

U.S. Customs and Border Protection



NOTICE OF REVOCATION OF A RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF SELF-ADHESIVE SURGICAL DRAPES

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 self-adhesive surgical drapes.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking one ruling letter concerning the tariff classification of self-adhesive surgical drapes. Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin and Decisions*, Vol. 49, No. 18, on May 6, 2015.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after October 19, 2015.

FOR FURTHER INFORMATION CONTACT: Laurance W. Frierson, Tariff Classification and Marking Branch: (202) 325–0371.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, CBP published notice proposing to revoke New York Letter (“NY”) N175698, dated August 15, 2011, in the *Customs Bulletin and Decisions*, Vol. 49, No. 18, on May 6, 2015. CBP received zero comments in response to the notice.

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

In ruling letter NY N175698, CBP determined that certain self-adhesive surgical drapes, used to cover wound dressings, were classified in heading 3919, Harmonized Tariff Schedule of the United States (HTSUS). Specifically, CBP classified the self-adhesive surgical drapes in subheading 3919.90.50, HTSUS, which provides for “Self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plastics, whether or not exceeding 20 cm: Other: Other.”

CBP has reviewed ruling letter NY N175698 and has determined the ruling letter to be in error. It is now CBP’s position that the self-adhesive surgical drapes are properly classified in subheading 3005.10.50, HTSUS, which provides for “Wadding, gauze, bandages and similar articles (for example, dressings, adhesive plasters, poultices), impregnated or coated with pharmaceutical substances or put

up in forms or packings for retail sale for medical, surgical, dental or veterinary purposes: Adhesive dressings and other articles having an adhesive layer: Other.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking ruling letter NY N175698 and any other ruling not specifically identified, to reflect the tariff classification of the subject merchandise according to the analysis contained in Headquarters Ruling Letter (“HQ”) H196055, set forth as an attachment to this document. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Ruling letter HQ H196055 will become effective 60 days after publication in the *Customs Bulletin and Decisions*.

Dated: July 24, 2015

GREG CONNOR

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachment

HQ H196055

July 24, 2015

CLA-2 OT:RR:CTF:TCM H196055 LWF

CATEGORY: Classification

TARIFF NO.: 3005.10.50

MR. JAY MITTLEMAN
 KCI USA, INC.
 P.O. Box 659508
 SAN ANTONIO, TX 78265-9508

RE: Revocation of New York Ruling Letter (NY) N175698, dated August 15, 2011; tariff classification of self-adhesive surgical drapes from Mexico

DEAR MR. MITTLEMAN:

This letter is to inform you that U.S. Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) N175698, dated August 15, 2011, concerning the tariff classification of KCI USA, Inc.'s (KCI) Vacuum Assisted Closure® (“V.A.C.®”) self-adhesive surgical drapes, imported from Mexico and used for covering wound dressings (“the surgical drapes”). In NY N175698, CBP classified the surgical drapes in heading 3919, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plastics, whether or not exceeding 20 cm.” Upon your request, dated December 1, 2011, we have reviewed NY N175698 and find the ruling to be in error. Accordingly, for the reasons set forth below, CBP is revoking ruling letter NY N175698.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke ruling letter NY N175698 was published on May 6, 2015 in the Customs Bulletin and Decisions, Vol. 49, No. 5. CBP received zero comments in response to the proposed revocation.

FACTS:

The merchandise at issue consists of packages of Vacuum Assisted Closure® self-adhesive surgical drapes imported and sold in packages containing either five (Item KCI-60566; M6275097/5) or ten (Item KCI-60515; M6275009/10) surgical drapes. CBP previously described the individual V.A.C.® surgical drapes in NY N175698, as follows:

The product is identified as a self-adhesive therapy drape. The drape is used with Vacuum Assisted Closure (V.A.C.) therapy apparatus to facilitate the protection and treatment of wounds. V.A.C. therapy is typically used by medical professionals in the management of severe wounds or incisions and uses an electric suction pump with a storage container to assist in the removal of wound fluids and in keeping the wound from opening. A V.A.C. therapy system dressing kit generally consists of a foam plastic dressing to be placed directly over the wound, a self-adhesive plastic sheet called a therapy drape for holding the foam dressing in place, and tubing and connectors to secure to the suction pump.

* * * * *

The V.A.C.® self-adhesive surgical drapes are exclusively intended for direct sale without re-packing to medical professionals for use in wound care

and treatment. The V.A.C.® self-adhesive surgical drapes serve as an integral component of the V.A.C.® wound therapy system and perform independent functions by protecting the wound, preventing contaminants from entering the wound area, and maintaining optimal moisture levels to support the healing environment. The V.A.C.® self-adhesive surgical drapes are not impregnated or coated with pharmaceutical substances.

ISSUE:

Whether KCI's V.A.C.® self-adhesive surgical drapes are classified in heading 3005, HTSUS, as wadding, gauze, bandages and similar articles, put up in forms or packings for retail sale for medical, surgical, dental or veterinary purposes; or heading 3919, HTSUS, as self-adhesive sheets of plastics, whether or not exceeding 20 cm.

LAW AND ANALYSIS:

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

GRI 1 requires that classification be determine first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in their appropriate order.

The following HTSUS provisions will be referenced:

3005	Wadding, gauze, bandages and similar articles (for example, dressings, adhesive plasters, poultices), impregnated or coated with pharmaceutical substances or put up in forms or packings for retail sale for medical, surgical, dental or veterinary purposes
	* * * * *
3919	Self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plastics, whether or not exceeding 20 cm
	* * * * *

Note 2 to Section VI, HTSUS, states:

- Subject to note 1 above, goods classifiable in heading 3004, 3005, 3006, 3212, 3303, 3304, 3305, 3306, 3307, 3506, 3707 or 3808 by reason of being put up in measured doses or for retail sale are to be classified in those headings and in no other heading of the tariff schedule.

* * * * *

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

EN 30.05, HTS, states, in pertinent part, as follows:

This heading covers articles such as wadding, gauze, bandages and the like, of textile, paper, plastic, etc., impregnated or coated with pharmaceutical substances (counter-irritant, antiseptic, etc.) for medical, surgical, dental or veterinary purposes.

These articles include wadding impregnated with iodine or methyl salicylate, etc., various prepared dressings, prepared poultices (e.g., linseed or mustard poultices), medicated adhesive plasters, etc. They may be in the piece, in discs or in any other form.

Wadding and gauze for dressings (usually of absorbent cotton) and bandages, etc., not impregnated or coated with pharmaceutical substances, are also classified in this heading, provided they are exclusively intended (e.g., because of the labels affixed or special folding) for sale directly without re-packing, to users (private persons, hospitals, etc.) for use for medical, surgical, dental or veterinary purposes.

* * * * *

In light of the requirements set forth, *supra*, by Note 2 to Section VI, HTSUS, the classification of the V.A.C.® self-adhesive surgical drapes turns on whether the merchandise is described by the terms of heading 3005, HTSUS. Heading 3005, HTSUS, provides for “Wadding, gauze, bandages and similar articles (for example, dressings, adhesive plasters, poultices), impregnated or coated with pharmaceutical substances or put up in forms or packings for retail sale for medical, surgical, dental or veterinary purposes.”

The term “bandages” is not defined in the HTSUS or the ENs. However, when a tariff term is not defined by the HTSUS or the legislative history, its correct meaning is its common, or commercial, meaning. *Rocknel Fastener, Inc. v. United States*, 267 F.3d 1354, 1356 (Fed. Cir. 2001) (“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.” (quoting *C.J. Tower & Sons of Buffalo, Inc. v. United States*, 673 F.2d 1268, 1271 (Fed. Cir. 1982))).

The Oxford English Dictionary defines the term “bandage,” in relevant part, as “A strip or band of woven material used to bind up a wound, sore, or fractured limb.” Oxford English Dictionary, <http://www.oed.com> (last visited February 4, 2013). Consistent with the common meaning of the term “bandage,” CBP has previously interpreted the term “bandage” to include pieces of material applied to a body part to make a compression, absorb drainage, prevent motion, retain surgical dressing, or lend support to a wound. See NY I84715, dated August 8, 2002; HQ 966637, dated October 22, 2003; and HQ H22137, dated October 11, 2012. Additionally, this office notes that in CBP’s Informed Compliance Publication (ICP), What Every Member of the Trade Community Should Know About: Wadding, Gauze, Bandages, and Similar Articles (Heading 3005, HTSUS), dated July 2006 (“ICP: Heading 30.05”), CBP has described the term “dressing,” used as an exemplar in the text of

heading 3005, HTSUS, to be a general term that includes, among other articles, “bandages” and “protectives” for wounds or injuries.¹

By contrast, CBP has previously held that certain articles not used for the treatment and care of wounds or injuries fall outside the scope of heading 3005, HTSUS. For example, in HQ 962172, dated May 5, 1999, CBP declined to classify a magnetic bandage in heading 3005, HTSUS, through application of *ejusdem generis*, because it could not be placed on an open wound and it therefore lacked common characteristics of the articles of heading 3005. Similarly, in HQ 966555, dated September 9, 2003, CBP determined that a hydrocolloidal polyethylene film wafer with plastic flange—adhered to the abdomen to secure ostomy pouches for the collection of bodily waste following surgical removal of parts of the intestine or urinary tract—was not classifiable in heading 3005, HTSUS, because:

[The] skin covered by the wafer is intact and there is no wound to cover... Hence, the function of the wafer is clearly to protect intact skin rather than to dress a wound[.]

Moreover, CBP stated in ruling letter HQ 966555 that although the hydrocolloidal polyethylene film wafer was designed to protect the skin surrounding a stoma from irritation and was similar in composition material to other hydrocolloidal dressings, it was not similar in function to wadding, gauze bandages, and similar articles of heading 3005, HTSUS, because:

[I]t is not applied to a wound with the intent to protect the wound from debris, absorb exudate from the wound, or provide the environment for healing. HQ 966555, at 6.

As such, this office observes that the common meaning of the term “bandages” of heading 3005, HTSUS—describing materials applied for the treatment and care of wounds or injuries—is reflected in several previous CBP ruling letters, *supra*. Consequently, a finding that the instant V.A.C.® self-adhesive surgical drapes are used for wound care and treatment would support classification of the merchandise as “bandages” of heading 3005, HTSUS.²

¹ *ICP: Heading 30.05* defines the terms “bandages” and “protective,” respectively, as follows:

Piece[s] of cloth or other material, of varying shape and size, applied to a body part to make compression, absorb drainage, prevent motion, retain surgical dressings” (Stedman’s). The function of a bandage is to hold a dressing in place by compression or support.

[...]

Protectives are used in conjunction with dressing materials to prevent loss of moisture or heat from a wound site. Film dressings are acrylate adhesives on a transparent, vapor-permeable plastic film applied directly to a wound surface. They are impervious to water and bacteria and are used to dress wounds which are already healing. *ICP: Heading 30.05* at 9, 10.

² The description of “bandages” of heading 3005, HTSUS, to care for and treat wounds or injuries is similarly reflected in *ICP: Heading 30.05*, which states:

The examples provided in the language of heading 3005 serve specialized functions in the field of health care. These functions are characterized by direct application to diseased or injured tissue, e.g., application to wounds for protection, immobilization, medication, etc. This is borne out by the definitions presented above. Products serving a lesser or different purpose, such as cleansing or soothing uninjured skin, are not

In addition to meeting the common meaning of the term “bandage,” however, the text of heading 3005, HTSUS, also requires that articles of the heading meet one of two additional descriptions—namely, of being “impregnated or coated with pharmaceutical substances” or “put up in forms or packings for retail sale for medical, surgical, dental or veterinary purposes.” Moreover, the ENs to heading 30.05, HS, state that wadding and gauze for dressings (usually of absorbent cotton) and bandages, etc., not impregnated or coated with pharmaceutical substances, are also classified in this heading, provided they are exclusively intended (e.g., because of the labels affixed or special folding) for sale directly without re-packing to users (private persons, hospitals, etc.) for use for medical, dental, or veterinary purposes. Here, inasmuch as the V.A.C.® self-adhesive surgical drapes are not impregnated or coated with pharmaceutical substances, this office need only consider whether the samples are put up for retail sale for medical, surgical, dental or veterinary purposes.

Upon review of physical characteristics and intended uses of the V.A.C.® self-adhesive surgical drapes, this office finds that the surgical drapes are designed as an integral component of the V.A.C.® wound therapy system and serve additional independent functions by protecting the wound, preventing contaminant from entering the wound area, and maintaining optimal moisture levels to support the healing environment. Additionally, we note that KCI’s “Basic V.A.C.® Dressing Application Pocket Guide”—which contains pictures showing the basic steps to apply a V.A.C.® self-adhesive surgical drape—clearly indicates that the merchandise is put up for retail sale for medical purposes. Consequently, this office finds that although the V.A.C.® self-adhesive surgical drapes are not impregnated or coated with pharmaceutical substances, the merchandise is put up for direct sale without re-packing to medical professionals for use in wound care and treatment.

In finding that the V.A.C.® self-adhesive surgical drapes are described by the common meaning of the term “bandages,” as provided for in heading 3005, HTSUS, the merchandise is classifiable under subheading 3005.10.50, HTSUS, as “Wadding, gauze, bandages and similar articles (for example, dressings, adhesive plasters, poultices), impregnated or coated with pharmaceutical substances or put up in forms or packings for retail sale for medical, surgical, dental or veterinary purposes: Adhesive dressings and other articles having an adhesive layer: Other.” In accord with Note 2 to Section VI, HTSUS, this office need not examine classification of the merchandise in Chapter 39, HTSUS, or other headings of the tariff schedule.

In classifying the V.A.C.® self-adhesive surgical drapes in heading 3005, HTSUS, this office notes that in ruling letter HQ 967207, dated January 11, 2005, CBP similarly classified—as part of its GRI 3 analysis concerning the “Safe Start IV Start Pak”—a “Tegaderm® transparent dressing” in heading 3005, HTSUS. There, CBP described the Tegaderm® dressing as being used to cover, secure, and protect an IV catheter and insertion site after an IV is inserted into a patient’s vein. Inasmuch as Tegaderm® dressing and the instant V.A.C.® self-adhesive surgical drapes are used on the human body to cover and protect open wounds during medical treatment, this office observes that the function of the instant V.A.C.® self-adhesive surgical drapes is

classifiable in heading 3005. **The basic requirement is that all these products must be for wound treatment in a medical, surgical, dental or veterinary setting, whether impregnated or coated with pharmaceuticals, or labeled, folded and packed for retail sale.** ICP: *Heading 30.05 at 11.* (Emphasis added).

substantially similar to that of the Tegaderm® dressing. Consequently, the classification of the Tegaderm® dressing under heading 3005, HTSUS, in ruling letter HQ 967207 is consistent with the classification of the V.A.C.® self-adhesive surgical drapes under the same provision.

HOLDING:

By application of GRI 1 and Section VI, Section Note 2, the V.A.C.® self-adhesive surgical drapes are classified under heading 3005, HTSUS, specifically in subheading 3005.10.50, which provides for “Wadding, gauze, bandages and similar articles (for example, dressings, adhesive plasters, poultices), impregnated or coated with pharmaceutical substances or put up in forms or packings for retail sale for medical, surgical, dental or veterinary purposes: Adhesive dressings and other articles having an adhesive layer: Other.” The 2014 column one, general rate of duty is free.

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

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

EFFECT ON OTHER RULINGS:

In accordance with the above analysis, NY N175698, dated August 15, 2001, is hereby REVOKED.

Sincerely,

GREG CONNOR

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division



**REVOCATION OF A RULING LETTER AND REVOCATION
OF TREATMENT RELATING TO THE TARIFF
CLASSIFICATION OF A LASER LIGHT RING**

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 a laser light ring.

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 and revoking treatment relating to the tariff classification of a laser light ring under the Harmonized Tariff Sched-

ule 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. 49, No. 25, on June 24, 2015. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after October 19, 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 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the *Customs Bulletin*, Volume 49, No. 25, on June 24, 2015, proposing to revoke New York Ruling Letter (NY) N008876, dated April 6, 2007, in which CBP determined the subject laser light ring was classified in subheading 8513.10.20, HTSUS, which provides, in pertinent part, for “Portable electric lamps designed to function by their own source of energy...: Lamps: Flashlights.” No comments were received in response to this notice.

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

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

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY N008876, in order to reflect the proper classification of the laser light ring under subheading 7117.90.60, HTSUS, which provides, in pertinent part, for "Imitation jewelry: Other: Other: Valued over 20 cents per dozen pieces or parts: Toy jewelry (except parts) valued not over 8 cents per piece," according to the analysis contained in HQ H241332, set forth as an attachment to this document. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: July 30, 2015

JACINTO JUAREZ

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachment

HQ H241332

July 30, 2015

CLA-2 RR:CTF:TCM H241332 EGJ

CATEGORY: CLASSIFICATION

TARIFF NO.: 7117.90.60

PRISCILLA R. ROYSTER
JOHN S. CONNOR, INC.
799 CROMWELL PARK DRIVE, SUITES A-G
GLEN BURNIE, MD 21061

Re: Revocation of NY N008876: Classification of a Laser Light Ring

DEAR Ms. ROYSTER:

This is in reference to your letter dated January 15, 2013, in which you requested reconsideration of New York Ruling Letter (NY) N008876, dated April 6, 2007, which was issued to your client, A & A Global Industries. NY N008876 concerned the tariff classification of a laser light ring under the Harmonized Tariff Schedule of the United States (HTSUS). In NY N008876, U.S. Customs and Border Protection (CBP) classified the laser light ring under heading 8513, HTSUS, as a flashlight. We have reviewed NY N008876 and find it to be in error. For the reasons set forth below, we hereby revoke NY N008876.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice of proposed action was published on June 24, 2015, in the *Customs Bulletin*, Vol. 49, No. 25. No comments were received in response to this notice.

FACTS:

In NY G86870, the subject merchandise is described as follows:

The merchandise under consideration is described as a Finger Tip Light. The housing of this light is constructed of clear plastic and is cylindrical in shape with a diameter of ½ inch, and measures approximately 1¼ inch long. Three nickel cadmium button cell batteries power a single light emitting diode (LED) bulb. A vinyl strap is attached to the housing of the light and may be used for slipping over a single finger.

In your reconsideration request, you provided additional information pertaining to the laser light ring. You stated that the ring is offered for sale in coin operated vending machines displayed in the front of toy stores, department stores, grocery stores and restaurants. The item is sold with markings “recommended for children over 3 years of age.” The small vinyl strap attached to the ring allows a child to wear the laser light on the child’s finger. You also provided a sample of the laser light ring, which is pictured below:

**ISSUE:**

Is the laser light ring classified under heading 7117, HTSUS, as imitation jewelry, under heading 8513, HTSUS, as a portable electric lamp, or under heading 9503, HTSUS, as a toy?

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

7113	Articles of jewelry and parts thereof, of precious metal or of metal clad with precious metal.	*	*	*
7117	Imitation jewelry:			
7117.90	Other:			
	Valued over 20 cents per dozen pieces or parts:			
7117.90.60	Toy jewelry (except parts) valued not over 8 cents per piece.	*	*	*
8513:	Portable electric lamps designed to function by their own source of energy (for example, dry batteries, storage batteries, magnetos), other than lighting equipment of heading 8512; parts thereof:			
8513.10:	Lamps:			
8513.10.20	Flashlights.	*	*	*
9503.00.00	[D]olls, other toys:	*	*	*

Note 9 to Chapter 71 states as follows:

9. For the purposes of heading 7113, the expression “articles of jewelry” means:

- (a) Any small objects of personal adornment (for example, rings, bracelets, necklaces, brooches, earrings, watch chains, fobs, pendants, tie pins, cuff links, dress studs, religious or other medals and insignia); and
- (b) Articles of personal use of a kind normally carried in the pocket, in the handbag or on the person (for example, cigar or cigarette cases, snuff boxes, cachou or pill boxes, powder boxes, chain purses or prayer beads).

These articles may be combined or set, for example, with natural or cultured pearls, precious or semiprecious stones, synthetic or reconstructed precious or semiprecious stones, tortoise shell, mother-of-pearl, ivory, natural or reconstituted amber, jet or coral.

* * *

Note 11 to Chapter 71 states as follows:

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

* * *

Note 1(p) to Section XVI (Chapters 84 – 85), states that:

- 1. This section does not cover:
 - (p) Articles of chapter 95.

* * *

Additional U.S. Rule of Interpretation 1(a), HTSUS, provides that:

- 1. In the absence of special language or context which otherwise requires:
 - (a) a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use.

* * *

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

EN 85.13(7) states:

The lamps of this heading include:

- (7) **Fancy torches** in the shape of pistols, lipsticks, etc. Composite articles composed of a lamp or torch and a pen, screwdriver, key ring, etc., remain classified here **only** if the principal function of the whole is the provision of light.

* * *

EN 95.03(D) states, in pertinent part:

D) Other toys.

This group covers toys intended essentially for the amusement of persons (children or adults)...These include:

...

- (ii) Toy pistols and guns.

* * *

In NY N008876, CBP classified the instant laser light ring under heading 8513, HTSUS, as a portable electric lamp designed to function by its own source of energy. We agree that the laser light ring is portable, and that it is powered by the small button cell batteries encased inside the ring. Further, EN 85.13(7) states that fancy torches in the shape of pistols, lipsticks, etc., are classifiable as portable electric lamps. For these reasons, the instant laser light ring is described by heading 8513, HTSUS.

Next, we turn to heading 7117, HTSUS, which provides for imitation jewelry. Note 11 to Chapter 71 explains that imitation jewelry means “articles of jewelry,” defined in Note 9(a) to Chapter 71, that do not consist of cultured pearls, precious/semiprecious stones or precious metal. Note 9(a) states that, for the purposes of heading 7113, HTSUS, “articles of jewelry” are small articles of adornment, such as rings, earrings, bracelets, etc. Turning to the instant merchandise, we note that the laser light ring is a “ring,” which is one of the listed examples of articles of jewelry in Note 9(a) to Chapter 71. Further, the laser light ring does not include pearls, precious stones or precious metal. As such, the laser light ring is described as imitation jewelry of heading 7117, HTSUS.

In your reconsideration request, you assert that the laser light ring is properly classified as a toy. Heading 9503 provides, in pertinent part, for “other toys.” In *Minnetonka Brands v. United States*, 110 F. Supp. 2d 1020, 1026 (Ct. Int’l Trade 2000) (*Minnetonka*), the U.S. Court of International Trade (CIT) determined that the “class or kind” of articles considered “toys” under heading 9503 are articles whose principal use is “amusement, diversion or play, rather than practicality.” *Id.* at 651. Thus, the CIT concluded that heading 9503, HTSUS, is a “principal use” provision within the meaning of Additional U.S. Rule of Interpretation 1(a) (AUSR 1(a)), HTSUS. *Id.*

Applying AUSR 1(a), the laser light ring must belong to the same class or kind of goods which have amusement as a principal use, i.e. toys. In *United States v. Carborundum Co.*, 536 F.2d 373, 377 (1976), the U.S. Court of Customs and Patent Appeals stated that in order to determine whether an article is included in a particular class or kind of merchandise, the court must consider a variety of factors, including: (1) the general physical characteristics of the merchandise; (2) the channels, class or kind of trade in which the merchandise moves (where the merchandise is sold); (3) the expectation of the ultimate purchasers; (4) the environment of the sale (i.e., accompanying

accessories and marketing); (5) usage, if any, in the same manner as merchandise which defines the class; (6) the economic practicality of so using the import; and (7) the recognition in the trade of this use. *Id.* While these factors were developed under the Tariff Schedule of the United States (predecessor to the HTSUS), the courts have also applied them under the HTSUS. *See, e.g. Minnetonka*, 110 F. Supp. 2d 1020, 1027; *see also Aromont USA, Inc. v. United States*, 671 F.3d 1310 (Fed. Cir. 2012), *Essex Manufacturing, Inc. v. United States*, 30 C.I.T. 1 (2006).

Examining the instant merchandise's physical characteristics, we note that this is a light-up laser ring. EN 95.03(D)(ii) states that the heading includes toy guns and pistols. The instant laser ring does share some physical characteristics with toy guns and pistols. For example, in NY N020200, dated December 10, 2007, CBP classified a wrist-mounted dart shooter equipped with a laser beam targeting system as a toy of heading 9503, HTSUS. The laser ring also shares the same characteristics as toys with laser lights. For example, in NY N050418, dated February 13, 2009, CBP classified toy plastic gloves with a red LED laser beam (for Toy Story character Buzz Lightyear) in heading 9503, HTSUS.

The laser light ring is sold in coin-operated vending machines which are located in the front of toy stores, grocery stores, restaurants, etc. We note that toys are frequently sold out of coin-operated vending machines. As such, the channel of trade is the same as that for other toys. In addition, the economic practicality of only paying 25 cents, 50 cents or 75 cents for a toy is recognized by the trade, as well as by parents everywhere.

Further, the marketing for the laser ring includes the statement that they are intended for children who are at least three years old. Many toys are marketed with the age range for children who are the target market. As such, we find that the marketing, which is an example of the environment of sale, is the similar to marketing for other toys.

The ultimate purchaser of the laser ring is a child. The child will expect to wear the laser ring, most likely in a dark room or outside after dark. The child may also expect to "shoot" the laser beam at friends or siblings, as with a toy pistol or gun. The laser ring does not give off a concentrated beam of light, like the laser beam attachment to the dart gun in NY N020200. However, there is still amusement value in a laser light, like the one attached to the toy hands in NY N050418. For all of the foregoing reasons, we find that the laser light ring is principally used for amusement, diversion or play. As such, it is described as a toy of heading 9503, HTSUS.

The instant laser ring is classifiable in three different headings. As such, we must turn to GRI 3(a), which provides as follows:

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

- (a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

Heading 8513, HTSUS, and heading 7117, HTSUS, are *eo nomine* provisions, which provide for portable electric lamps and imitation jewelry respectively. Heading 9503, HTSUS, is a principal use provision. In *The Pomeroy Collection, Ltd. v. United States*, 559 F.Supp. 2d 1374, note 22 (Ct. Int'l Trade 2008), the CIT explained the difference between use provisions and *eo nomine* provisions as follows:

A “use” provision is “a provision describing articles by the manner in which they are used as opposed to by name,” while an *eo nomine* provision is one ‘in which an item is identified by name.’ *Len-Ron Mfg. Co. v. United States*, 334 F.3d 1304, 1308 (Fed. Cir. 2003) (*Len-Ron Mfg. II*). And there are two types of “use” provisions – “actual use” and “principal (formerly known as “chief”) use.” An “actual use” provision is satisfied only if “such use is intended at the time of importation, the goods are so used and proof thereof is furnished within 3 years after the date the goods are entered.” See Additional U.S Rule of Interpretation (ARI) 1(b) (*quoted in Clarendon Mktg., Inc. v. United States*, 144 F.3d 1464, 1467 (Fed. Cir. 1998)). In contrast, a “principal use” provision functions essentially “as a controlling legal label, in the sense, that even if a particular import is proven to be actually used inconsistently with its principal use, the import is nevertheless classified according to its principal use.” *Clarendon Mktg.*, 144 F.3d at 1467.

In *Len-Ron Mfg. II*, the CAFC reviewed the decision of the CIT in *Len-Ron Mfg. v. United States*, 118 F. Supp. 2d 1266 (Ct. Int'l Trade 2000) (*Len-Ron Mfg. I*), to classify a certain bag in an *eo nomine* provision, instead of classifying it in a principal use provision. 334 F.3d 1304,1313. While examining the CIT's decision, the CAFC stated the following:

The courts have generally held that “where a product is equally described by both a “use” provision and an *eo nomine* provision, the “use” provision is typically held to be the more specific of the two. *Len-Ron Mfg. I*, 118 F. Supp. 2d at 1285. However, as the court also correctly pointed out, this is not a binding rule of law, but rather a “convenient rule of thumb for resolving issues where competing provisions are in balance.” *Id.* (*quoting Orlando Food*, 140 F.3d at 1441 (internal quotation marks omitted)). The court went on to explain that this rule of thumb was only applicable where the alternative competing provisions were “in balance” or “equally descriptive” of the article being classified. *Id.* Observing that subheading 4202.12 “specifies a single article for proper classification,” where subheading 4202.32 “is a broad provision encompassing a variety of articles with specific and independent uses,” the trial court found that subheading 4202.12, which expressly identifies “vanity cases,” was the more specific of the two.

Turning to the three relevant headings, we find that even though heading 9503, HTSUS, is a principal use provision, heading 7117, HTSUS, is the most specific of the three headings. Heading 7117, HTSUS, provides for imitation jewelry, which consists of a narrowly defined list of goods set forth in Note 9 to Chapter 71. Conversely, heading 9503, covers toys, which encompasses a

broad range of products, as does heading 8513, HTSUS, which provides for portable lamps. Further, CBP has consistently classified rings that light up as imitation jewelry of heading 7117, HTSUS. *See, e.g.* NY H89185, dated April 2, 2002, NY I80756, dated April 18, 2002, NY I88948, dated December 3, 2002, and NY J81735, dated March 21, 2003. For all of these reasons, the laser light ring is properly classified as imitation jewelry of heading 7117, HTSUS.

HOLDING:

By application of GRI 3(a) and GRI 6, the laser light ring is classified under subheading 7117.90.60, HTSUS, which provides for “Imitation jewelry: Other: Valued over 20 cents per dozen pieces or parts: Toy jewelry (except parts) valued not over 8 cents per piece.” 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 World Wide Web at *www.usitc.gov*.

EFFECT ON OTHER RULINGS:

NY N008876, dated April 6, 2007, is hereby revoked.

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

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division



**REVOCATION OF FIVE RULING LETTERS AND
REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF DOLL PENS**

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

ACTION: Notice of revocation of five ruling letters and revocation of treatment relating to the tariff classification of doll pens.

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 five ruling letters relating to the tariff classification of doll pens 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. 49, No. 25, on June 24, 2015. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after October 19, 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 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the *Customs Bulletin*, Volume 49, No. 25, on June 24, 2015, proposing to revoke New York Ruling Letter (NY) N134676, dated December 20, 2010, NY H81777, dated June 19, 2001, NY H82260, dated June 19, 2001, NY I87007, dated October 11, 2002, and NY J81101, dated February 12, 2003, in which CBP determined that the subject doll pens were classified in heading 9608, HTSUS, as pens. No comments were received in response to this notice.

As stated in the proposed notice, this revocation will cover any rulings on the subject merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to

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

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

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY N134676, NY H81777, NY H82260, NY I87007, and NY J81101, in order to reflect the proper classification of the doll pens as dolls under heading 9503, HTSUS, according to the analysis contained in HQ H149977, set forth as an attachment to this document. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: July 30, 2015

JACINTO JUAREZ
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachment

HQ H149977

July 30, 2015

CLA-2 OT:RR:CTF:TCM H149977 EGJ

CATEGORY: Classification

TARIFF NO.: 9503.00.00

KENNETH W. LONG JR., Esq.
SUNRISE WORLD ENTERPRISES, LLC
107 GLEN TRAIL
WOODSTOCK, GA 30188

RE: Revocation of NY N134676, NY H81777, NY H82260, NY I87007, and NY J81101; Tariff Classification of Doll Pens

DEAR MR. LONG:

This is in reference to your letter dated February 14, 2011, in which you requested reconsideration of New York Ruling Letter (NY) N134676, dated December 20, 2010, issued to you concerning the tariff classification of the Big Shooz Two Piece Desk Set (the doll pen). In NY N134676, U.S. Customs and Border Protection (CBP) classified the doll pen in subheading 9608.10.00, HTSUS, which provides for ball point pens. We have reviewed NY N134676 and find it to be in error. For the reasons set forth below, we hereby revoke NY N134676 and four other rulings with substantially similar merchandise: NY H81777, dated June 19, 2001; NY H82260, dated June 19, 2001; NY I87007, dated October 11, 2002, and NY J81101, dated February 12, 2003.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, notice of the proposed action was published on June 24, 2015, in the *Customs Bulletin*, Vol. 49, No. 25. No comments were received in response to this notice.

FACTS:

In NY N134676, the subject merchandise is described as follows:

The submitted sample is identified as a BigShooz 2-Piece Desk Set. This item is a ball point pen in which the body of the pen is in the shape and form of a football player made of molded plastic. The top of the football player figure has a removable helmet. There is no face under the helmet but only a plastic extension over which the helmet is fitted. The figure has two articulated arms, one on each side of the figure, and has a painted red jersey with the number 13 printed on it. The bottom portion of the figure has painted white pants in which there is a vertical indented line that is designed to distinguish two legs. At the very bottom is a silver tip through which the writing end of the ball point pen cartridge extends.

The item includes a separate base for the pen, which is designed to appear like very large shoes for the football player. The base is one piece in which the shoes are attached in the middle to a section that has an aperture at the top. The aperture is designed to receive the writing end of the football player pen so that the pen and therefore the football player figure can stand upright on a desk. The entire item measures approximately 6½" in height.

In your reconsideration request, you provided additional information regarding the doll pen. The figure is made of plastic and it has an ink cartridge

inserted into it. The ink cartridge is shorter than a standard cartridge in order to fit inside the figure, and no refills of the ink cartridge are sold.

The doll pen wears a college football uniform, which is licensed by the various institutions. The intended market is college alumni, current students and fans of the sports team. Given the quality of the product and the authentic collegiate decoration, you expect that the consumer will consider this as an item of memorabilia and will not discard the item when the ink cartridge runs out. The doll pen general sells for a retail price of \$19.95. Pictures of the doll pen are provided below:



ISSUE:

What is the tariff classification of the doll pen?

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order. Under GRI 6, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to GRIs 1 through 5.

GRI 3(b) provides as follows:

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

...

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

* * *

The HTSUS headings and subheadings under consideration are the following:

9503.00.00	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: * * *
9608	Ball point pens; felt tipped and other porous-tipped pens and markers; fountain pens, stylograph pens and other pens; duplicating styli; propelling or sliding pencils (for example, mechanical pencils); pen-holders, pencil-holders and similar holders; parts (including caps and clips) of the foregoing articles, other than those of heading 9609: * * *
9608.10.00	Ball point pens. * * *

Note 1(l) to Chapter 96 provides that:

1. This chapter does not cover:

- (l) Articles of Chapter 95 (toys, games, sports equipment).

* * *

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

The EN to GRI 3(b) states, in pertinent part:

RULE 3 (b)

(VI) This second method relates only to:

- (i) Mixtures.
- (ii) Composite goods consisting of different materials.
- (iii) Composite goods consisting of different components.
- (iv) Goods put up in sets for retail sales.

It applies only if Rule 3 (a) fails.

(VII) In all these cases the goods are to be classified as if they consisted of the material or component **which gives them their essential character**, insofar as this criterion is applicable.

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

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

rable whole but also those with separable components, **provided** these components are adapted one to the other and are mutually complementary and that together they form a whole which would not normally be offered for sale in separate parts.

* * *

EN 95.03(C) provides, in pertinent part, as follows:

This heading covers:

(C) **Dolls.**

This group includes not only dolls designed for the amusement of children, but also dolls intended for decorative purposes (e.g., boudoir dolls, mascot dolls), or for use in Punch and Judy or marionette shows, or those of a caricature type.

Dolls are usually made of rubber, plastics, textile materials, wax, ceramics, wood, paperboard, papier maché or combinations of these materials. They may be jointed and contain mechanisms which permit limb, head or eye movements as well as reproductions of the human voice, etc. They may also be dressed.

* * *

Heading 9503, HTSUS, covers dolls and heading 9608, HTSUS, covers pens. The pen's exterior is a doll because it is a plastic figure of a college football player. According to EN 95.03(C), the heading includes dolls that are used for decoration, such as mascot dolls and caricature dolls. The instant doll pen is both a college mascot and a caricature doll, as its feet are oversized to act as a pen stand. However, the doll pen's interior ink cartridge and ball point tip form a complete pen inside of the doll. As such, neither heading 9503, HTSUS, nor heading 9608, HTSUS, describe the doll pen in its entirety. Each heading only refers to one component of the doll pen. As such, we must turn to GRI 3(b) to determine which component imparts the pen's essential character.

GRI 3(b) states that mixtures, composite goods and retail sets shall be classified as if they consisted of the component which gives them their essential character. In order to identify a composite good's essential character, the U.S. Court of International Trade (CIT) has applied the factors listed in the ENs to GRI 3(b), which are "the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods." *The Home Depot v. United States*, 427 F. Supp. 2d 1278, 1293 (Ct. Int'l Trade 2006). With regard to the role of the component which imparts the essential character, the court has stated it is "that which is indispensable to the structure, core or condition [of the retail set]." *Id. citing A.N. Deringer, Inc. v. United States*, 66 Cust. Ct. 378, 383 (1971).

Applying the aforementioned factors, the doll is bulkier and weighs more than the pen. We do not have any information relating to the separate values of the doll and pen components. However, you have provided us with information relating to the role of the each component. You stated that the ink cartridge is smaller than a standard ball point pen ink cartridge. You also stated that no replacement ink cartridges are available for the doll pen. You noted that the targeted consumers are fans of the college football team, who

will treat the doll pen as memorabilia. You noted that college fans will not throw away the pen once the ink runs out, but will keep the doll pen on display as a decorative item. As such, we find that the doll plays a much larger role than the pen.

Further, CBP has classified other pens encased inside of dolls as dolls. *See, e.g.* NY K82148, dated January 6, 2004 (Barbie™ Fashion Doll Pens were classified as dolls), and NY L81741, dated January 21, 2005 (Strawberry Shortcake™ Mini Doll Pen and Disney© Princess Doll Pens were classified as dolls). For all of these reasons, we find that the doll imparts the essential character to the doll pen. As such, the Big Shooz doll pen is properly classified as a doll of heading 9503, HTSUS.

HOLDING:

By operation of GRI 3(b), the Big Shooz Two Piece Desk Set is classified in subheading 9503.00.00, which provides, in pertinent part, for “[D]olls, other toys.” The 2015 column one, general rate of duty is free.

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

EFFECT ON OTHER RULINGS:

NY N134676, dated December 20, 2010; NY H81777, dated June 19, 2001; NY H82260, dated June 19, 2001; NY I87007, dated October 11, 2002; and NY J81101, dated February 12, 2003, are hereby revoked.

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

Sincerely,

JACINTO JUAREZ

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division



PROPOSED REVOCATION OF A RULING LETTER AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF A POWERCAP AND A POWERCAP WITH CRYSTAL

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

ACTION: Notice of proposed revocation of a ruling letter and treatment relating to the tariff classification of a PowerCap and a PowerCap with Crystal.

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 Implementa-

tion Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) proposes to revoke a ruling letter relating to the tariff classification of a Power-Cap and a PowerCap with Crystal, under the Harmonized Tariff Schedule of the United States (HTSUS). CBP also proposes 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 September 18, 2015.

ADDRESSES: Written comments are to be addressed to Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K Street NE, 10th Floor, Washington, D.C. 20229–1177. Submitted comments may be inspected at the above address 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: George Aduhene, Tariff Classification and Marking Branch: (202) 325–0184

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993 Title VI, (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (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, as amended (19 U.S.C. 1625 (c)(1)), this notice advises interested parties that CBP intends to revoke a ruling letter relating to the tariff classification of a PowerCap and a PowerCap with Crystal. Although in this notice, CBP is specifically referring to the revocation of NY N093423, dated February 18, 2010, set forth as Attachment A, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., 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, as amended (19 U.S.C. 1625 (c)(2)), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

In NY N093423, CBP classified a PowerCap and a PowerCap with Crystal, in subheading 8504.40.9540, HTSUSA, which provides for, "Electrical transformers, static converters (for example, rectifiers) and inductors; parts thereof: Static converters: Other: Rectifiers and rectifying apparatus: Power supplies: Other."

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke N093423 and any other ruling not specifically identified, in order to reflect the proper classification of a PowerCap and a PowerCap with Crystal in subheading 8506.50.00, HTSUS, according to the analysis contained in proposed HQ H128416, set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: June 17, 2015

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

Attachments

[ATTACHMENT A]

N093423

February 18, 2010

CLA-2-85:OT:RR:NC:N1:109

CATEGORY: Classification

TARIFF NO.: 8504.40.9540

MR. GREGORY LEE PEEBLES
SR. COMPLIANCE MANAGER
MAXIM INTEGRATED PRODUCTS
4401 S. BELTWOOD PARKWAY
DALLAS, TX 75244

RE: The tariff classification of a PowerCap and a PowerCap with Crystal from the Philippines

DEAR MR. PEEBLES:

In your letter dated February 1, 2010, you requested a tariff classification ruling.

The merchandise under consideration is a PowerCap and a PowerCap with Crystal. The product literature also refers to the PowerCap as DS9034PC/PCI and the PowerCap with Crystal as DS9034PCX. Samples of each of these devices were submitted for classification purposes.

The DS9034PC/PCI PowerCap is a lithium power source designed to provide 10 years of battery backup power for NV (non-volatile) SRAMS in Dallas Semiconductor's PowerCap Module (PCM) package. It snaps directly onto a surface-mounted PowerCap Module base to form a complete NV SRAM Module.

The DS9034PCX PowerCap with Crystal a lithium power source designed to provide 10 years of battery backup power for NV (non-volatile) timekeeping RAMs in Dallas Semiconductor's surface-mountable PowerCap Module (PCM) package. After the PowerCap module board has been soldered in place and cleaned, the DS9034PCX PowerCap with Crystal is placed on top of the PCM board to form a complete PowerCap Module package. The PowerCap is keyed to prevent incorrect attachment.

Both the DS9034PC/PCI PowerCap and the DS9034PCX PowerCap with Crystal contain a printed circuit board substrate upon which a lithium battery, connectors, and plastic cap are attached. The DS9034PCX also contains a crystal. Based on the description and function of each of these devices, each is a printed circuit assembly that carries out the function of a power supply.

You suggested Harmonized Tariff Schedule of the United States of America (HTSUSA) subheading 8473.50.3000, which provides for "Parts and accessories equally suitable for use with machines of two or more of the headings 8469 to 8472: Printed circuit assemblies." However, although each of these devices is a printed circuit assembly, each is a power supply. Power supplies are provided for eo nomine in heading 8504. Additionally, in a conversation this office held with you, each of these power supplies has numerous uses, which are not limited to use with an automatic data processing (ADP) machine or telecommunications apparatus. As such, they are not dedicated for use solely or principally with automatic data processing (ADP) machines of heading 8471 or for use solely or principally with telecommunications apparatus. Therefore, since the DS9034PC/PCI PowerCap and the DS9034PCX

PowerCap with Crystal both perform the function of a power supply, which is provided for in the HTSUSA within heading 8504, they are not parts for machines of two or more headings of 8469 to 8472, specifically ADP machines of heading 8471. Your suggested classification of 8473.50.3000 is inapplicable for these devices.

The applicable subheading for the PowerCap (DS9034PC/PCI) the PowerCap with Crystal (DS9034PCX) will be 8504.40.9540, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Static converters: Other: Rectifiers and rectifying apparatus: Power supplies: Other.” The rate of duty will be 1.5 percent ad valorem.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Linda M. Hackett at (646) 733-3015.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

[ATTACHMENT B]

HQ H192478
CLA-2 OT:RR:CTF:TCM H192478 GA
CATEGORY: Classification
TARIFF NO.: 8506.50.00

MR. GREGORY LEE PEBBLES, SR.
COMPLIANCE MANAGER
MAXIM INTEGRATED PRODUCTS
4401 S. BELTWOOD PARKWAY
DALLAS, TX 75244

RE: Revocation of NY 093423; Classification of a PowerCap and a PowerCap with Crystal from the Philippines

DEAR MR. PEBBLES:

This letter concerns New York Ruling Letter (NY) N093423, dated February 18, 2010, issued to Maxim Integrated Products concerning the classification of the PowerCap and the PowerCap with Crystal products under the Harmonized Tariff Schedule of the United States (HTSUS). In that ruling, U.S. Customs and Border Protection (CBP) classified the subject merchandise in subheading 8504.40.9540, HTSUSA, which provides for “Electrical transformers, static converters (for example, rectifiers) and inductors; parts thereof: Static converters: Other: Rectifiers and rectifying apparatus: Power supplies: Other.”

We have reviewed NY N093423 and find it to be in error. For the reasons set forth below, we hereby revoke N093423.

FACTS:

In NY N093423, CBP described the merchandise as follows:

The merchandise under consideration is a PowerCap and a PowerCap with Crystal. The product literature also refers to the PowerCap as DS9034PC/PCI and the PowerCap with Crystal as DS9034PCX.

The DS9034PC/PCI PowerCap is a lithium power source designed to provide 10 years of battery backup power for NV (non-volatile) SRAMS in Dallas Semiconductor’s PowerCap Module (PCM) package. It snaps directly onto a surface-mounted PowerCap Module base to form a complete NV SRAM Module.

The DS9034PCX PowerCap with Crystal is a lithium power source designed to provide 10 years of battery backup power for NV (non-volatile) timekeeping RAMs in Dallas Semiconductor’s surface-mountable PowerCap Module (PCM) package. After the PowerCap module board has been soldered in place and cleaned, the DS9034PCX PowerCap with Crystal is placed on top of the PCM board to form a complete PowerCap Module package. The PowerCap is keyed to prevent incorrect attachment.

Both the DS9034PC/PCI PowerCap and the DS9034PCX PowerCap with Crystal contained printed circuit board substrate upon which a lithium battery, connectors, and plastic cap are attached. The DS9034PCX also contains a crystal. Based on the description and function of each of these devices, each is a printed circuit assembly that carries out the function of a power supply.

ISSUE:

Whether the PowerCap and PowerCap with Crystal products are classified in heading 8504, HTSUS, as static converters, or in heading 8506, HTSUS, as primary batteries.

LAW AND ANALYSIS:

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

The HTSUS provisions under considerations are as follows:

8504	Electrical transformers, static converters (for example, rectifiers) and inductors; parts thereof:
8504.40	Static converters:
8504.40.95	Other:
	Rectifiers and rectifying apparatus:
	Power supplies:
8504.40.9540	Other
*	* * * * *
*	* * * * *
8506	Primary cells and primary batteries; parts thereof:
8506.50.00 00	Lithium

Section XVI, Note 3, which includes headings 8504 and 8506, HTSUS, provides:

Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.

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

EN 85.04 states, in relevant part:

(II) ELECTRICAL STATIC CONVERTERS

The apparatus of this group are used to convert electrical energy in order to adapt it for further use. They incorporate converting elements (e.g., valves) of different types. They may also incorporate various auxiliary devices (e.g., transformers, induction coils, resistors, command regulators, etc.). Their

operation is based on the principle that the converting elements act alternately as conductors and non-conductors.

EN 85.06 states, in relevant part:

These generate electrical energy by means of chemical reactions.

A primary cell consists basically of a container holding an alkaline or a non-alkaline electrolyte (e.g., potassium or sodium hydroxide, ammonium chloride or a mixture of lithium chloride, ammonium chloride, zinc chloride and water) in which two electrodes are immersed. The anode is generally of zinc, magnesium or of lithium and the cathode (depolarising electrode) is, for example, of manganese dioxide (mixed with carbon powder), of mercuric oxide or of silver oxide. In lithium primary cells, the anode is of lithium and the cathode is, for example, of thionyl chloride, of sulphur dioxide, manganese dioxide or of iron sulphide. A nonaqueous electrolyte is used because of the solubility and reactivity of lithium in aqueous solutions. In air-zinc primary cells, an alkaline or neutral electrolyte is generally used. The zinc is used as the anode, oxygen diffuses into the cell and is used as the cathode. Each electrode is provided with a terminal or other arrangement for connection to an external circuit. The principal characteristic of a primary cell is that it is not readily or efficiently recharged.

Primary cells are used for supplying current for a number of purposes (for bells, telephones, hearing aids, cameras, watches, calculators, heart pace-makers, radios, toys, portable lamps, electric prods for cattle, etc.). Cells may be grouped together in batteries, either in series or in parallel or a combination of both. Cells and batteries remain classified here irrespective of the use for which they are intended (e.g., standard cells for laboratory work producing a constant known voltage fall in the heading).

Heading 8504, HTSUS, provides, in relevant part, for static converters. The ENs to heading 8504, HTSUS, provide: "The apparatus of this group are used to convert electrical energy in order to adapt it for further use. They incorporate converting elements (e.g., valves) of different types. They may also incorporate various auxiliary devices (e.g., transformers, induction coils, resistors, command regulators, etc.). Their operation is based on the principle that the converting elements act alternately as conductors and non-conductors."

A review of the product literature and specifications indicates that the instant merchandise does not incorporate any converting elements, and is not used to convert electrical energy in order to adapt it for further use. Instead, the subject DS9034PC/PCI PowerCap and the DS90349PCX PowerCap with Crystal generate electrical energy by means of a chemical reaction involving lithium cells. Therefore, neither product falls within the EN's delineation of static converters.

The subject DS9034PC/PCI PowerCap consists of a lithium battery, connectors, and a plastic cap attached to a printed circuit board. The subject DS90349PCX PowerCap with Crystal consists of a lithium battery, connectors, a plastic cap, and a crystal attached to a printed circuit board. Section XVI, Note 3, HTSUS, which governs the classification of goods in heading 8504, among others, states that unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines adapted for the purpose of performing two or more

complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function. Both products qualify under Section XVI, Note 3, HTSUS, as composite machines that are to be classified as if consisting of that component or as being that machine which performs the principal function. The principal function of the merchandise is to provide a source of current. Based on its description and function, the lithium battery is the source of the current.

The lithium battery is designed to provide 10 years of battery backup power. It is a primary (non-chargeable) battery. Therefore, the subject merchandise is classifiable in heading 8506, HTSUS.

HOLDING:

By application of GRIs 1 and 6, we find the PowerCap and PowerCap with Crystal are classified in heading 8506, HTSUS, and subheading 8506.50.00, HTSUS, which provides for “Primary cells and primary batteries; parts thereof: Lithium.” The column one, general rate of duty is 2.7 percent *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY N093423, dated February 18, 2010 is hereby REVOKED.

Sincerely,

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division



**REVOCATION OF ONE RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO THE
CLASSIFICATION OF COATED FABRIC**

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

ACTION: Notice of revocation of one ruling letter and revocation of treatment relating to the classification of coated fabric.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP is revoking one ruling concerning the classification of coated fabric under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published on June 24, 2015, Vol. 49, No. 25, of

the *Customs Bulletin*. One comment was received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after October 19, 2015.

FOR FURTHER INFORMATION CONTACT: Ann Segura, Tariff Classification and Marking Branch: (202) 325-0031.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke one ruling letter pertaining to the classification of coated fabric was published in the June 24, 2015, *Customs Bulletin*, Vol. 49, No. 25. One comment was received in response to the notice.

As stated in the proposed notice, 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., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the notice period.

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

any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the 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 the effective date of the final decision on this notice.

In NY N216578, dated July 26, 2013, CBP classified plastic coated textile upholstery fabric from China in subheading 5903.20.2500, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for "Textile fabrics impregnated, coated, covered or laminated with plastics, other than those of heading 5902: With polyurethane: Of man-made fibers: Other: Other". We now believe that the subject merchandise is properly classified in subheading 3921.13.1500, HTSUSA, which provides for "Other plates, sheets, film, foil and strip, of plastics: Cellular: Of polyurethanes: Combined with textile materials: Products with textile components in which man-made fibers predominate by weight over any other single textile fiber: Other".

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY N216578, and any other ruling not specifically identified, pursuant to the analysis set forth in Headquarters Ruling Letter ("HQ") H256889, set forth as Attachment A to this notice. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: July 29, 2015

JACINTO JUAREZ
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachment

HQ H256889

July 29, 2015

CLA-2 OT:RR:CTF:TCM H256889 AS

CATEGORY: Classification

TARIFF NO.: 3921.13.1500

MR. AMEET SHAH

CULP, INC.

P.O. BOX 2686

1823 EASTCHESTER DRIVE

HIGH POINT, NC 27265

RE: Revocation of NY N216578; Tariff Classification of Coated Fabric

DEAR MR. SHAH:

This is in response to your request for reconsideration, dated September 19, 2013, filed on your behalf by Alston & Bird LLP, requesting the reconsideration of New York Ruling Letter (NY) N216578, dated July 26, 2013, which classified coated fabric under the Harmonized Tariff Schedule of the United States (HTSUS). In NY N216578, dated July 26, 2013, CBP classified plastic coated textile upholstery fabric from China in subheading 5903.20.2500, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for "Textile fabrics impregnated, coated, covered or laminated with plastics, other than those of heading 5902: With polyurethane: Of man-made fibers: Other: Other". Samples have been submitted to this office for examination. You advise that the samples do not need to be returned.

We have reviewed NY N216578 and found it to be incorrect. For the reasons set forth below, we hereby revoke NY N216578.

On June 24, 2015, pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, notice of the proposed action was published in the *Customs Bulletin*, Vol. 49, No. 25. One comment was received in support of the notice. The commenter also advised that the correct date on the request for reconsideration was September 19, 2013.¹ This has now been corrected.

FACTS:

The subject article, identified as fabric style "Cantina RL", is described as a plastic coated upholstery material with a four layer construction. The top outer layer consists of compact polyurethane that has been printed and embossed to simulate leather. The second layer is cellular polyurethane. The third layer is a woven fabric of 70 percent polyester/30 percent cotton fibers. The backing layer is leather scrap that is flocked onto the textile fabric. The article is composed of: Polyurethane plastic (2 layers – 260 g/m²; Woven textile fabric – 168 g/m²; Leather scrap – 128 g/m²). Based upon the weight breakdown, this material is not over 70 percent by weight of rubber or plastics.

The CBP Laboratory Report, dated 4/23/2014, which tested the sample identified as "Cantina RL", determined that this is a woven fabric that has

¹ The proposed ruling published on June 24, 2015, in the *Customs Bulletin*, Vol. 49, No. 25, contained a typographical error which indicated that the request for reconsideration was dated February 18, 2008.

been “...coated, covered, impregnated, or laminated with two layers of polyurethane type plastic material on its outer surface and with composite leather on its inner surface. It weighs 505.4 grams per square meter. The two layers of polyurethane are composed of a top layer of compact application and a bottom layer of cellular application. The polyurethane layers weigh 241.0 grams per square meter. The woven fabric weighs 176.7 grams per square meter and the composite leather weighs 87.7 grams per square meter.”

ISSUE:

What is the proper classification for the merchandise?

LAW AND ANALYSIS:

Classification under the HTSUSA 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 heading and legal notes do not otherwise require, the remaining GRI may then be applied.

The HTSUSA provisions under consideration are as follows:

3921	Other plates, sheets, film, foil and strip, of plastics:
	Cellular:
3921.13	Of polyurethanes:
	Combined with textile materials:
	Products with textile components in which man-made fibers predominate by weight over any other single textile fiber:
3921.13.1500	Other
5903	Textile fabrics impregnated, coated, covered or laminated with plastics other than those of heading 5902:
5903.20	With Polyurethane:
	Of man-made fibers:
	Other:
5903.20.2500	Other

Note 2(p) to Chapter 39, HTSUS, states, in pertinent part, the following:

2. This chapter does not cover:...

* * *

(p) Goods of section XI (textiles and textile articles)

Note 10 to Chapter 39, HTSUS, states the following:

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

Note 1(h) to section XI, HTSUS provides:

1. This section does not cover

* * *

- (h) Woven, knitted or crocheted fabrics, felt or nonwovens, impregnated, coated, covered or laminated with plastics, or articles thereof, of chapter 39;

Note 2(a)(5) to Chapter 59, HTSUS, states in pertinent part, the following:

2. Heading 5903 applies to:

- (a) Textile fabrics, impregnated, coated, covered or laminated with plastics, whatever the weight per square meter and whatever the nature of the plastic material (compact or cellular), other than: ...

* * *

- (5) Plates, sheets or strip of cellular plastics, combined with textile fabric, where the textile fabric is present merely for reinforcing purposes (chapter 39); ...

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 general EN to Chapter 39, under the heading, “Plastics and textile combinations”, in part provides:

Otherwise, the classification of plastics and textile combinations is essentially governed by Note 1 (h) to Section XI, Note 3 to Chapter 56 and Note 2 to Chapter 59.

The following products are also covered by this Chapter:

* * *

- (d) Plates sheets and strip of cellular plastics combined with textile fabrics (as defined in Note 1 to Chapter 59), felt or nonwovens, where the textile is present merely for reinforcing purposes.

You assert that the merchandise should be classified as a sheet of cellular polyurethane combined with a man-made fiber fabric, not over 70 percent by weight of plastics, under subheading 3921.13.1500, HTSUSA, which provides for “Other plates, sheets, film, foil and strip, of plastics: Cellular: Of polyurethanes: Combined with textile materials: Products with textile components in which man-made fibers predominate by weight over any other single textile fiber: Other”. You also argue that the cellular polyurethane plastic imparts the essential character of Cantina RL, while the thin layer of compact polyurethane provides a slight coloring effect, i.e., it is the cellular polyurethane that provides the “leather-like” quality to the article. Therefore, you conclude that because the cellular polyurethane plastic imparts the essential character to the product, and the textile fabric is present merely for reinforcing purposes, this product is excluded from heading 5903, per note 2(a)(5) to Chapter 59 which excludes “Plates, sheets or strip of cellular plastics combined with textile fabric, where the textile fabric is present merely for reinforcing purposes (chapter 39)”.

Although you raise an “essential character” analysis in your submission, we do not believe an “essential character” analysis is warranted in this instance. This article is classifiable pursuant to a GRI I analysis.

Note 2(p) to Chapter 39 states that Chapter 39 does not cover “goods of Section XI (textiles and textile articles)”. Therefore, our analysis begins with heading 5903, HTSUS.

Note 1(h) to Section XI, HTSUS, which includes Chapter 59, provides that Section XI, covering textiles and textile articles, does not cover “Woven, knitted, or crocheted fabrics, felt or nonwovens, impregnated, coated, covered or laminated with plastics, or articles thereof, of chapter 39.” In order for the subject merchandise to be classified as a textile in heading 5903, it must first meet the terms of Note 2 to Chapter 59, HTSUS. However, under the terms of Note 2(a)(5), merchandise is precluded from classification in heading 5903, HTSUS, when it is comprised of “Plates, sheets or strip of cellular plastics, combined with textile fabric, where the textile fabric is present merely for reinforcing purposes (chapter 39)”.

The General Notes to the EN for Chapter 39 define cellular plastics as: “...plastics having many cells (either open, closed or both), dispersed throughout their mass. They include foam plastics, expanded plastics and microporous or microcellular plastics. They may be either flexible or rigid.” In the CBP Laboratory Report it concluded, in pertinent part, that the merchandise consisted of two layers of polyurethane composed of a top layer of compact application and a bottom layer of cellular application. Since the merchandise is composed of cellular plastics, the issue that must be resolved is whether the woven textile fabric is present merely for reinforcing purposes.

We conclude that the textile fabric is present merely to reinforce the plastic. The subject article is comprised of four distinct layers, i.e., a top outer layer which consists of compact polyurethane (PU) that has been printed and embossed to simulate leather, a second layer of cellular PU, a third layer of woven fabric (70 percent polyester/30 percent cotton fibers), and a backing layer of leather scrap that is flocked onto the textile fabric. In fact, the woven fabric is “sandwiched” between two layers of polyurethane and having a backing layer of leather scrap that completely obscures the woven textile fabric. Clearly, the woven fabric is present merely for reinforcing purposes because it forms an interior layer and is completely obscured on both sides by the PU coatings and flocking. As such, the woven textile fabric serves to prevent the plastic from tearing or stretching. Therefore, we find that Note 2(a)(5) to Chapter 59, HTSUS, excludes the merchandise from heading 5903, HTSUS, and directs classification as an article of plastic of Chapter 39, HTSUS.

Merchandise of heading 3921, HTSUS, can be printed or otherwise surface-worked, uncut or cut into rectangles, but has not been further worked. As such, the subject merchandise meets the terms of heading 3921, HTSUS.

In view of the foregoing, CBP finds that NY 216578, dated July 26, 2013, incorrectly classified the subject merchandise as “Textile fabrics impregnated, coated, covered or laminated with plastics...” in heading 5903, HTSUS.

HOLDING:

By application of GRI’s 1 and 6, the subject merchandise is properly classified in heading 3921, HTSUS, specifically, subheading 3921.13.1500, HTSUSA, which provides for “Other plates, sheets, film, foil and strip, of plastics: Cellular: Of polyurethanes: Combined with textile materials: Products

with textile components in which man-made fibers predominate by weight over any other single textile fiber: Other". The column one, general rate of duty is 6.5 percent *ad valorem*.

Duty rates are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the World Wide Web at www.us-ita.gov.

EFFECT ON OTHER RULINGS:

NY N216578, dated July 26, 2013, is hereby REVOKED.

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

Sincerely,

JACINTO JUAREZ

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division



GENERAL NOTICE
19 CFR PART 177

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

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

ACTION: Notice of revocation of two ruling letters and revocation of treatment concerning the tariff classification of certain gazebos.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP is revoking two ruling letters pertaining to the tariff classification of certain gazebos under the Harmonized Tariff Schedule of the United States (HTSUS). CBP is also revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed revocation was published on February 25, 2015, in Volume 49, Number 8, of the *Customs Bulletin*. Seven sets of comments were received in response to the proposed notice.

EFFECTIVE DATE: This revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after October 19, 2015.

FOR FURTHER INFORMATION CONTACT: Emily Beline, Tariff Classification and Marking Branch, Regulations and Rulings, Office of International Trade, (202) 325-7799.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), (Title VI), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended and related laws. Two new concepts which emerge from the law are “informed compliance” and “shared responsibility.” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the 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, as amended (19 U.S.C. 1625(c)(1)), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), a notice was published in the *Customs Bulletin*, Volume 49, Number 8, on February 25, 2015, proposing to revoke New York Ruling Letters (NY) NY N230084, dated August 29, 2012, and NY N236254, dated December 14, 2012, and proposing to revoke any treatment accorded to substantially identical transaction. No comments were received in response to the proposed action.

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 his agents for importations of merchandise subsequent to this notice.

In NY N230084, dated August 29, 2012, CBP classified a gazebo under subheading 7308.90.95, HTSUS, which provides for, “Structures (excluding prefabricated buildings of heading 9406) and parts of structures...of iron or steel: Other: Other.”

In NY N236254, dated December 14, 2012, CBP also classified a gazebo under 7308.90.95, HTSUS, which provides for, “Structures (excluding prefabricated buildings of heading 9406) and parts of structures...of iron or steel: Other: Other.”

It is now CBP’s position that these gazebos are properly classified under subheading 3926.90.99, HTSUS, which provides for other articles of plastics.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY N230084 and NY N236254 and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling (HQ) H262026, (Attachment A). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the *Customs Bulletin*.

Dated: July 21, 2015

IEVA K. O’ROURKE
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

HQ H252026

July 21, 2015

CLA-2 OT:RR:CTF:TCM: H252026 ERB

CATEGORY: Classification

TARIFF NO.: 3926.90.9995

MS. ALICE LIU
ATICO INTERNATIONAL USA, INC.
501 S. ANDREWS AVENUE
FORT LAUDERDALE, FL 33301

MR. KIM YOUNG
BDP INTERNATIONAL INC.
2929 WALKER ROAD NW
2ND FLOOR
GRAND RAPIDS, MI 49544

RE: Revocation of NY N230084; Revocation of NY N236254; Tariff classification of gazebos and canopy shelters

DEAR MS. LIU AND MR. YOUNG:

This letter is to inform you that U.S. Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) N230084, issued to Atico International USA, Inc. (Atico) on August 29, 2012, and NY N236254 issued to BDP International (BDP) on December 14, 2012, concerning the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of gazebos from China. We have reviewed these two rulings and found them to be incorrect. Accordingly, for the reasons set forth below, we are revoking these rulings.

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), a notice was published in the *Customs Bulletin*, Volume 49, Number 8, on February 25, 2015. Seven (7) sets of comments were received in response to the proposed notice.

FACTS:

CBP stated in NY N230084 the following:

The product to be imported is item number A050MA0075, gazebo. The product is comprised of steel tubes weighing 4.5 kgs, PE fabric at 1.2 kgs and the plastic part with a weight of 0.3kgs. The steel tubes outline the frame and a fire retardant PE cover forms the roof. The PE roof is placed over the steel frame. All components will be packed in one box and assembly is required.

The applicable subheading for the gazebo will be 7308.90.9590, Harmonized Tariff Schedule of the United States (HTSUS) which provides for structures...

PE stands for “polyethylene,” and in this context the product is a PE tarp, a waterproof laminate of woven strips and sheet material. Atico’s ruling request submission stated that the PE cover or shroud measures 10’ x 10’

along the top, and 10' x 10' along the floor, forming a square, is PE 100G, and is treated with fire retardant material which satisfies CPAI-84, a flammability standard written by the Industrial Fabrics Association International.¹ It does not have fabric "walls." The steel tube legs measure 24 mm, and the roof measures 18 mm.

CBP stated in NY N236254 the following:

The product to be imported is a canopy shelter identified as model number 25757. It consists of a one-piece cover, a 10' x 20' steel frame, bungee cords, footplates and spike anchors. The canopy fabric is woven of polyethylene strips that measure not over 5mm in width and is laminated on both sides with a plastic material which renders it waterproof. The applicable subheading for the gazebo will be 7308.90.95, Harmonized Tariff Schedule of the United States (HTSUS) which provides for structures...

BDP's ruling request submission stated that the canopy has been treated so as to be UV protectant, with added fade blockers and anti-aging and anti-fungal agents. It does not have fabric "walls." It is advertised as being quick and east to set up, and is "Great for: camping, decks/patios, special/corporate events, shade and protection."

ISSUE:

Whether the subject gazebos are classified as an article of plastic of heading 3926, HTSUS, or whether they are structures of heading 7308, HTSUS.

LAW AND ANALYSIS:

Classification under the 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 HTSUS provisions under consideration are as follows:

3926 Other articles of plastics and articles of other materials of headings 3901 to 3914:

**

7308 Structures (excluding prefabricated buildings of heading 9406) and parts of structures (for example, bridges and bridge sections, lock gates, towers, lattice masts, roofs, roofing frameworks, doors and windows and their frames and thresholds for doors, shutters, balustrades, pillars and columns) of iron or steel; plates, rods, angles, shapes, sections, tubes and the like, prepared for use in structures of iron or steel:

The Court of International Trade (CIT) addressed the scope of "tents" of heading 6306, HTSUS, in *Target Stores v. United States*, Court No. 06-00444 (Slip Op. 12-41, March 22, 2012) when it considered certain products described as "gazebos." There the CIT noted that "tents" are typically lightweight, portable shelters, which form an enclosure around the user to protect users from weather elements other than mere sunshine. They are designed to

¹ See <http://tentexperts.org/safety/safetyarticles/flammabilityrequirements>

set up and collapse quickly, are easily transported, and they are not landscape design features nor are they akin to permanent shelters. Conversely, the products before the CIT in *Target Stores, supra*, were substantial in nature, could accommodate furniture, were assembled and disassembled in a manner that is time-consuming and requires the use of components, tools, and other techniques not associated with the easy setting up or taking down of tents. Moreover, the subject merchandise in *Target Stores, supra*, are frequently used as a landscape design feature in a sight plan. They are often made of steel and wood, and not fabric or textiles. The CIT thus ruled that because the gazebos were not *prima facie* classified under heading 6306, HTSUS, as tents, they were classified under heading 7308, HTSUS, as structures of steel.

This decision is instructive here with respect to whether the instant merchandise falls under the scope of heading 6306, HTSUS. Although the instant merchandise is designed to facilitate easy assembly or set-up, we note that when in use, neither product protects the user from weather elements other than sunshine any more or less than the merchandise subject to *Target Stores, supra*. Accordingly, we find that the instant merchandise is not *prima facie* classifiable under heading 6306, HTSUS, as “tents.”

That said, the subject gazebos are also not *prima facie* classifiable as a “structure of iron or steel”, as the Court determined the gazebos before it was, in *Target Stores, supra*. The gazebos in NY N230084 are lightweight, portable, “pop-up” canopies, which require little expert knowledge to assemble, and can likely be done by only one or two persons with minimal external tools. They are clearly advertised as great for picnics, temporary or seasonal events. They are not permanent shelters, they are not made of heavy metal, and there is no indication they are used as a landscape design feature.

The gazebos of NY N236254 are heavier; advertisements indicate they weigh around seventy (70) pounds and feature six legs and may require two persons to assemble. But they too require little expert knowledge, or outside tools, and the product’s packaging included with the original submission as well as the aforementioned online advertisements state that they are for seasonal shade, great for camping, commercial job sites, picnic areas, backyard events, pools or patio use. They are not permanent shelters as was the case with wooden and steel gazebos. Though they share some characteristics, they are distinguishable from the products considered by the *Target Stores* Court. Neither of the subject canopies is akin to the exemplars listed in the EN to chapter 73, nor are they characterized by the fact that “once they are put in position, they generally remain in that position”² or are “expected to

² 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 Harmonized System and are generally indicative of the proper interpretation of these headings. See T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989). The EN to Chapter 73 states, in part: This heading covers complete or incomplete metal structures as well as parts of structures. For the purpose of this heading, these structures are characterised by the fact that once they are put in position, they generally remain in that position. They are usually made up from bars, rods, tubes, angles, shapes, sections, sheets, plates, wide flats including so called universal plates, hoop, string, forgings or castings, by riveting, bolting, welding, etc.

remain so configured for extended periods of time.” *Target Stores v. United States, supra*, * 11.

All seven sets of comments received by this office argue that CBP is misinterpreting the Court’s holding in *Target Stores*, and impermissibly narrowing the scope of heading 7308, HTSUS. Arguments raised will be addressed in turn.

Four sets of comments argue that the characteristics laid out by the CIT explaining why the subject gazebos are “structures” of heading 7308, HTSUS, which CBP applied in the proposed ruling published in the *Customs Bulletin*, are irrelevant, and represent flawed logic, “because the cited factors have never been considered in determining what qualifies as structures in heading 7308, HTSUS.” It is true that factors such as weight, dimensions, amount of expert knowledge needed to assemble, advertised use to consumers, permanence, or use as a landscape design feature, have not been previously used by CBP to determine what is and is not a structure of 7308, HTSUS. But as the CIT used those exact characteristics to distinguish among goods which have some characteristics of a tent and some characteristics of a structure, CBP will interpret and apply those characteristics in the instant case to determine whether the subject merchandise is within the intended scope of heading 7308, HTSUS, as was clarified by the CIT.

Four sets of comments point to HQ 082489, dated October 31, 1988, a ruling decided under the HTSUS’ predecessor, the Tariff Schedule of the United States. While prior TSUS cases may be instructive in interpreting identical language in the HTSUS, they are not dispositive. H.R. Conf. Rep. No. 100–576, at 549–50 (1988), reprinted in 1988 U.S.C.C.A.N. 1547, 1582–83. The commenters continue to cite the House Conference Report which accompanies the Omnibus Trade and Competitiveness Act of 1988, which enacted the HTSUS which says, in relevant part:

In light of the significant number and nature of changes in nomenclature from the TSUS to the HTSUS, decisions by the Customs Service and the courts interpreting the nomenclature under the TSUS are not to be deemed dispositive in interpreting the HTSUS. Nevertheless, on a case-by-case basis prior decisions should be considered instructive in interpreting the HTSUS, particularly where the nomenclature previously interpreted in those decisions remains unchanged and no dissimilar interpretation is required by the text of the HTSUS.

In the instant case, the tariff provisions for both headings at issue remain unchanged as between the TSUS to the HTSUS. However, the consideration this office gives to TSUS rulings is outweighed by judicial changes in classification. Customs Regulations 19 C.F.R. 152.16(e) provides that the principles of a Court of International Trade decision are to be applied subsequent to that decision. The CIT in *Target Stores, supra*, proffered a chart which specifically stated the characteristics of a tent which are classified as such, versus a gazebo, classified as a structure. The Court used these diverging characteristics to determine that gazebos were not “tents” but were instead, because of the enumerated characteristics, more akin to “structures.” *Target Stores v. United States, supra* * 11 (“Rather, plaintiff’s goods **become essentially** structures of metal or wood bolted together external to individual homes and expected to remain so configured for extended periods of time.” [Emphasis

added)). Thus, moving forward, this office is charged with the responsibility to determine, on a case-by-case basis, whether an article “becomes essentially” a structure, or rather, if that article is something other than a “structure” because it does not share the Court’s enumerated characteristics of a “structure” of iron or steel. The instant pop-up canopies share almost no characteristics with the *Target* gazebo, nor with any of the other named exemplars of structures, found in the ENs.

The CIT in *Target Stores, supra*, did not state which GRI it applied when it determined that gazebos were structures of heading 7308, HTSUS. However, the subject merchandise is composed of a plastic textile cover, steel tube legs and frame, and various small metal screws and parts, packaged together for assembly as a single article post-importation. The case law is very clear that a composite good is found where two or more headings each refer to part only of the materials contained therein, and therefore, classification is made pursuant to GRI 3. See *Pomeroy Collection Ltd. v. United States*, 893 F. Supp. 2d 1269, 1280 (Ct. Int’l Trade 2013). The subject merchandise is, therefore, a composite good. GRI 3 (b) provides:

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in set 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 Courts have discussed the application of GRI 3(b) on several occasions. See *Conair Corp. v. United States*, 29 CIT 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), *aff’d* 491 F.3d 1334 (Fed. Cir. 2007). In particular, in *Home Depot, Inc. v. United States, supra*, the court stated: “[a]n essential character inquiry requires a fact intensive analysis.” 427 F. Supp. 3d at 1284 (Ct. Int’l Trade 2006). The EN (VIII) to GRI 3(b) is also instructive. Therein it provides:

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 *Home Depot, Inc. v. United States, supra*, the CIT examined all the factors listed in the EN (VIII) to GRI 3(b) to determine the classification of merchandise. The court also noted that the EN list is not exhaustive and that other factors should be considered, including the article’s name, primary function, and the “attribute which strongly marks or serves to distinguish what it is. Its essential character is that which is indispensable to the structure, core or condition of the article, i.e. what it is.” *Id* quoting *A.N. Deringer, Inc. v. United States*, 66 Cust. Ct. 378 (1971).

In this case, the composite good at issue is composed of a large plastic canopy of heading 3926, HTSUS, and a steel frame with steel legs of Chapter 73, HTSUS. The quantity of each component does not weigh in favor of either component. There are multiple steel components, but it makes up one frame, and there is one large canopy. The frames of each product are heavier than its respective canopy. Therefore, this factor weighs in favour of the frame im-

parting the good's essential character. Neither importer provided CBP with pricing information. Some commenters, in analogizing similar products, stated that the steel frame makes up about 52% of the cost of the shelter, with the cover making up about 43%. Another commenter noted that the frame is 65%, with the cover being 32%. Therefore, in cases where the frame is more expensive, then this factor does weigh in favour of the frame. The bulk of the product is made up by the plastic canopy, which is larger in coverage or square footage than the frame, and is the more cumbersome of the two components for users to assemble. This factor weighs in favour of the canopy imparting the goods' essential character. Six commenters stated that the steel frame was highly engineered and so imparts the essential character. But a collapsible accordion frame is not so technologically advanced, specialized, or complex that the entire product should be classified pursuant to this factor.

As regards the nature and role of the components, multiple commenters claim the cover is not essential to the product, and therefore cannot be considered as imparting the goods essential character. Yet, both the subject canopies, as well as all of the substantially similar products submitted to this office from commenters, advertise their goods as being temporary shelters, under which users may park their cars, store plants or other supplies, or set up a farmer's market or flea market, have a picnic or tailgate. The concept of shelter or sheltering cannot be accomplished without a means of being covered or protected. The primary role of the subject merchandise is to provide shade and minimal cover for users in fair weather. The consumer's expectation is to purchase a means of providing temporary, moveable, outdoor shade. The metal frame cannot serve this purpose alone; rather its sole purpose is to provide physical support for the canopy, under which users will sit or stand. Moreover, the canopies have been treated so as to be waterproof, fire retardant, anti-fungal, and/or UV-resistant, whereas the steel frames have no special treatments on them which benefit users. All of these very important factors weigh in favour of the canopy imparting the goods' essential character. The essential character of the subject gazebos is thus, imparted by the canopy itself. It follows then that the subject merchandise is classified according to the constituent material of the canopy, as, "Other plastic articles" under heading 3926, HTSUS.

As regards the canopies not being a "permanent shelter", a few of the submitted comments noted that permanence is not required for an article to be classifiable as a structure of heading 7308, HTSUS. Indeed, it is not. In *S.G.B. Steel Scaffolding & Shoring Co.*, 82 Cust. Ct. 197 (Cust. Ct. 1979), the Court first conducted a lexicographic analysis, and then an ejusdem generis analysis with respect to the scope of the tariff term "structures," noting "[t]he master rule of statutory construction, of course, is to interpret the provision so as to carry out the legislative intent." *S.G.B. Steel Scaffolding & Shoring Co. v. United States*, 82 Cust. Ct. 197, 213 (Cust. Ct. 1979), citing *United States v. American Trucking Ass'ns.*, 310 U.S. 534, 542 (1940); *United States, etc. v. Simon Saw & Steel Co.*, 51 CCPA 33, at 40. The Court concluded that, pursuant to the words' common meaning, "scaffolding" which was meant to support humans and materials (including concrete), but which is inherently temporary in nature, was still a "structure" for tariff purposes, and also was of a like class with the items particularly described in heading 7308, HTSUS.

S.G.B. Steel Scaffolding & Shoring. Co. v. United States, 82 Cust. Ct. 197, at 215. The Court continued, that this was because scaffold-type shoring is generally assembled in tower structures consisting of a pair of prefabricated frames and towers are provided for specifically as an exemplar in the heading text of 7308, HTSUS. *Id* at 216.

However, scaffolding which can support the weight of humans and materials, including concrete, is not at all similar to a lightweight, seasonal canopy which sets up and collapses easily via an accordion-style frame and which, when not in use, is stored in a bag for easy transport. One commenter's submitted instructions of a substantially similar product states clearly: "Do not use in any potentially windy or rainy weather", and "Do not rely on your [canopy shelter] for protection in heavy or prolonged rain storms", and "The [canopy shelter] product is designed as a temporary shelter. Do not leave it up for extended periods", and "Do not leave your [canopy shelter] product unattended." In fact, doing so could void the warranty of the canopy. None of these instructions indicate the product is akin to scaffolding structures or towers of steel. Regardless of how broadly the Court found heading 7308, HTSUS to be when it considered steel scaffolding, no reading of *S.G.B. Steel Scaffolding & Shoring. Co. v. United States*, *supra*, would conclude the Court also meant to include a pop-up canopy.

Furthermore, the EN does not require structures to be permanent, but durability is contemplated. The EN to Chapter 73 states, and the Court in *Target Stores*, *supra*, relies upon, the clarification that goods classified therein are done so because they will "remain so configured for extended periods of time." *Target Stores v. United States*, *supra* * 11. As has been addressed, and which is evidenced by the product's own warnings to consumers, these pop-up canopies should not be erected for, or left standing for extended periods of time.

One commenter pointed to several CBP rulings regarding furniture, to argue that CBP has previously recognized the importance of structural framing components of composite articles. See HQ H069895, dated March 22, 2010, as well as NY N251114, dated April 3, 2014, and NY N06531, dated February 23, 2007. However, in each of those circumstances, this office recognized that the form and shape and purpose of the article was as a door, and the structural frame thus imparts the form and shape of a door. Here, the purpose of the article is as a shelter, and the form and shape of the sheltering component is imparted by the canopy and not the frame.

Some commenters argued that neither the canopy nor the frame imparted the goods essential character, and as such, they should be classified under the heading which occurs last in numerical order among those which equally merit consideration, pursuant to GRI 3(c). However, as explained, the purpose of the canopy shelter is to shelter the people and things underneath it. Therefore the canopy imparts the goods' essential character, and classification pursuant to GRI 3(c) is unnecessary.

Classification pursuant to the canopy is consistent with previous HQ rulings whereby CBP classified outdoor canopies according to the material of the cover itself. See NY856811, dated October 17, 1990, (classifying a dining canopy of polyethylene strips covered on both sides with a visible plastic coating under heading 3926, HTSUS as an other article of plastic); NY 802307, dated October 4, 1994 (classifying a dining canopy made of polyeth-

ylene under heading 3926, HTSUS as an other article of plastic); NY I88445, dated December 2, 2002 (classifying a sun shelter/dining canopy made from clear polyethylene strips under heading 3936, HTSUS, as an other article of plastic) and NY L81420, dated December 17, 2004 (classifying a dining canopy composed of clear polyethylene fabrics under heading 3926, HTSUS as an other article of plastic).

HOLDING:

In accordance with GRI 3(b), the subject gazebos are classified in heading 3926, HTSUS. They are specifically provided for in subheading 3926.90.9995, HTSUSA, as an “Other article of plastic: Other: Other: Other.” The duty rate is 5.3 percent *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY N230084, dated August 29, 2012, and NY N236254, dated December 14, 2012 are hereby REVOKED.

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

Sincerely,

IEVA K. O’ROURKE

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**PROPOSED REVOCATION OF A RULING LETTER AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE TARIFF CLASSIFICATION OF KNIT POLYESTER
PANTS**

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

ACTION: Notice of proposed revocation of a ruling letter and proposed revocation of treatment relating to the tariff classification of knit polyester pants.

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 proposing to revoke a ruling concerning the tariff classification of knit polyester pants under the Harmonized Tariff Schedule of the United States (“HTSUS”). Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before September 18, 2015.

ADDRESSES: Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 5th floor, 799 9th Street N.W., Washington, D.C., 20229–1179, and may be inspected during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0188.

FOR FURTHER INFORMATION CONTACT: Robert Shervette, Office of International Trade, Tariff Classification and Marking Branch, at (202) 325–0274.

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”), become effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility**.” These concepts are premised on the idea that in order to maximize voluntary

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP is proposing to revoke one ruling letter pertaining to the tariff classification of knit polyester pants. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter ("NY") N071298, dated August 10, 2009, set forth as "Attachment A", this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

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

In NY N071298, CBP classified knit polyester pants as loungewear under heading 6103, HTSUS, which provides for: "[m]en's or boys' suits, ensembles, suit-type jackets, blazers, trousers, bib and brace overalls, breeches and shorts (other than swimwear), knitted or crocheted." Upon our review of NY N071298, we have determined that the merchandise described in that ruling is properly classified as sleepwear under heading 6107, HTSUS, which provides for: "[m]en's

or boys' underpants, briefs, nightshirts, pajamas, bathrobes, dressing gowns and similar articles, knitted or crocheted.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY N071298, and to revoke or modify any other ruling not specifically identified to reflect the proper classification of the subject merchandise according to the analysis contained in proposed Headquarters Ruling Letter (“HQ”) H140735, set forth as “Attachment B” to this document. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: July 30, 2015

IEVA K. O’ROURKE
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N071298

August 10, 2009

CLA-2-62:OT:RR:NC::N3:358

CATEGORY: Classification

TARIFF NO.: 6103.43.1540

MR. HAROLD GRUNFELD

MR. DAVID MURPHY

GRUNFELD, DESIDERIO, LEBOWITZ, SILVERMAN & KLESTADT LLP

399 PARK AVENUE 25TH FLOOR

NEW YORK, NY 10022-4877

RE: The tariff classification of boys' lounge pants from Thailand.

DEAR MESSRS. GRUNFELD AND MURPHY:

In your letter dated August 3, 2009, on behalf of your client Outerstuff Ltd., you requested a tariff classification ruling. One sample was submitted with your request. The submitted sample will be returned to you.

The sample, which you describe as sleep bottoms, is a pair of boy's lounge pants constructed from knit polyester, piece dyed, brushed fabric. You state that the article is made from flame retardant fabric and that it is designed for use as sleepwear. The pull-on style pants have a fabric covered elastic waistband, side entry pockets and hemmed cuffs. The pants have a random, all-over Ohio State Buckeyes™ print design. The sample is a boys' size large, 14/16.

Although you describe the style as sleepwear in subheading 6207.22.000, the article is precluded from Chapter 62 because of knit construction. The item belongs to a class of apparel that is multi-purpose in nature and is designed for wear in a variety of informal situations in and around the home. As such, it is not classified in heading 6107, HTSUS, which is limited to garments that are designed for wear only to bed for sleeping.

The applicable subheading for garment will be 6103.43.1540, Harmonized Tariff Schedule of the United States (HTSUS), which provides for men's or boys' trousers, breeches and shorts, knitted or crocheted, of synthetic fibers, trousers and breeches, boys', other. The duty rate is 28.2% 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 Bruce Kirschner at 646-733-3048.

Sincerely,

ROBERT B. SWIERUPSKI

*Director**National Commodity Specialist Division*

[ATTACHMENT B]

H140735

CLA-2 OT: RR: CTF: TCM H140735 RES

CATEGORY: Classification

TARIFF NO.: 6107.99.1030

HAROLD GRUNFELD

DAVID MURPHY

GRUNFELD, DESIDERIO, LEBOWITZ, SILVERMAN & KLESTADT LLP

399 PARK AVENUE, 25TH FLOOR

NEW YORK, NY 10022-4877

RE: Revocation of NY N071298; classification of knit polyester pants from Thailand

DEAR MESSRS. GRUNFELD AND MURPHY:

This is in reference to New York Ruling Letter (“NY”) N071298, issued to you, on behalf of your client, Outerstuff, Ltd., on August 10, 2009. In NY N071298, U.S. Customs and Border Protection (“CBP”) classified boys’ pants (“pants”) under heading 6103, Harmonized Tariff Schedule of the United States (“HTSUS”). CBP has reviewed that ruling and determined that it is incorrect.

FACTS:

In NY N071298, CBP described the merchandise as follows:

The sample, which you describe as sleep bottoms, is a pair of boy’s lounge pants constructed from knit polyester, piece dyed, brushed fabric. You state that the article is made from flame retardant fabric and that it is designed for use as sleepwear. The pull-on style pants have a fabric covered elastic waistband, side entry pockets and hemmed cuffs. The pants have a random, all-over Ohio State Buckeyes™ print design. The sample is a boys’ size large, 14/16. . . . The item belongs to a class of apparel that is multi-purpose in nature and is designed for wear in a variety of informal situations in and around the home.

In NY N071298, CBP classified the merchandise as loungewear under subheading 6103.43.1540, HTSUS, which provides for “[m]en’s or boys’ suits, ensembles, suit-type jackets, blazers, trousers, bib and brace overalls, breeches and shorts (other than swimwear), knitted or crocheted: [t]rousers, bib and brace overalls, breeches and shorts: [o]f synthetic fibers: [t]rousers, breeches and shorts: [o]ther: [t]rousers and breeches: [b]oys’: [o]ther.”

The importer filed a request for reconsideration of NY N071298 on December 16, 2010, asserting that the proper classification of the pants at issue is as unisex sleepwear under heading 6108, HTSUS, which provides for “[w]omen’s or girls’ slips, petticoats, briefs, panties, night dresses, pajamas, negligees, bathrobes, dressing gowns and similar articles, knitted or crocheted.” Although in your request for reconsideration you discuss men’s and boys’ pajama sets, as well as pants, as NY N071298 addressed only pants, this reconsideration is limited to the pants.

ISSUE:

1. Whether the subject merchandise is classified as loungewear, or as sleepwear.
2. If the merchandise is classified as sleepwear, whether the subject merchandise is classified under heading 6107, HTSUS, as boy's sleepwear or under heading 6108, HTSUS, as unisex sleepwear.

LAW AND ANALYSIS:

Classification under the 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 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 2 through 6 may be applied in order.

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

The 2015 HTSUS headings under consideration in this case are as follows:

- | | |
|------|---|
| 6103 | Men's or boys' suits, ensembles, suit-type jackets, blazers, trousers, bib and brace overalls, breeches and shorts (other than swimwear), knitted or crocheted: |
| 6107 | Men's or boys' underpants, briefs, nightshirts, pajamas, bathrobes, dressing gowns and similar articles, knitted or crocheted: |
| 6108 | Women's or girls' slips, petticoats, briefs, panties, night dresses, pajamas, negligees, bathrobes, dressing gowns and similar articles, knitted or crocheted: |

In a request for reconsideration of the ruling, the importer asserts that the merchandise in NY N071298 is unisex sleepwear and not boys' sleepwear. NY N071298 did not address whether or not the subject merchandise should be classified as unisex and not as a boys' article of apparel. We will analyze the two issues separately below.

Sleepwear versus Loungewear

In the determination of whether garments are classified as sleepwear, CBP considers factors discussed in several decisions by the United States Court of International Trade. In *Mast Industries, Inc. v. United States*, 9 C.I.T. 549, 552 (1985), *aff'd* 786 F. 2d 1144 (Fed. Cir. 1986), the Court cited several lexicographic sources; among them *Webster's Third New International Dictionary* which defined "nightclothes" as "garments to be worn to bed." Based on an examination of the garment, witness testimony, and other evidence concerning how it was marketed and advertised, the court determined that the garment at issue was designed, manufactured, and used as nightwear

and, therefore, was classifiable as nightwear. *Id.* at 500–51. Likewise, in *St. Eve International, Inc. v. United States*, 11 C.I.T. 224 (1987), the court ruled that the garments at issue were manufactured, marketed and advertised as nightwear and were chiefly used as such. The court in *St. Eve* based its conclusion on an analysis of how the garment was advertised and marketed and on an examination of the garment itself. Similarly, in *Inner Secrets / Secretly Yours, Inc. v. United States*, 19 C.I.T. 496, 505–06 (1995), based upon an examination of the merchandise at issue, witness testimony, and documentary evidence such as marketing and advertising materials, the court determined that the subject merchandise was classifiable as underwear and not outerwear.

Thus, the determination of the classification of an imported garment requires an analysis of the physical characteristics of the article and, if the article is ambiguous in design and not clearly recognizable, of the extrinsic evidence, such as marketing materials and invoices associated with the article. See HQ 967185, dated Oct. 8, 2004, (stating that CBP’s policy is to carefully examine the physical characteristics of the garments in question and in some cases to consider other extrinsic evidence); HQ 962021, dated Sept. 19, 2001, (stating that for a garment not clearly recognizable as underwear or outerwear, CBP will consider other factors such as advertising, marketing, invoices, etc). CBP considers these factors in totality and no single factor is determinative of classification as each viewed alone may be flawed. See HQ 967185; HQ 964513, dated Feb. 11, 2002. Where the physical attributes of the garment do not lend support to the claim that the garment is sleepwear neither advertising nor marketing alone will be considered conclusive enough to substantiate classification for tariff purposes. See HQ 955341, dated May 12, 1994.

In classification of garments, evidence may be the merchandise itself. CBP has adopted that view as the crucial factor in the classification of a garment. *Mast Industries*, 9 C.I.T. at 552, (citing *United States v. Bruce Duncan Co.*, 50 C.C.P.A. 43, 46 (1963)). See also HQ 966234, dated Sept. 2, 2003. Night clothes and sleepwear are characterized by a sense of privateness or private activity such as sleeping. See *International Home Textile, Inc. v. United States*, 21 C.I.T. 280, 282 (1997), *aff’d* 153 F.3d 1378 (Fed. Cir. 1998). Sleepwear is worn in private situations such as in one’s home while alone or in the company of only intimate friends and close family. On the other hand, loungewear is “worn at informal social activities in and around the home, and for other individual, non-private activities in and around the house.” *Id.* Examples of activities where loungewear is appropriate are “watching movies at home with guests, barbequing at a backyard gathering, doing outside home and yard maintenance, washing the car, walking the dog, and the like.” *Id.* In essence, loungewear would be an article of clothing that lacks the sense of privateness such that a reasonable person would deem it appropriate to wear it in front of people other than close family or intimate friends. Thus, in consideration of the physical characteristics, the threshold question in the instant case is whether the pants at issue are appropriate to wear in informal

social activities, such as in the examples enumerated by the court in *International Home*, or do they share the essential character of privateness or private activity.

The sample provided has some of the characteristics that are features typically found on sleepwear, such as elasticized waistband, loose fit, brushed polyester fabric for softness, and motifs printed randomly all over the pants. See HQ H030421, dated May 10, 2010; HQ H040736, dated October 26, 2009; HQ 956663, dated November 30, 1994. Other characteristics of the sample are features which have been found on both sleepwear and loungewear, such as side seam pockets and a lack of a fly. Side seam pockets will not preclude a garment from being classified as sleepwear in as much as these pockets do not interfere with a garment's practical use for sleeping. See HQ H030421; HQ 963906, dated April 4, 2001. A lack of a fly is normally suggestive of modesty, which is a feature useful for loungewear. However, there is no requirement for boy's sleepwear pants to have some type of fly feature. In addition, there are no buttons, zippers, belt loops, pleats, or insets on the pants or any other useful design features one would associate with loungewear worn at informal social gatherings. Finally, the pants have a hangtag sewn into them that says "flame-retardant sleepwear." The labeling of the pants with hangtags that have the words "sleepwear" is highly suggestive that the pants are sleepwear. Overall, the physical characteristics of the pants are consistent with sleepwear.

The extrinsic evidence submitted includes: purchase orders describing the merchandise as "100% polyester knit sleepwear," invoices describing the merchandise as "boys 100 percent polyester knit sleepwear," and excerpts of the importer's sales catalogues listing similar tops with pants sets as "pyjama sets" under the "sleepwear" section. Lastly, the importer provided information highlighting the fact that the company that makes the instant pants is primarily a sleepwear manufacturer. Noting that internal company documents, such as invoices can be viewed as self-serving, *Regali v. United States*, 16 C.I.T. 407 (1992), CBP is of the opinion that this extrinsic evidence alone would not substantiate the importer's claim for classifying the knit pants as sleepwear. However, CBP notes the consistency in the labeling of the knit pants as pajamas or sleepwear through the supply chain, e.g., the purchase orders (sleepwear), invoices (pyjamas pants), the knit pants themselves (flame-retardant sleepwear hangtag), and the fact that the manufacturer primarily makes sleepwear. Thus, the extrinsic evidence does not contradict the analysis of the physical characteristics but is consistent with the conclusion that the instant pants are sleepwear and not loungewear.

Collectively, in consideration of the totality of factors, the extrinsic evidence coupled with an examination of the physical characteristics of the sample support finding that the instant pants should be classified as sleepwear and not loungewear. This finding is in accord with that in HQ H040736, dated October 26, 2009, wherein similar merchandise stylized for girls was classified as girls' pajamas in heading 6108, HTSUS.

Unisex versus Boys' Wear

General Note ("GN") 9 to Chapter 61 states in relevant part that "[g]arments which cannot be identified as either men's or boys' garments or as women's or girls' garments are to be classified in the headings covering women's or girls' garments."

In determining whether garments are identifiable as men's or boys' or as women's or girls', CBP considers the following factors: (1) sizing, (2) construction, (3) styling, and (4) other factors such as packaging, labeling, etc. See Headquarters Ruling ("HQ") 952241, dated October 25, 1992, (citing Guidelines for the Reporting of Imported Products in Various Textile and Apparel Categories ("Textile Guidelines"), 53 Fed. Reg. 52564 (Dec. 28, 1988)). Other factors may be considered and any factor may be determinative by itself or in combination with one or more factors. *Id.* Other factors to consider include examining how an article is marketed and advertised. See *St. Eve International, Inc. v. United States*, *supra* (determining the classification of a garment based on an analysis of how it was advertised, marketed, and on an examination of the garment itself); *Mast Industries, Inc. v. United States*, *supra* (classifying a garment based on an analysis of an examination of the garment, witness testimony, and marketing and advertising materials). See also HQ 967185, *supra* (stating that CBP's policy is to carefully examine the physical characteristics of the garments in question and when that is not substantially helpful, to also consider other extrinsic evidence, such as marketing materials, packaging, labeling, and invoices associated with the article). Thus, these factors are analyzed below in turn.

(1) Sizing: According to the importer's memo and the purchase orders, the sleep pants come in sizes 8 – 20. The sample provided is a size large (14/16). In general, girls' clothing sizes are 7 – 16, and boys' clothing sizes are 8–20. <http://pages.ebay.com/buy/guides/apparel-accessories-buying-guide/sizingcharts/>; <http://www.sizeguide.net/size-guide-children-size-chart.html> Thus, because the size scale of the pants is consistent with boys' sizes, the factor of sizing weighs in favor of finding that the pants at issue are a boys' article of clothing and not unisex wear.

(2) Construction: The sleep pants at issue are composed of a 100% knit polyester flame-retardant fabric, which upon visual and tactile inspection has a light weight and slightly medium thickness of fabric. Although the importer does not explain what aspects of the construction of the pants are unisex features versus boys' or girls' features, CBP observes that there is nothing about the construction of the pants that would place it in either the boys' or girls' category of clothing. Instead, the construction of the pants is neutral in regards to gender categorization. Therefore, because the factor of construction does not favor placing the garment in one gender category over the other, this factor supports a finding that the instant pants are of a unisex construction.

(3) Styling: In regard to the design of the sleep pants, the sample provided is red with motifs of the Ohio State Buckeyes team logo randomly scattered all over the pants. Other similar boys' sleep pants of the importer come in the team colors and randomly scattered team logo motifs of the respective college sports team the pants are representing in the same style as that of the sample. The importer has not provided any information as to whether cloth-

ing that has sport team logos printed is traditionally marketed toward boys or to both sexes equally. A comparison of the styles of boys' versus girls' garments sold as sleepwear in the stores the importer listed as customers—Wal-mart, JC Penney, and Kohl's—shows that girls' sleep pants in general tend to come in light colors, such as various shades of pinks, blues, greens, purples, etc., with characters on them such as Hello Kitty, princesses, etc., or designs such as hearts or flowers. Boys' styles of pants in these stores tended to come in dark and bold colors such as navy blue, black, red, and have on the pants cartoon characters such as dogs, cars, dinosaurs, and Sponge Bob™, or designs such as camouflage, plaids, sports motifs, etc. In addition, none of these retailers' online stores carried the college sport team boys' sleep pants. Kohl's was the only retailer that sold other licensed sports apparel, such as t-shirts, hats, and jerseys, and these garments were listed in boys' sizes and not girls' sizes. Overall, the style of the instant sleep pants is more similar to colors and designs marketed to boys than to girls. Therefore, the style factor weighs in favor of finding that the sleep pants at issue here are intended to be used as a boys' garment.

(4) Other factors: Other factors include things such as how an article is marketed, advertised, and labeled. The importer's invoices and purchase orders, Exhibits E and G, respectively, in the importer's memorandum, list the pants at issue as either "boys 100 percent polyester knit sleepwear" or "boy's 100% polyester knit sleepwear." In a catalogue excerpt titled NFL Sleepwear, Exhibit B, there is a page with the label of "Boys FR Sleeper" that has pajamas with NFL team logos for the New England Patriots printed randomly all over a pair of pants and a second page with "unisex" on the top of it that has pajama sets that also has the Patriot NFL team logos printed randomly all over both the pants and matching top of the pajama set. In another catalogue excerpt with the title of MLB Sleepwear, Exhibit C, there is a page with the label of "Boys FR Sleeper" that has pajamas with MLB team logos for the Boston Red Sox printed randomly all over a pair of pants and a second page with "unisex" on the top of it that has pajama sets that also have the Boston Red Sox team logos printed randomly all over both the pants and matching top of the pajama set.

Although the importer did not include a catalogue for the type of pants at issue—garments with college team logos—one can deduce from the excerpts of the professional sports related sleepwear catalogues that there is an inconsistency on how the importer advertises similar garments to retailers in regard to being unisex versus boys' wear. There is no explanation provided as to why seemingly similar styled pants are labeled differently. Even though the importer's catalogues for the professional sports related garments are inconsistent in how they market similar styled pants, the fact that similar pants are considered boys' wear coupled with the importer's internal documentation demonstrating that the importer and manufacturer view the pants at issue as boys' garments, all weigh in favor of a finding that the pants at issue are boys' wear and not unisex wear.

Overall, an analysis of the factors provided in the Textile Guidelines and used in HQ 952241—the sizing, construction, styling, advertising and marketing of the garment—demonstrate that the instant pants are intended to be used by boys and, hence, are identifiable as boys' garments. Therefore, the pants at issue are not classifiable as a unisex garment in heading 6108, HTSUS.

Therefore, the instant pants are properly classified as boys' sleepwear in heading 6107, HTSUS, as [m]en's or boys' underpants, briefs, nightshirts, pajamas, bathrobes, dressing gowns and similar articles, knitted or crocheted."

HOLDING:

Pursuant to GRI 1, the instant pants are classified under subheading 6107.99.1030, HTSUSA, which provides for "[m]en's or boys' underpants, briefs, nightshirts, pajamas, bathrobes, dressing gowns and similar articles, knitted or crocheted: [o]ther: [o]f other textile materials: [o]f man-made fibers: [s]leepwear." The general, column one, rate of duty is 14.9 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 World Wide Web at www.usitc.gov/tata/hts/.

EFFECTS ON OTHER RULINGS:

NY N071298, dated August 10, 2009, is revoked.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**REVOCATION OF ONE RULING LETTER AND
MODIFICATION OF ONE RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO THE
CLASSIFICATION OF BAKED CRÈME DESSERTS**

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

ACTION: Notice of revocation of one ruling letter and modification of one ruling letter and revocation of treatment relating to the classification of baked crème desserts.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that CBP is revoking one ruling and modifying one ruling concerning the classification of baked crème desserts under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical merchandise. Pursuant to section 625(c)(1)), as amended by section 623 of Title VI, notice of the proposed action was published in the *Customs Bulletin*, Vol. 49, No. 25, June 24, 2015. No comments were received in response to this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after October 19, 2015.

FOR FURTHER INFORMATION CONTACT: Ann Segura, Tariff Classification and Marking Branch: (202) 325-0031.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), a notice was published in the *Customs Bulletin*, Volume 49, No. 25, on June 24, 2015, proposing to revoke NY N015908 and modify NY N015868, and to revoke any treatment accorded to substantially identical transactions. No comments were received in response to this notice.

As stated in the proposed notice, this revocation and modification will cover any rulings on this issue that 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 notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the 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 the effective date of this final decision.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY N015908, dated September 5, 2007, and modifying NY N015868, dated September 7, 2007, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter ("HQ") H233583, set forth as Attachment A to this notice. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: July 29, 2015

JACINTO JUAREZ

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachment

HQ H233583

July 29, 2015

CLA-2 OT:RR:CTF:TCM H233583 AS

CATEGORY: Classification

TARIFF NO.: 1905.90.90

MR. BRIAN KAVANAUGH
DERINGER LOGISTICS CONSULTING GROUP
1 LINCOLN BLVD., SUITE 225
ROUSES POINT, NY 12979

RE: Revocation of NY N015908; Modification of NY N015868; Tariff Classification of Crème Desserts

DEAR MR. KAVANAUGH:

This is in response to your request for reconsideration dated September 12, 2012, filed on behalf of Marie Morin Canada, Inc., (“Marie”), requesting the reconsideration of New York Ruling Letter (NY) N015908, dated September 5, 2007.¹

In NY N015908, dated September 5, 2007, CBP classified crème desserts, identified as “Crème Coffee” and “Crème au Caramel”. The “Crème Coffee” product was classified in heading 1901, HTSUS, and subheading 1901.90.4200, Harmonized Tariff Schedule of the United States Annotated (HTSUSA)², which provides for “Malt extract; food preparations of flour, groats, meal, starch or malt extract, not containing cocoa or containing less than 40 percent by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included; food preparations of goods of headings 0401 to 0404, not containing cocoa or containing less than 5 percent by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included: Other: Other: Dairy products described in additional U.S. note 1 to chapter 4: Dairy preparations containing over 10 percent by weight of milk solids: Described in additional U.S. note 10 to chapter 4 and entered pursuant to its provisions”.

The “Crème au Caramel” product was classified in heading 1901, HTSUS, and subheading 1901.90.4600, HTSUSA³, which provides for “Malt extract; food preparations of flour, groats, meal, starch or malt extract, not containing cocoa or containing less than 40 percent by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included; food preparations of goods of headings 0401 to 0404, not containing cocoa or containing less than 5 percent by weight of cocoa calculated on a totally defatted basis, not

¹ In HQ H023498, dated March 9, 2009, CBP modified NY N015908, dated September 5, 2007, pursuant to Section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993). See “Customs Bulletin”, Vol. 43, No. 13, March 26, 2009. This was in response to a previous request for reconsideration of NY N015908 and further clarification at that time that you were only seeking the reconsideration of that ruling as it pertained to the classification of the “Crème Brulee” product. As such, NY N015908 was modified to reflect the correct classification of the “Crème Brulee” in subheading 1905.90.90, HTSUS.

² If the quantitative limits of additional U.S. note 10 to Chapter 4 have been reached, the product would be classified in subheading 1901.90.4300, HTSUSA.

³ If the quantitative limits of additional U.S. note 10 to Chapter 4 have been reached, the product would be classified in subheading 1901.90.4700, HTSUSA.

elsewhere specified or included: Other: Other: Dairy products described in additional U.S. note 1 to chapter 4: Other: Described in additional U.S. note 10 to chapter 4 and entered pursuant to its provisions”.

In addition, in NY N015868, dated September 7, 2007, one of two dessert products, “Crème au Chocolat”, was also classified in heading 1901, HTSUS, and subheading 1901.90.4600, HTSUSA.⁴

We have reviewed NY N015908 and NY N015868 and found the classification of certain crème desserts to be incorrect. For the reasons set forth below, we hereby revoke NY N015908 and modify NY N015868.

Pursuant to section 625(c)(1), the Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke NY N015908 and modify NY N015868 was published in the *Customs Bulletin*, Vol. 49, No. 25, on June 24, 2015. No comments were received in response to this notice.

FACTS:

In NY N015908, CBP described the Crème Coffee and Crème au Caramel as fully cooked custard desserts, imported in frozen condition, in single-serving glass ramekins containing 110-grams, six units in a retail package. The Crème Coffee dessert is said to be composed of approximately 46 percent cream, 23 percent milk, 14 percent egg yolks, 12 percent sugar, 4 percent egg whites, and one percent coffee flavor. The Crème au Caramel consists of approximately 60 percent milk, 18 percent eggs, 12 percent sugar, 10 percent caramel, and one percent vanilla.

In N015868, CBP described the Crème au Chocolat as a chocolate custard consisting of 64.1 percent milk, 19.2 percent whole eggs, 12.8 percent sugar, and 3.8 percent cocoa powder. It is a ready to eat dessert imported in a frozen condition, individually packed for retail sale in small glass ramekins containing 110 grams, 6 ramekins to a carton.

ISSUE:

Whether the crème dessert products are classified in heading 1901, HTSUS, as an “other” food preparation, or in heading 1905, HTSUS, as “bakers’ wares”?

LAW AND ANALYSIS:

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

The following HTSUS provisions are under consideration:

⁴ If the quantitative limits of additional U.S. note 10 to Chapter 4 have been reached, the product would be classified in subheading 1901.90.4700, HTSUSA.

- 1901 Malt extract; food preparations of flour, groats, meal, starch or malt extract, not containing cocoa or containing less than 40 percent by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included; food preparations of goods of headings 0401 to 0404, not containing cocoa or containing less than 5 percent by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included:
* * *
- 1905 Bread, pastry, cakes, biscuits and other bakers' wares, whether or not containing cocoa; communion wafers, empty capsules of a kind suitable for pharmaceutical use, sealing wafers, rice paper and similar products:

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

The ENs to heading 1901, HTSUS, state, in relevant part:

Apart from the preparations excluded by the General Explanatory Note to this Chapter, this heading also **excludes** :

* * *

- (e) Fully or partially cooked bakers' wares, the latter requiring further cooking before consumption (**heading 19.05**).

The ENs to heading 1905, HTSUS, state, in relevant part:

- (A) **Bread, pastry, cakes biscuits and other bakers' wares, whether or not containing cocoa.**

This heading covers all bakers' wares. The most common ingredients of such wares are cereal flours, leavens and salt but they may also contain other ingredients such as: gluten, starch, flour of leguminous vegetables, malt extract or milk, seeds such as poppy, caraway or anise, sugar, honey, eggs, fats, cheese, fruit, cocoa in any proportion, meat, fish, bakery "improvers", etc. Bakery "improvers" serve mainly to facilitate the working of the dough, hasten fermentation, improve the characteristics and appearance of the products and give them better keeping qualities. The products of this heading may also be obtained from dough based on flour, meal or powder of potatoes.

This heading includes the following products:

* * * *

- (11) **Certain bakery products made without flour** (e.g., meringues made of white of egg and sugar).

You assert that the Crème Coffee and Crème au Caramel dessert products are classified as "bakers' wares" in heading 1905, HTSUS, because these are fully cooked desserts which are prepared by one who specializes in the making of baked goods. Furthermore, you note that EN 19.05(A)(11) suggests that these desserts, as baked flourless baker products, are classified in heading 1905, HTSUS, and are thus precluded from classification in heading 1901, HTSUS.

In accordance with the terms of heading 1901, HTSUS, we must first determine whether the HTSUS provides for the merchandise in any other heading.

CBP has previously construed the term “bakers’ wares” to mean “manufactured articles offered for sale by one [who] specializes in the making of breads, cakes, cookies, and pastries.”⁵ See HQ H015429, dated December 11, 2007. Most recently, in HQ W968393, dated July 16, 2008, we explained:

The text of heading 1905, HTSUS, provides for “other bakers’ wares” which, when read in the context of the entire clause of which this expression is a part, leads us to now find that **the term “other bakers’ wares” refers to baked goods (or wares) other than the “bread, pastry, cakes, [and] biscuits” specified in the heading.** In addition, based on the heading text and the examples provided by the ENs, it appears that **goods of heading 1905, HTSUS, are consumed “as is” and are not incorporated into other food items.** (Emphasis added).

In HQ H023498, dated March 9, 2009, CBP held that a Crème Brûlée dessert product was classified as “bakers’ wares” of heading 1905, HTSUS. In making this determination, CBP considered the fact that the product was a manufactured good offered for sale by one who specializes in the making of pastries. It was also noted that the Crème Brûlée product was akin to bakery products made without flour (e.g., meringues made of egg white and sugar) described in EN 19.05 (a)(11). Moreover, CBP noted that the product, as imported, was fully baked and ready for consumption “as is”, that is, they are not incorporated into other food items. See also HQ H015429, dated December 11, 2007, fully baked crème brûlée classified in heading 1905, HTSUS; HQ H226175, dated October 10, 2012, pre-baked French crème brulee classified in heading 1905, HTSUS.

Like the Crème Brûlée of HQ H023498, the Crème Coffee, Crème au Caramel, and Crème au Chocolat dessert products at issue are bakery products made without flour. They are manufactured goods offered for sale by one who specializes in the making of pastries. They are akin to the bakery products made without flour (e.g., meringues made of white of egg and sugar) described in EN 19.05 (A)(11)). Moreover, as imported, they are fully baked and ready for consumption “as is”; that is, they are not incorporated into other food items. Accordingly, we find that the Crème Coffee, Crème au Caramel, and Crème au Chocolat dessert products are “bakers’ wares” and are classified in heading 1905, HTSUS. This decision is consistent with CBP precedent. See HQ H023498; HQ H015429; and HQ H226175.

HOLDING:

By application of GRIs 1 and 6, the Crème Coffee, Crème Caramel, and Crème au Chocolat dessert products are classified in heading 1905, HTSUS, specifically, subheading 1905.90.90, HTSUS, which provides for “Bread, pastry, cakes, biscuits and other bakers’ wares, whether or not containing cocoa; communion wafers, empty capsules of a kind suitable for pharmaceutical use, sealing wafers, rice paper and similar products: Other: Other: Other”. The general column one duty rate is 4.5 percent *ad valorem*.

⁵ This definition was based on the dictionary definition of the word “baker” and the word “wares” since we were unable to find a dictionary that defined the compound term “bakers’ wares.”

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

EFFECT ON OTHER RULINGS:

NY N015908, dated September 5, 2007, is REVOKED and NY N015868, dated September 7, 2007 is MODIFIED.

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

Sincerely,

JACINTO JUAREZ

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**EXTENSION OF THE AIR CARGO ADVANCE SCREENING
(ACAS) PILOT PROGRAM AND REOPENING OF
APPLICATION PERIOD FOR PARTICIPATION**

AGENCY: U.S. Customs and Border Protection, DHS.

ACTION: General notice.

SUMMARY: On October 24, 2012, U.S. Customs and Border Protection (CBP) published a notice in the **Federal Register** that announced the formalization and expansion of the Air Cargo Advance Screening (ACAS) pilot program that would run for six months. CBP subsequently published several notices extending the pilot period and/or reopening the application period to new participants for limited periods. The most recent notice extended the pilot period through July 26, 2015. This document announces that CBP is extending the pilot period for an additional year and reopening the application period for new participants for 90 days. The ACAS pilot is a voluntary test in which participants submit a subset of required advance air cargo data to CBP at the earliest point practicable prior to loading of the cargo onto the aircraft destined to or transiting through the United States.

DATES: CBP is extending the ACAS pilot program through July 26, 2016, and reopening the application period to accept applications for new ACAS pilot participants through October 26, 2015. Comments concerning any aspect of the announced test may be submitted at any time during the test period.

ADDRESSES: Applications to participate in the ACAS pilot must be submitted via email to *CBPCCS@cbp.dhs.gov*. In the subject line of the email, please use “ACAS Pilot Application”. Written comments concerning program, policy, and technical issues may also be submitted via email to *CBPCCS@cbp.dhs.gov*. In the subject line of the email, please use “Comment on ACAS pilot”

FOR FURTHER INFORMATION CONTACT: Craig Clark, Cargo and Conveyance Security, Office of Field Operations, U.S. Customs & Border Protection, via email at *craig.clark@cbp.dhs.gov*.

SUPPLEMENTARY INFORMATION:

Background

On October 24, 2012, CBP published a general notice in the **Federal Register** (77 FR 65006, corrected in 77 FR 65395¹) announcing that CBP is formalizing and expanding the ACAS pilot to include other eligible participants in the air cargo environment. The notice provides a description of the ACAS pilot, sets forth eligibility requirements for participation, and invites public comments on any aspect of the test. In brief, the ACAS pilot revises the time frame for pilot participants to transmit a subset of mandatory advance electronic information for air cargo. CBP regulations implementing the Trade Act of 2002 specify the required data elements and the time frame for submitting them to CBP. Pursuant to title 19, Code of Federal Regulations (19 CFR) 122.48a, the required advance information for air cargo must be submitted no later than the time of departure of the aircraft for the United States (from specified locations) or four hours prior to arrival in the United States for all other locations.

The ACAS pilot is a voluntary test in which participants agree to submit a subset of the required 19 CFR 122.48a data elements (ACAS data) at the earliest point practicable prior to loading of the cargo onto the aircraft destined to or transiting through the United States. The ACAS data is used to target high-risk air cargo. CBP is considering possible amendments to the regulations regarding advance information for air cargo. The results of the ACAS pilot will help determine the relevant data elements, the time frame within which data must be submitted to permit CBP to effectively target, identify and mitigate any risk with the least impact practicable on trade operations, and any other related procedures and policies.

¹ This **Federal Register** notice, published on October 26, 2012, corrected the email address under the **ADDRESSES** heading for submitting applications or comments. The correct email address is *CBPCCS@cbp.dhs.gov*.

Extension of the ACAS Pilot Period and Reopening of the Application Period

The October 2012 notice announced that the ACAS pilot would run for six months. The notice provided that if CBP determined that the pilot period should be extended, CBP would publish another notice in the **Federal Register**. The October 2012 notice also stated that applications for new ACAS pilot participants would be accepted until November 23, 2012. CBP subsequently published several notices extending the pilot period and/or reopening the application period to new participants for limited periods. On December 26, 2012, CBP published a notice in the **Federal Register** (77 FR 76064) reopening the application period for new participants until January 8, 2013. On January 3, 2013, the **Federal Register** published a correction (78 FR 315) stating that the correct date of the close of the reopened application period was January 10, 2013. On April 23, 2013, CBP published a notice in the **Federal Register** (78 FR 23946) extending the ACAS pilot period through October 26, 2013, and reopening the application period through May 23, 2013. On October 23, 2013, CBP published a notice in the **Federal Register** (78 FR 63237) extending the ACAS pilot period through July 26, 2014, and reopening the application period through December 23, 2013. Finally, on July 28, 2014, CBP published a notice in the **Federal Register** (79 FR 43766) extending the ACAS pilot period through July 26, 2015, and reopening the application period through September 26, 2014.

Each extension of the pilot period and reopening of the application period has allowed for a significant increase in the diversity and number of pilot participants. CBP continues to receive a number of requests to participate in the pilot. CBP would like to extend the pilot further and reopen the application period for participants in order to provide sufficient opportunity to the broader air cargo community to participate and prepare for a potential regulatory regime in a pilot environment. CBP would also like to ensure continuity in the flow of advance air cargo security information as the rulemaking process progresses.

For these reasons, CBP is extending the ACAS pilot period through July 26, 2016, and reopening the application period through October 26, 2015.

Anyone interested in participating in the ACAS pilot should refer to the notice published in the **Federal Register** on October 24, 2012, for additional application information and eligibility requirements.

Dated: July 21, 2015.

TODD C. OWEN,
*Assistant Commissioner,
Office of Field Operations.*

[Published in the Federal Register, July 27, 2015 (80 FR 44360)]

AGENCY INFORMATION COLLECTION ACTIVITIES:
Ship's Store Declaration

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

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

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Ship's Stores Declaration (CBP Form 1303). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours or to the information collected. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before September 8, 2015 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to oir_submission@omb.eop.gov or faxed to (202) 395-5806.

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: This proposed information collection was previously published in the **Federal Register** (80 FR 24268) on April 30, 2015, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10. CBP invites the general public and other Federal agencies to comment on proposed and/ or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (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 costs to respondents or record keepers from the collection of information (total capital/ startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Ship’s Stores Declaration.

OMB Number: 1651–0018.

Form Number: CBP Form 1303.

Abstract: CBP Form 1303, Ship’s Stores Declaration, is used by the carriers to declare articles to be retained on board the vessel, such as sea stores, ship’s stores (e.g. alcohol and tobacco products), controlled narcotic drugs or bunker fuel in a format that can be readily audited and checked by CBP. This form collects information about the ship, the ports of arrival and departure, and the articles on the ship. CBP Form 1303 is provided for by 19 CFR 4.7, 4.7a, 4.81, 4.85 and 4.87 and is accessible at: <http://www.cbp.gov/sites/default/files/documents/CBP%20Form%201303.pdf>.

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to CBP Form 1303.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 8,000.

Estimated Number of Responses per Respondent: 13.

Estimated Number of Total Annual Responses: 104,000.

Estimated Total Annual Burden Hours: 26,000.

Dated: July 29, 2015.

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

[Published in the Federal Register, August 6, 2015 (80 FR 46996)]

AGENCY INFORMATION COLLECTION ACTIVITIES:

Customs Modernization Act Recordkeeping Requirements

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: Customs Modernization Act Recordkeeping Requirements. CBP is proposing that this information collection be extended with no change to the burden hours or to the information collected. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before October 5, 2015 to be assured of consideration.

ADDRESSES: Written comments may be mailed 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: Customs Modernization Act Recordkeeping Requirements.

OMB Number: 1651-0076.

Abstract: The North American Free Trade Agreement Implementation Act, Title VI, known as the Customs Modernization Act (Mod Act) amended title 19 U.S.C. 1508, 1509 and 1510 by revising Customs and Border Protection (CBP) laws related to recordkeeping, examination of books and witnesses, regulatory audit procedures and judicial enforcement. Specifically, the Mod Act expanded the list of parties subject to CBP recordkeeping requirements; distinguished between records which pertain to the entry of merchandise and financial records needed to substantiate the correctness of information contained in entry documentation; and identified a list of records which must be maintained and produced upon request by CBP. The information and records are used by CBP to verify the accuracy of the claims made on the entry documents regarding the tariff status of imported merchandise, admissibility, classification/nomenclature, value and rate of duty applicable to the entered goods. The Mod Act record keeping requirements are provided for by 19 CFR 163 and instructions are available at: <http://www.cbp.gov/document/publications/recordkeeping>.

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 (with no change).

Affected Public: Businesses.

Estimated Number of Respondents: 5,459.

Estimated Number of Total Annual Responses: 5,459.

Estimated Time per Response: 1,040 hours.

Estimated Annual Burden Hours 5,677,360.

Dated: July 29, 2015.

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

[Published in the Federal Register, August 6, 2015 (80 FR 46995)]