frames or swivel devices for revolving chairs.

The heading covers ...

(D) Mountings, fittings and similar articles suitable for buildings

This group includes:

- (1) Door guards fitted with chains, bars, etc.; espagnolette or casement bolts and fittings; casement fasteners and stays; fanlight or skylight openers, stays and fittings; cabin hooks and eyes; hooks and fittings for double windows; hooks, fasteners, stops, brackets and roller ends for shutters or blinds; letter-box plates; door knockers, spy holes, etc. (**other than** those fitted with optical elements).

- (2) Catches (including ball spring catches), bolts, fasteners, latches, etc., (**other than** key-operated bolts of **heading 83.01**), for doors.
- (3) Fittings for sliding doors or windows of shops, garages, sheds, hangars, etc. (e.g., grooves and tracks, runners and rollers).
- (4) Keyhole plates and finger-plates for doors of buildings.
- (5) Curtain, blind or portiere fittings (e.g., rods, tubes, rosettes, brackets, bands, tassel hooks, clips, sliding or runner rings, stops); cleat hooks, guides and knot holders for blind cords, etc.; staircase fittings, such as protectors for staircase treads; stair carpet clips, stair rods, banister knobs. Rods, tubes and bars, suitable for use as curtain or stair rods, etc., merely cut to length and drilled, remain classified according to the constituent metal.
- (6) Corner braces, reinforcing plates, angles, etc., for doors, windows or shutters.
- (7) Hasps and staples for doors; handles and knobs for doors, including those for locks or latches.
- (8) Door stops and door closers (**other than** those of (H) below).

(E) Mountings, fittings and similar articles suitable for furniture

This group includes:

- (1) Protective studs (with one or more points) for legs of furniture, etc.; metal decorative fittings; shelf adjusters for book-cases, etc.; fittings for cupboards, bedsteads, etc.; keyhole plates.
- (2) Corner braces, reinforcing plates, angles, etc.
- (3) Catches (including ball spring catches), bolts, fasteners, latches, etc. (**other than** key-operated bolts of **heading 83.01**).
- (4) Hasps and staples for chests, etc.
- (5) Handles and knobs, including those for locks or latches.

(F) (1) Fittings and similar articles for trunks, chests, suit-cases or similar travel goods, e.g., lid guides (but **not including** fasteners); handles; corner protectors; lid struts and runners; closing rods for basket-trunks; fittings for expanding cases; however, ornaments for handbags fall in **heading 71.17** ...

(G) **Hat-racks, hat-pegs, brackets** (fixed, hinged or toothed, etc.) and **similar fixtures** such as coat racks, towel racks, dish-cloth racks, brush racks, key racks. Coat racks, etc., having the character of furniture, such as coat racks incorporating a shelf, are classified in **Chapter 94** ...

According to Subheading Note 1(a) to Chapter 74, brass is a copper-zinc alloy. As such, brass articles are classifiable as copper articles in Chapter 74. Heading 7418, HTSUS, provides for copper sanitary ware and parts of sanitary ware. The term “sanitary ware” is not defined in the HTSUS.¹ The *Macmillan Dictionary*, available at www.macmillandictionary.com, defines “sanitary” as “relating to people’s health, especially to the system of supply water and dealing with human waste.” *Merriam-Webster’s Collegiate Dictionary*, 1033 (10th Ed. 2001), defines sanitary ware as “ceramic plumbing fixtures (as sinks, lavatories or toilet bowls).” These definitions are consistent with EN 73.24, which states, *inter alia*, that “baths, bidets .. sinks, wash basins ... soap dishes and sponge baskets ... urinals, bedpans, chamber-pots, water closet pans and flushing cisterns ... spittoons, toilet paper holders” are all sanitary ware.

The subject brass escutcheon is a component of a shower or bathtub system. Baths and showers are types of sanitary ware. Thus, if the brass escutcheon constitutes a “part” within the meaning of the HTSUS, we could classify it as a part of sanitary ware under heading 7418, HTSUS.

In *Bauerhin Techs. Ltd. P’ship. United States*, 110 F. 3d 774 (Fed. Cir. 1997), the court identified two distinct lines of cases defining the word “part.” Consistent with *United States v. Willoughby Camera Stores, Inc.*, 21 C.C.P.A. 322, 324 (1933), one line of cases holds that a part of an article “is something necessary to the completion of that article without which the article to which it is to be joined, could not function as such article.” The other line of cases evolved from *United States v. Pompeo*, 43 C. C.P.A. 9, 14 (1955), which held that a device may be a part of an article even though its use is optional and the article will function without it, if the device is dedicated for use upon the article, and, once installed, the article will not operate without it. Under either line of cases, an imported item is not a part if it is “a separate and distinct commercial entity.” *ABB, Inc. v. United States*, 28 Ct. Int’l Trade 1444, 1452–53 (2004).

Applying the case law, the brass escutcheon is not a “part” under the HTSUS. This trim component is of a strictly decorative nature. The escutcheon does not contribute to the function of the shower or bath into which it is installed, nor does it mount any other necessary parts to the shower or bath system.² Accordingly, we cannot classify it as a “part” of sanitary ware under heading 7418, HTSUS.

¹ When, as in this case, a tariff term is not defined by the HTSUS or its legislative history, “the term’s correct meaning is its common meaning.” *Mita Copystar Am. v. United States*, 21 F.3d 1079, 1082 (Fed. Cir. 1994). The common meaning of a term used in commerce is presumed to be the same as its commercial meaning. *Simod Am. Corp. v. United States*, 872 F.2d 1572, 1576 (Fed. Cir. 1989). To ascertain the common meaning of a term, a court may consult “dictionaries, scientific authorities, and other reliable information sources” and “lexicographic and other materials.” *C.J. Tower & Sons v. United States*, 673 F.2d 1268, 1271 (CCPA 1982); *Simod*, 872 F.2d at 1576.

² CBP has found that an escutcheon which contributes to a faucet’s function by mounting the faucet valves and water spout is classifiable as a “part” of a valve under heading 8481, HTSUS. See NY N19120, dated December 2, 2011.

Heading 8302 provides, in pertinent part, for “Base metal mountings, fittings and similar articles suitable for furniture, doors, staircases, windows, blinds, coachwork, saddlery, trunks, chests, caskets or the like; base metal hat racks, hat-pegs, brackets and similar fixtures ... automatic door closers of base metal.” The terms “and the like” and “similar fixtures” require that we apply the rule of *ejusdem generis* to determine the scope of heading 8302, HTSUS. Under the rule of *ejusdem generis*, where an enumeration of specific things is followed by a general word or phrase, the general word or phrase is held to refer to things of the same kind as those specified. With respect to classification analysis, *ejusdem generis* requires that the imported merchandise possess the essential characteristics or purposes that unite the articles enumerated *eo nomine* in order to be classified under the general terms. See *Sports Graphics, Inc. v. United States*, 24 F.3d 1390, 1392 (Fed. Cir. 1994).

First, we note that all of the named articles in heading 8302, HTSUS, are of base metal. Note 3 to Section XV (which includes Chapter 83) states that base metal includes copper. Therefore, the brass escutcheon consists of a base metal.

Next, we find that the terms base metal “mountings” and “fittings” must be read in conjunction with the rest of the words of heading 8302. The words “suitable for furniture, doors, staircases, windows, blinds, coachwork, saddlery, trunks, chests, caskets or the like” qualify the meaning of “mountings” and “fittings.” EN 83.02 categorizes these articles into mountings suitable for buildings, mountings suitable for furniture, mountings suitable for trunks and other travel goods as well as hat-racks, hat-pegs and brackets.

The brass escutcheon is immediately distinguishable from mountings for furniture, trunks, chests and travel goods because it does not attach to such articles. Moreover, hat racks, hat pegs and brackets all mount on the wall and support hats or other articles, such as shelves. In contrast, the brass escutcheon attaches to a shower or bath and does not serve as a support. Thus, in order to be classified in heading 8302, HTSUS, the brass escutcheon must be a base metal mounting or fitting for a building.

The brass escutcheon attaches to a shower stall and hides the hole in the shower around the shower arm. Shower stalls are distinguishable from doors, staircases, and windows because they are not architectural elements of a building. In Headquarters Ruling Letter (HQ) 960428, dated December 15, 1997, we found that the grille cover for an air duct was not classified in heading 8302, HTSUS, because an air vent is distinguishable from the enumerated building components. Similarly, the brass escutcheon does not attach to an article similar to doors, staircases or windows. As such, heading 8302, HTSUS, does not cover the instant merchandise.

Heading 7419, HTSUS, provides for other articles of copper. EN 74.19 states that this heading covers articles of copper which are not classified elsewhere in the tariff schedule. Based upon the foregoing, the brass escutcheon is classified in heading 7419, HTSUS.

HOLDING:

By application of GRI 1, the brass escutcheon is classified in heading 7419, HTSUS. It is specifically classified under subheading 7419.99.50, which provides for “Other articles of copper: Other: Other: Other: Other ... “ The 2015 column one, general rate of duty is free.

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

EFFECT ON OTHER RULINGS:

NY 186062, dated September 26, 2002 and NY 803902, dated November 29, 1994, are hereby modified.

Sincerely,

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

GREG CONNOR

CUSTOMS BROKERS USER FEE PAYMENT FOR 2015

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

ACTION: General notice.

SUMMARY: This document provides notice to customs brokers that the annual fee of \$138 that is assessed for each permit held by a broker, whether it may be an individual, partnership, association, or corporation, is due by February 27, 2015.

DATES: Payment of the 2015 Customs Broker User Fee is due by February 27, 2015.

FOR FURTHER INFORMATION CONTACT: Brian Barulich, Broker Management Branch, Office of International Trade, (202) 863-6099.

SUPPLEMENTARY INFORMATION:

Pursuant to § 111.96 of title 19 of the Code of Federal Regulations (19 CFR 111.96(c)), U.S. Customs and Border Protection (CBP) assesses an annual user fee of \$138 for each customs broker district and national permit held by an individual, partnership, association, or corporation. CBP regulations provide that this fee is payable for each calendar year in each broker district where the broker was issued a permit to do business by the due date which is published in the **Federal Register** annually. *See* 19 CFR 24.22(h) and (i)(9). Broker districts are defined in the General Notice entitled, “Geographical Boundaries of Customs Brokerage, Cartage and Lighterage Districts” published in the **Federal Register** on September 27, 1995 (60 FR 49971).

As required by 19 CFR 111.96, CBP must provide notice in the **Federal Register** no later than 60 days before such due date on which the payment is due for each broker permit. This document notifies customs brokers that for calendar year 2015, the due date for payment of the user fee is February 27, 2015. It is anticipated that for subsequent years, the annual user fee for customs brokers will be due on the last business day of February of each year.

Dated: December 17, 2014.

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

NEW DATE FOR THE APRIL 2015 CUSTOMS BROKER LICENSE EXAMINATION

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

ACTION: General notice.

SUMMARY: This document announces that U.S. Customs and Border Protection has changed the date on which the semi-annual written examination for an individual broker's license will be held in April 2015.

DATES: The customs broker's license examination scheduled for April 2015 will be held on Monday, April 13.

FOR FURTHER INFORMATION CONTACT: John Lugo, Broker Management Branch, Office of International Trade, (202) 863-6015.

SUPPLEMENTARY INFORMATION:

Background

Section 641 of the Tariff Act of 1930, as amended (19 U.S.C. 1641), provides that a person (an individual, corporation, association, or partnership) must hold a valid customs broker's license and permit in order to transact customs business on behalf of others, sets forth standards for the issuance of broker's licenses and permits, and provides for the taking of disciplinary action against brokers that have engaged in specified types of infractions. This section also provides that an examination may be conducted to assess an applicant's qualifications for a license.

The regulations issued under the authority of section 641 are set forth in Title 19 of the Code of Federal Regulations, part 111 (19 CFR part 111). Part 111 sets forth the regulations regarding the licensing of, and granting of permits to, persons desiring to transact customs business as customs brokers. These regulations also include the qualifications required of applicants and the procedures for applying for licenses and permits. 19 CFR 111.11 sets forth the basic requirements for a broker's license and, 19 CFR 111.11(a)(4), provides that an applicant for an individual broker's license must attain a passing grade (75 percent or higher) on a written examination.

19 CFR 111.13 sets forth the requirements and procedures for the written examination for an individual broker's license and states that written customs broker license examinations will be given on the first

Monday in April and October unless the regularly scheduled examination date conflicts with a national holiday, religious observance, or other foreseeable event.

CBP recognizes that the first Monday in April 2015 coincides with the observance of the religious holiday of Passover. In consideration of this conflict, CBP has decided to change the regularly scheduled date of the examination. This document announces that CBP has scheduled the April 2015 broker license examination for Monday, April 13, 2015.

Dated: December 16, 2014.

BRENDA B. SMITH,
Assistant Commissioner,
Office of International Trade, U.S. Customs
and Border Protection.

[Published in the Federal Register, December 22, 2014 (79 FR 76346)]



AGENCY INFORMATION COLLECTION ACTIVITIES:

Foreign Assembler's Declaration

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

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

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Foreign Assembler's Declaration (with Endorsement by Importer). CBP is proposing that this information collection be extended with no change to the burden hours or to the information collected. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before February 23, 2015 to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229-1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S.

Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION:

CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L 104–13; 44 U.S.C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency’s estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual cost burden to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Foreign Assembler’s Declaration (with Endorsement by Importer).

OMB Number: 1651–0031.

Abstract: In accordance with 19 CFR 10.24, a Foreign Assembler’s Declaration must be made in connection with the entry of assembled articles under subheading 9802.00.80, Harmonized Tariff Schedule of the United States (HTSUS). This declaration includes information such as the quantity, value and description of the imported merchandise. The declaration is made by the person who performed the assembly operations abroad and it includes an endorsement by the importer. The Foreign Assembler’s Declaration is used by CBP to determine whether the operations performed are within the purview of subheading 9802.00.80, HTSUS and therefore eligible for preferential tariff treatment.

19 CFR 10.24(c) and (d) require that the importer/assembler maintain records for 5 years from the date of the related entry and that they make these records readily available to CBP for audit, inspection, copying, and reproduction. Instructions for complying with this regulation are posted on the CBP.gov Web site at:

http://www.cbp.gov/trade/trade-community/outreach-programs/trade-agreements/nafta/repairs-alterations/subchpt-9802.

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

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents/Recordkeepers: 2,730.

Estimated Time per Response/Recordkeeping: 55 minutes.

Estimated Number of Responses/Recordkeeping per Respondent: 128.

Estimated Total Annual Burden Hours: 320,087.

Dated: December 17, 2014,

TRACEY DENNING,
Agency Clearance Officer,
U.S. Customs and Border Protection.

[Published in the Federal Register, December 23, 2014 (79 FR 77021)]

AGENCY INFORMATION COLLECTION ACTIVITIES:

Application for Allowance in Duties

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

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

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Application for Allowance of Duties. CBP is proposing that this information collection be extended with no change to the burden hours or to the information collected. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before February 23, 2015 to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229-1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229-1177, at 202-325-0265.

SUPPLEMENTARY INFORMATION:

CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13; 44 U.S. C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual cost burden to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Application for Allowance in Duties

OMB Number: 1651-0007

Form Number: Form 4315

Abstract: CBP Form 4315, "Application for Allowance in Duties," is submitted to CBP in instances of claims of damaged or defective imported merchandise on which an allowance in duty is made in the liquidation of the entry. The information on this form is used to substantiate an importer's claim for such duty allowances. CBP Form 4315 is authorized by 19 U.S.C. 1506 and provided for by 19 CFR 158. This form is accessible at: http://www.cbp.gov/sites/default/files/documents/CBP%20Form%204315_0.pdf

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to Form 4315.

Type of Review: Extension (without change)

Affected Public: Importers

Estimated Number of Respondents: 12,000

Estimated Number of Total Annual Responses: 12,000

Estimated Time per Response: 8 minutes

Estimated Annual Burden Hours: 1,600

Dated: December 17, 2014.

TRACEY DENNING,
Agency Clearance Officer,
U.S. Customs and Border Protection.

[Published in the Federal Register, December 23, 2014 (79 FR 77019)]

AGENCY INFORMATION COLLECTION ACTIVITIES:

Petition for Remission or Mitigation of Forfeitures and Penalties Incurred

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

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

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Petition for Remission or Mitigation of Forfeitures and Penalties Incurred (CBP Form 4609). CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before February 23, 2015 to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229-1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S.

Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229-1177, at 202-325-0265.

SUPPLEMENTARY INFORMATION:

CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13; 44 U.S.C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual cost burden to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Petition for Remission or Mitigation of Forfeitures and Penalties Incurred.

OMB Number: 1651-0100.

Form Number: Form 4609.

Abstract: CBP Form 4609, Petition for Remission or Mitigation of Forfeitures and Penalties Incurred, is completed and filed with the CBP Port Director by individuals who have been found to be in violation of one or more provisions of the Tariff Act of 1930, or other laws administered by CBP. Persons who violate the Tariff Act are entitled to file a petition seeking mitigation of any statutory penalty imposed or remission of a statutory forfeiture incurred. This petition is submitted on CBP Form 4609. The information provided on this form is used by CBP personnel as a basis for granting relief from forfeiture or penalty. CBP Form 4609 is authorized by 19 U.S.C. 1618 and provided for by 19 CFR 171.11. It is accessible at: <http://www.cbp.gov/sites/default/files/documents/CBP%20Form%204609.pdf>.

Current Actions: CBP proposes to extend the expiration date of this information collection with a change to the burden hours resulting from updated estimates of the number of responses. There are no changes to the information collected.

Type of Review: Extension (with change).

Affected Public: Businesses.

Estimated Number of Respondents: 1,610.

Estimated Number of Total Annual Responses: 1,610.

Estimated Time per Response: 14 minutes.

Estimated Annual Burden Hours: 376.

Dated: December 17, 2014,

TRACEY DENNING,
Agency Clearance Officer,
U.S. Customs and Border Protection.

[Published in the Federal Register, December 23, 2014 (79 FR 77019)]

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AGENCY INFORMATION COLLECTION ACTIVITIES:
Small Vessel Reporting System

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

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

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Small Vessel Reporting System (SVRS). CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before February 23, 2015 to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229-1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229-1177, at 202-325-0265.

SUPPLEMENTARY INFORMATION:

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

Title: Small Vessel Reporting System

OMB Number: 1651–0137

Abstract: The Small Vessel Reporting System (SVRS) is a pilot program that allows certain participants using small pleasure boats to report their arrival telephonically instead of having to appear in person for inspection by a CBP officer each time they enter the United States. In some cases, a participant may also be asked to report to CBP for an in person inspection upon arrival. Participants may be U.S. citizens, U.S. lawful permanent residents, Canadian citizens, and permanent residents of Canada who are nationals of Visa Waiver Program countries listed in 8 CFR 217.2(a). In addition, participants of one or more Trusted Traveler programs and current Canadian Border Boater Landing Permit (CBP Form I–68) holders may participate in SVRS.

In order to register for the SVRS pilot program, participants enter data via the SVRS Web site, which collects information such as biographical information and vessel information. Participants will go through the in person CBP inspection process during SVRS registration, and in some cases, upon arrival in the United States.

For each voyage, SVRS participants will be required to submit a float plan about their voyage via the SVRS Web site in advance of arrival in the United States. The float plan includes vessel information, a listing of all persons on board, estimated dates and times of departure and return, and information on the locations to be visited

on the trip. Participants in SVRS can create a float plan for an individual voyage or a template for a float plan that can be used multiple times.

SVRS is authorized by 8 U.S.C. 1103, 8 U.S.C. 1225, 8 U.S.C. 1365b, 8 CFR 235.1, 19 U.S.C. 1433, 19 U.S.C. 1498, and 19 CFR 4.2. The SVRS Web site is accessible at: <https://svrs.cbp.dhs.gov/>.

Current Actions: CBP proposes to extend the expiration date of this information collection with a change to the burden hours resulting from updated estimates of the number of respondents. There is no change to the information being collected.

Type of Review: Extension (with change)

Individuals

SVRS Application

Estimated Number of Respondents: 7,509

Estimated Number of Total Annual Responses: 7,509

Estimated Time per Response: 15 minutes

Estimated Total Annual Burden Hours: 1,877

Float Plan

Estimated Number of Respondents: 2,589

Estimated Number of Total Annual Responses: 2,589

Estimated Time per Response: 10.6 minutes

Estimated Total Annual Burden Hours: 457

Dated: December 17, 2014,

TRACEY DENNING,
Agency Clearance Officer,
U.S. Customs and Border Protection.

[Published in the Federal Register, December 23, 2014 (79 FR 77020)]

U.S. Court of Appeals for the Federal Circuit

BELIMO AUTOMATION A.G., Plaintiff-Appellant, v. UNITED STATES,
Defendant-Appellee.

Appeal No. 2014–1165

Appeal from the United States Court of International Trade in No. 10-CV-0113,
Judge Mark A. Barnett.

Dated: December 19, 2014

ROBERT B. SILVERMAN, Grunfeld, Desiderio, Lebowitz, Silverman & Klestadt LLP, of New York, New York, argued for plaintiff-appellant. With him on the brief were PETER W. KLESTADT and ROBERT F. SEELY.

AMY M. RUBIN, Assistant Director, Commercial Litigation Branch, Civil Division, United States Department of Justice, of New York, New York, argued for defendant-appellee. With her on the brief were STUART F. DELERY, Assistant Attorney General and JEANNE E. DAVIDSON, Director, of Washington, DC. Of counsel on the brief was MICHAEL W. HEYDRICH, Office of Assistant Chief Counsel, United States Customs and Border Protection, of New York, New York.

Before PROST, *Chief Judge*, NEWMAN and TARANTO, *Circuit Judges*.

PROST, *Chief Judge*.

Belimo appeals from the Court of International Trade’s classification of Belimo’s imports as “electric motors” under subheading 8501.10.40 of the Harmonized Tariff Schedule of the United States (“HTSUS”). Belimo argues that the subject imports should have been classified as “automatic regulating and controlling instruments and apparatus; parts and accessories thereof” under HTSUS 9032.89.60. Because we agree with the Court of International Trade that Belimo’s imports are not designed to measure either temperature or a variable of liquids or gases, as is required by HTSUS 9032.89.60, we affirm.

BACKGROUND

Belimo’s imported devices consist of an electric motor, gears, and two printed circuit boards, and are principally used in heating, ventilating, and air conditioning (“HVAC”) systems within buildings. *Belimo Automation A.G. v. United States*, 35 ITRD 2319, 2013 WL 6439119, at *1 (Ct. Int’l Trade 2013) (“*Opinion*”). HVAC systems work by pumping cold or hot air into a room. The HVAC system’s sensors detect the ambient temperature in a given space, and send information to a central controller, which compares the actual temperature values to the user’s desired temperature values. Next, the central

controller sends a signal to the actuators, electric motors that adjust the angle of a damper blade to let in more or less hot or cold air.

In a traditional HVAC system, the actuator receives the signal from the central controller and moves the damper blade to the position indicated by the controller. However, if a disturbance such as a strong draft moves the damper blade, it may become stuck in the incorrect position. Belimo's products are similar to a traditional actuator, but represent an improvement in that they incorporate a programmed Application Specific Integrated Circuit ("ASIC"). The ASIC's purpose is to continuously and independently monitor the damper blade's position, and maintain it at the correct angle without any input from the central controller. The ASIC accomplishes this by monitoring the behavior of the electric motor that moves the damper blade.¹

The ASIC operates independently from the central controller and can detect unintended changes in damper blade position; this allows it to better maintain the blade's position against disturbances. The ASIC performs other independent functions: it can adapt to receive an AC or DC signal from the controller, filter out unintended electric signals, and use stored energy to prevent the motor from spinning out of control in the event of a power failure. *Opinion*, 2013 WL 6439119, at *8; Appellant's Br. 14 (agreeing with the Court of International Trade's factual recitation).

The subject imports entered the United States between February 9, 2007 and February 26, 2007. U.S. Customs and Border Protection liquidated them between December 21, 2007 and January 11, 2008 under HTSUS 8501.10.40. Belimo timely filed a request protesting this classification decision on June 17, 2008. On September 18, 2009, Customs denied the request. HQ H044560 (Sept. 18, 2009). Belimo challenged the denial of its request at the Court of International Trade, claiming that the products should have been classified as "automatic regulating and controlling instruments and apparatus; parts and accessories thereof" under HTSUS 9032.89.60.

The Court of International Trade affirmed on cross-motions for summary judgment that the actuators could not be classified under HTSUS 9032, because they do not automatically measure the actual value of the temperature or any variable of air, as required by HTSUS Chapter 90, Note 7(a). *Opinion*, 2013 WL 6439119, at *7. The Court of International Trade also held that the subject actuators were correctly classified as "electric motors" under Heading 8501. *Id.* at *7-8. Despite the fact that the actuators incorporated additional parts and

¹ Different models of the subject imports employ different methods to monitor the motor, such as measuring electric resistance or changes in the motor's magnetic field. We agree with the Court of International Trade that the differences in the subject imports' motor monitoring methods are not material to our analysis. *Opinion*, 2013 WL 6439119, at *1 n.2.

components such as the ASIC, which allowed the motor to operate more precisely and reliably, the court held that “the ASIC does not change the principal function of the subject imports as electric motors.” *Id.* at *8 (quoting *Nidec Corp. v. United States*, 68 F.3d 1333, 1337 (Fed. Cir. 1995)). Belimo appeals. We have jurisdiction under 28 U.S.C. § 1295(a)(5).

STANDARD OF REVIEW

The meaning and scope of tariff headings and subheadings presented in this appeal are pure questions of law which this court reviews de novo. *Deckers Corp. v. United States*, 532 F.3d 1312, 1314 (Fed. Cir. 2008); *Metchem, Inc. v. United States*, 513 F.3d 1342, 1345 (Fed. Cir. 2008).

DISCUSSION

HTSUS Chapter 90, Note 7(a) can be broken up into three main clauses, and provides that Heading 9032 applies only to:

[1] Instruments and apparatus for automatically controlling the flow, level, pressure or other variables of liquids or gases, or for automatically controlling temperature,

[2] whether or not their operation depends on an electrical phenomenon which varies according to the factor to be automatically controlled,

[3] which are designed to bring the factor to, and maintain it at, a desired value, stabilized against disturbances, by constantly or periodically measuring its actual value.

The parties’ disagreement is focused on whether Belimo’s products satisfy the requirements of clauses one and three. We hold that Belimo’s actuators are not designed to measure the actual value of a factor of liquids or gases, as required by clause three. Thus, we do not decide whether they automatically control temperature or a variable of liquids or gases as required by clause one.

Clause three requires a qualifying instrument to measure the actual value of “the factor.” Belimo incorrectly argues that “the factor” includes electrical phenomena, such as the actuator motor’s behavior. Rather, “the factor” refers to “the factor to be automatically controlled” in clause two. Clause one in turn establishes the set of things that may be automatically controlled: “the flow, level, pressure or other variables of liquids or gases,” as well as “temperature.” Therefore, “the factor” is a general term that consists of temperature, as well as flow, level, pressure, and other variables of liquids or gases that maybe automatically controlled by the instrument or apparatus.

The factor to be automatically controlled by the subject imports is air flow—and by extension, room temperature—but the “factor” here does *not* include motor winding position or any electrical phenomenon. To qualify under Heading 9032, therefore, Belimo must show at least that its actuators are designed to measure the actual value of temperature, or some other variable of air such as flow, level, or pressure.

Belimo acknowledges that the ASIC “measure[s] the current position of the damper blade.” Appellant’s Br. 8. The ASIC does not directly measure air flow or temperature; that is the job of the HVAC sensors. Belimo argues, however, that its ASIC measures flow *indirectly*, using the changes in damper blade position as a reference. Appellant’s Reply Br. 16 (“[Damper blade] position equates to a specific flow as a proportion of the total potential flow through the HVAC conduit at a given level of pump or fan pressure.”). Belimo argues that “[i]t is enough if the controlling device is simply ‘sensitive to changes in the variable to be controlled.’” *Id.* at 17. To support this position, Belimo cites the additional guidance in Explanatory Note EN 9032(I), which explains that “in some cases, a simple device which is sensitive to changes in the variable . . . may be used instead of a measuring device.” Appellant’s Br. 20. The government does not dispute that a Heading 9032 controller may measure the variable to be controlled indirectly. Appellee’s Br. 30. Rather, the government argues that the subject imports do not “measure” flow in the relevant sense. *Id.*

Belimo’s argument that a device merely needs to be “sensitive to changes in the variable to be controlled” stretches the heading too far. A block of ice may be sensitive to temperature, but the ice does not “measure” temperature in any meaningful way. We need not decide precisely how direct or indirect a device’s measurement must be in order to satisfy this requirement. It is enough to resolve this case that Note 7(a) requires the instrument or apparatus be “designed” to control a factor through the measurement of the factor’s actual value. *See* Note 7(a) (Heading 9032 applies to “instruments . . . which are *designed* to bring the factor to, and maintain it at, a desired value, . . . by constantly or periodically measuring its actual value.”) (emphasis added). Although the ASIC monitors the motor’s behavior and measures the damper blade’s position, it was not designed to control airflow or temperature by directly or indirectly measuring its actual value. The airflow rate is not well correlated to the position of the damper blades; it also depends on the speed of the system fan, for example. Meanwhile, temperature is sensitive to a multitude of factors besides damper blade position, including whether the doors or windows in the room are open, the number of room occupants, the

location of the room within the building, etc. Moreover, even if Belimo's actuators could be used with some degree of success to calculate air flow in a room, they are not *designed* to take the place of the HVAC sensors, which *do* measure temperature and report this information to the central controller. Unlike the exemplars in EN 9032(I) that are designed to measure the actual value of variables of gases through indirect methods, *see* Appellant's Reply Br. 18 ("Pressure regulators may operate based on the force exerted on 'an adjustable spring,' and a humidistat may operate based on the length of strands of hair."), Belimo's actuators are only designed to monitor motor behavior. Therefore, they cannot be classified under HTSUS Heading 9032.

We turn next to whether Belimo's actuators were properly classified as "electric motors" under HTSUS Heading 8501.10.40. Belimo concedes that absent the ASIC, its actuators would be classified under Heading 8501. Appellant's Br. 47. Belimo argues, however, that the inclusion of the ASIC "changes [the actuator's] functionality from electric motor to automatic controller of fluids and gases." *Id.* at 47–48. Belimo even goes so far as to say they are no longer "actuators" as a result. Appellant's Reply Br. 24.

The Court of International Trade properly dismissed Belimo's argument. The actuators are electric motors, as they convert electric energy into mechanical energy. *Opinion*, 2013 WL 6439119, at *7. Note 3 to Section XVI, which encompasses Heading 8501, states that "[u]nless the context otherwise requires, . . . machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as . . . that machine which performs the principal function." Although the ASIC "contributes additional functionalities beyond those that a basic electric motor offers, including continuous monitoring of the motor absent a signal from the central controller, adapting to AC or DC electrical signals, and storing energy for use in the event of a power failure," these additional functions are complementary to the principal function of an electric motor, and all relate to improving the precision and reliability of the motor's operation. *Id.* at *8. In other words, although the presence of the ASIC may allow the motor to do its job more efficiently and accurately, and in some cases more safely, the ASIC's principal function is nonetheless

to assist in moving the damper blades.² Classification of Belimo's products as motors under Heading 8501.10.40 is therefore proper.

CONCLUSION

For the aforementioned reasons, we affirm the judgment of the Court of International Trade.

AFFIRMED

² Belimo criticizes the Court of International Trade for relying on *Nidec Corp. v. United States*, 68 F.3d 1333, 1336–37 (Fed. Cir. 1995). Belimo attempts to distinguish the case on the ground that its products automatically perform a measurement and control function, whereas the motor in *Nidec* did not. However, as in *Nidec*, the “basic character” of Belimo’s product is a motor with an additional component—the ASIC—that improves its precision. Thus, its principal function is still that of an electric motor. *See Opinion*, 2013 WL 6439119, at *8.

THAI PLASTIC BAGS INDUSTRIES CO., LTD., MASTER PACKAGING, INC., AND INTEPLAST GROUP, LTD., Plaintiffs-Appellants, v. UNITED STATES, POLYETHYLENE RETAIL CARRIER BAG COMMITTEE, HILEX POLY CO., LLC, AND SUPERBAG CORPORATION, Defendants-Appellees.

Appeal No. 2014–1237

Appeal from the United States Court of International Trade in Nos. 1:11-cv-00408, 1:11-cv-00409, and 1:11-cv-00416, Judge Donald C. Pogue.

Dated: Decided: December 24, 2014

IRENE H. CHEN, Chen Law Group LLC, of Rockville, Maryland, argued for plaintiffs-appellants.

RYAN M. MAJERUS, Trial Attorney, Commercial Litigation Branch, Civil Division, United States Department of Justice, of Washington, DC, argued for defendant-appellee United States. With him on the brief were STUART F. DELERY, Assistant General, JEANNE E. DAVIDSON, Director, and PATRICIA M. MCCARTHY, Assistant Director. Of counsel on the brief was SCOTT D. MCBRIDE, Senior Attorney, Office of the Chief Counsel for Trade Enforcement and Compliance, United States Department of Commerce, of Washington, DC.

DANIEL L. SCHNEIDERMAN, King & Spalding, of Washington, DC, argued for defendants-appellees Polyethylene Retail Carrier Bag Committee, et al. With him on the brief was JOSEPH W. DORN. Of counsel was STEVEN A. JONES.

Before LOURIE, MOORE, and CHEN, *Circuit Judges*.

LOURIE, *Circuit Judge*.

Thai Plastic Bags Industries Co., Ltd., Master Packaging, Inc., and Inteplast Group, Ltd. (collectively, “TPBI”) appeal from the decision of the United States Court of International Trade affirming the Final Results of the sixth administrative review of the antidumping duty order on polyethylene retail carrier bags from Thailand by the United States Department of Commerce (“Commerce”) that excluded Blue Corner Rebate revenue from the calculation of the cost of production. *See Thai Plastic Bags Indus. Co. v. United States*, 904 F. Supp. 2d 1326 (Ct. Int’l Trade 2013) (“*Decision*”). Because we conclude that the Court of International Trade did not err in affirming Commerce’s decision, we *affirm*.

BACKGROUND

The Thai government provides rebates through the Blue Corner Rebate (“BCR”) program to domestic manufacturers who produce and export products made from raw materials imported by domestic suppliers. TPBI manufactures polyethylene retail carrier bags in Thailand and exports them to the United States. TPBI obtains the polyethylene resin used for manufacturing those bags from Thai domestic suppliers, who in turn import the raw materials for producing resin and pay the associated import duties. To account for those duties,

TPBI pays a compensation fee to the resin suppliers in exchange for tax certificates, which are then provided to the Thai government upon export of the finished bag products in exchange for rebates under the BCR program.

Commerce imposes remedial duties when foreign products are sold at less than fair value, which Commerce determines by comparing the exporter's home market price to the export price, *i.e.*, the U.S. price. 19 U.S.C. § 1677b(a). If sales in the home market are made at prices below the cost of production of the product, however, Commerce will disregard the prices of those sales when determining the antidumping duty margin. 19 U.S.C. § 1677b(b). The calculation of the cost of production is based on the cost of producing the finished product for sale in the home market, and includes the cost of raw materials as well as a catch-all category of general and administrative expenses. *See* 19 U.S.C. § 1677b(b)(3). A lower calculated cost of production results in the inclusion of more sales at lower prices, which means a lower home market price to compare to the export price, and hence a smaller dumping margin and a lesser antidumping duty.

In 2004, Commerce determined that polyethylene retail carrier bags from Thailand were being sold in the United States at less than fair value, *Polyethylene Retail Carrier Bags from Thailand*, 69 Fed. Reg. 34,122 (Dep't of Commerce June 18, 2004) and 69 Fed. Reg. 42,419 (Dep't of Commerce July 15, 2004); the International Trade Commission determined that the domestic industry was materially injured by those imports, 69 Fed. Reg. 47,957 (USITC Aug. 6, 2004); and Commerce accordingly issued an antidumping duty order, 69 Fed. Reg. 48,204 (Dep't of Commerce Aug. 9, 2004). Several years later, Commerce conducted its sixth administrative review of that antidumping duty order, covering the period of August 1, 2009 through July 31, 2010. For this review, TPBI sought to adjust the calculation of its cost of production downwards by arguing that the Thai BCR program provided compensation for the fees paid to its resin suppliers and therefore that BCR revenue should be subsumed into production costs. J.A. 891 (Issues and Decision Memorandum for the Final Results). Because previous attempts to offset its raw material costs had been rejected, TPBI incorporated BCR revenue this time as an adjustment to its general and administrative expenses. *Id.* The domestic industry of polyethylene retail carrier bag manufacturers and producers, as represented by the Polyethylene Retail Carrier Bag Committee and its individual members, Hilex Poly Co., LLC and Superbag Corporation, submitted briefs commenting on the administrative review and urging Commerce to deny the offset for BCR revenue to TPBI's general and administrative expenses.

Commerce determined that the BCR program related to export sales rather than production costs, and therefore that adjusting the calculation of TPBI's cost of production to take account of BCR revenue would be inappropriate. J.A. 893; see *Decision* at 1330. Commerce noted that BCR revenues are "somewhat analogous" to duty drawbacks, where an adjustment to the U.S. price of the product would correct for an imbalance resulting from import duties that are factored into home market prices but either rebated or not collected for exported products. J.A. 893; see generally 19 U.S.C. § 1677a(c)(1)(B); *Saha Thai Steel Pipe (Pub.) Co. v. United States*, 635 F.3d 1335, 1340–41 (Fed. Cir. 2011). However, Commerce further noted, TPBI had neither attempted to show a link between the import duties paid and the rebates received from the Thai government, nor claimed BCR revenue as a duty drawback. J.A. 893; see *Decision* at 1330 n.9; see also *Wheatland Tube Co. v. United States*, 414 F. Supp. 2d 1271, 1276 (Ct. Int'l Trade 2006) (describing test for evaluating duty drawback claims). Commerce therefore determined the anti-dumping margin without an offset for BCR revenue in TPBI's cost of production. TPBI appealed to the Court of International Trade.

The Court of International Trade affirmed Commerce's decision to not deduct BCR revenue from the calculation of the cost of production. *Decision* at 1331. The court agreed that rebates conditioned upon exportation are, by definition, not available for like products sold in TPBI's home market. *Id.* at 1330. The court held that because the record reasonably supported a finding that BCR revenue was export-conditional, substantial evidence supported Commerce's conclusion that BCR revenue was not relevant to the cost of production. *Id.* at 1331.

TPBI timely appealed. We have jurisdiction pursuant to 28 U.S.C. § 1295(a)(5).

DISCUSSION

We review decisions of the Court of International Trade *de novo*, applying the same substantial evidence standard of review that the Court of International Trade itself applies in reviewing Commerce's determinations. *Global Commodity Grp. LLC v. United States*, 709 F.3d 1134, 1138 (Fed. Cir. 2013); *PPG Indus., Inc. v. United States*, 978 F.2d 1232, 1236 (Fed. Cir. 1992). "Although such review amounts to repeating the work of the Court of International Trade, we have noted that 'this court will not ignore the informed opinion of the Court of International Trade.'" *Diamond Sawblades Mfrs. Coal. v. United States*, 612 F.3d 1348, 1356 (Fed. Cir. 2010) (quoting *Suramerica de Aleaciones Laminadas, C.A. v. United States*, 44 F.3d 978, 983 (Fed.

Cir. 1994) (emphasizing that the Court of International Trade “reviewed the record in considerable detail” and thus its opinion “deserves due respect”).

TPBI primarily argues that Commerce improperly inflated the calculation of the cost of production by not factoring in BCR revenue. TPBI contends that because its manufacturing costs include the compensation fees it pays to its suppliers, and the BCR program is intended to offset those compensation fees, BCR revenue should be deducted from its cost of production. TPBI asserts that Commerce usually allows offsets to general and administrative expenses for miscellaneous income when it cannot determine that the revenue is related to a specific manufacturing or selling activity, *e.g.*, commissions or sales of intermediate products. BCR revenue thus should be treated similarly, according to TPBI, because it would be impossible for TPBI to otherwise reasonably account for the revenue. TPBI also contends that denying the adjustment—and refusing to otherwise account for the compensation fee—distorts the dumping margin in contravention of Commerce’s mandate to calculate dumping margins accurately. TPBI further asserts that because it has no practical way to obtain the necessary documentation from third party suppliers to provide the requisite link to qualify for duty drawback adjustments, Commerce must adjust its calculation of the cost of production to compensate for the imbalance.

The government responds that the rebates are provided only when a product is exported and only if it was made from imported materials. The government also notes that TPBI’s suppliers listed the tax certificate fee separately from the actual cost of materials on sales documents. The government contends that TPBI understood that when it selected its suppliers and paid the separate fee for tax certificates, it would provide the certificates to the Thai government upon export to receive an export-related rebate. Therefore, the government asserts, BCR revenue is tied not to the manufacture or production of merchandise, but to the export. The government also argues that Congress specifically addressed the effect of import duties on exported goods with the duty drawback provision, but that TPBI did not seek a duty drawback in this case.

The domestic industry adds that TPBI did not request an adjustment to the price of its exported products to counteract its BCR revenue. Because BCR revenues are export-conditional, the domestic industry contends, deducting them from general and administrative expenses would create a mismatch between the calculated cost of production and TPBI’s home market price.

We agree with the government and the domestic industry that revenue from the BCR program provided by the Thai government should not be included in the calculation of the cost of production. Even if BCR revenue serves to indirectly compensate for the import duties paid on the raw materials eventually incorporated into TPBI's products, the rebates are strictly export-conditional. Because the calculation of the cost of production is based on producing finished products for sale in the home market, *i.e.*, goods for sale in Thailand, substantial evidence supports that deducting BCR revenue from general and administrative expenses, or any part of cost of production, would be improper.

Commerce has consistently denied offsets to the cost of production for revenue derived from the Thai BCR program. Commerce rejected an adjustment to the calculation of the cost of production in the previous administrative review of the same antidumping duty order, noting that BCR revenues are related to export sales, not to the production of merchandise. *Polyethylene Carrier Bags from Thailand, Fifth Administrative Review*, at 19–20, <http://enforcement.trade.gov/frn/summary/thailand/20115267-1.pdf> (Dep't of Commerce Mar. 8, 2011) (final admin. review) (rejecting adjustment to Cost of Materials for BCR revenues). Commerce also previously rejected a similar adjustment to the cost of production for BCR revenue in another antidumping duty administrative review. *See Canned Pineapple Fruit from Thailand*, at 34, <http://enforcement.trade.gov/frn/summary/thailand/0328802-1.pdf> (Dep't of Commerce Nov. 19, 2003) (final admin. review) (noting that Commerce previously disallowed cost adjustment for BCR revenue, *see* 64 Fed. Reg. 69,481, 69,484–85 (Dep't of Commerce Dec. 13, 1999) (final admin. review) (disallowing adjustment to cost of materials for tax certificate revenues)). We therefore find that substantial evidence supported Commerce's decision to deny adjusting the calculation of the cost of production to account for BCR revenue, and that the Court of International Trade did not err in affirming that decision.

Furthermore, while Commerce has stated that TPBI could seek adjustments under the duty drawback provision, despite not being the entity that directly pays the import duties, that is not the issue before us on appeal. Although TPBI claims that it would be impossible for it to obtain documentation to satisfy the link requirement for a duty drawback, there is no evidence in the record that it even attempted to make this argument to Commerce. We therefore do not decide whether TPBI could have received a duty drawback adjustment in a situation with a third party.

CONCLUSION

We have considered the remaining arguments and conclude that they are without merit. For the foregoing reasons, the Court of International Trade's decision affirming Commerce's denial of an offset to TPBI's cost of production for revenue from the Thai government's Blue Corner Rebate program is affirmed.

AFFIRMED