

U.S. Customs and Border Protection



PROPOSED REVOCATION OF A RULING LETTER AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF CAST IRON RING CARRIERS

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 cast iron ring carriers

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 letter concerning the tariff classification of cast iron ring carriers, also known as inserts, for use in spark-ignition engine pistons under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP 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 July 8, 2016.

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, 90 K Street, N.E., 10th Floor, Washington, D.C. 20229–1177. Submitted comments may be inspected at the same 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: Laurance W. Frierson, Tariff Classification and Marking Branch, Regulations and Rulings, Office of International Trade: (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, this notice advises interested parties that CBP is proposing to revoke a ruling letter pertaining to the tariff classification of cast iron ring carriers, also known as inserts, for use in spark-ignition engine pistons (“ring carriers”). Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter (“NY”) N073512, dated September 24, 2009 (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 transactions should advise CBP during this notice period. An importer’s failure to advise CBP of substantially identical transactions or of

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

In the above mentioned ruling, NY N073512, CBP determined that the ring carriers (also referred to as “inserts”) were classified as finished parts suitable for use solely or principally with the engines of heading 8407 or 8408, HTSUS, under subheading 8409.91.50, HTSUS, which provides for “Parts suitable for use solely or principally with the engines of heading 8407 or 8408: Other: Suitable for use solely or principally with spark-ignition internal combustion piston engines (including rotary engines): Other: For vehicles of subheading 8701.20, or heading 8702, 8703, or 8704: Other.” It is now CBP’s position that the ring carriers are properly classified under subheading 8409.91.10, HTSUS, which provides for “Parts suitable for use solely or principally with the engines of heading 8407 or 8408: Other: Suitable for use solely or principally with spark-ignition internal combustion piston engines (including rotary engines): Cast-iron parts, not advanced beyond cleaning and machined only for the removal of fins, gates, sprues and risers or to permit location in finishing machinery.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY N073512, and any other ruling not specifically identified, to reflect the proper classification of the ring carriers according to the analysis contained in proposed Headquarters Ruling Letter (“HQ”) H100675, 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: March 3, 2016

IEVA K. O’ROURKE
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N073512

September 24, 2009

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

CATEGORY: Classification

TARIFF NO.: 8409.91.5085

ADONICA-JO R. WADA
 SIMON GLUCK & KANE LLP
 115 SANSOME STREET, SUITE 1204
 SAN FRANCISCO, CA 94104

RE: The tariff classification of a cast-iron ring carrier from an unspecified country

DEAR Ms. WADA,

In your letter dated August 24, 2009, you requested a tariff classification ruling on behalf of your client, Karl Schmidt Unisia (KUS), Inc. of Marinette, Wisconsin.

The item under consideration has been identified as a ring carrier specifically designed to be installed on the “Marathon Engine”. The Marathon Engine is a unique, long life, spark ignition engine designed to be run continuously for long periods of time. You state in your request that the Marathon Engine can run “24 hours a day, 7 days a week, for 4,000 continuous hours.”

You state that this ring carrier is made of cast iron with the following metallurgical profile:

- Carbon 2.2–3.0%
- Silicon 1.5–2.5%
- Manganese 0.8–1.5%
- Nickel 13.5–17.0%
- Phosphorus ≤0.1
- Sulfur <0.1
- Chromium 1.0–1.6%
- Copper 5.0–7.0%
- Iron Remainder (68–75.8%)

The ring carrier has an outer diameter of approximately 80mm, an inner diameter of 60mm and a thickness of 5mm.

The ring carrier is designed to be incorporated as part of the piston, and is used in the casting process. Prior to installation the ring carrier will be heat treated and bead blasted, which are not considered to be major finishing operations.

In your request, you propose classification of the Marathon engine ring carrier in subheading 8409.91.1080 of the Harmonized Tariff Schedule of the United States (HTSUS) which provides for “Parts...for use...with...engines...: Other: Suitable for use...with spark-ignition internal combustion piston engines...: Cast-iron parts, not advanced beyond cleaning and machining...: Other”.

General Note 3. (h) (vi) to the HTSUS states “... a reference to ‘headings’ encompasses subheadings indented thereunder”. Subheading 8409.91.50 of

the HTSUS provides for “Parts...for use...with...engines...: Other: Suitable for use...with spark-ignition internal combustion piston engines...: Other: For vehicles...: Other”.

From an examination of the sample provided, it is the opinion of this office that the ring carrier, in the condition as imported, is advanced beyond the cleaning and machining needed to be classified in your proposed subheading.

The applicable classification subheading for the Marathon engine ring carrier will be 8409.91.5085, HTSUS, which provides for “Parts...for use...with...engines...: Other: Suitable for use...with spark-ignition internal combustion piston engines...: Other: For vehicles...: Other: Other”. The general rate of duty is 2.5%.

Duty rates are provided for your convenience and are subject to change. The text of the most recent Harmonized Tariff Schedule of the United States and the accompanying duty rates are provided on the 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 Mark Palasek at 646-733-3013.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

[ATTACHMENT B]

HQ H100675
 CLA-2 OT:RR:CTF:TCM H100675 IOR/LWF
 CATEGORY: Classification
 TARIFF NO.: 8409.91.10

DANIEL J. GLUCK
 SIMON GLUCK KANE LLP
 ONE PENN PLAZA
 250 WEST 34TH STREET, SUITE 4615
 NEW YORK, NY 10119

RE: Request for Reconsideration of New York Ruling Letter N073512; Classification of cast iron ring carriers, also known as inserts, for use in spark-ignition engine pistons

DEAR MR. GLUCK:

On September 24, 2009, U.S. Customs and Border Protection (“CBP”) issued New York Ruling Letter (“NY”) N073512 to you on behalf of Karl Schmidt Unisia (“KUS”), classifying cast iron ring carriers, also known as inserts, for use in spark-ignition engine pistons (“ring carriers”) under sub-heading 8409.91.50, of the Harmonized Tariff Schedule of the United States (“HTSUS”), which provides for “Parts suitable for use solely or principally with the engines of heading 8407 or 8408: Other: Suitable for use solely or principally with spark-ignition internal combustion piston engines (including rotary engines): Other: For vehicles of subheading 8701.20, or heading 8702,8703 or 8704: Other.” CBP has been provided additional information regarding the pre and post-importation processing of the subject ring carriers. Accordingly, we have reviewed NY N073512 and found it to be incorrect for the reasons set forth below.

FACTS:

The subject ring carriers are round in shape, smooth and machine finished on all sides. They are imported with or without ledges depending on the type of piston with which the item is designed to be used. In ruling letter NY N073512, CBP described the subject merchandise as follows:

The item under consideration has been identified as a ring carrier specifically designed to be installed on the “Marathon Engine.” The Marathon Engine is a unique, long life, spark ignition engine designed to be run continuously for long periods of time.¹ You state in your request that the Marathon Engine can run “24 hours a day, 7 days a week, for 4,000 continuous hours.”

You state that this ring carrier is made of cast iron with the following metallurgical profile:

- Carbon 2.2–3.0%
- Silicon 1.5–2.5%
- Manganese 0.8–1.5%

¹ KUS, in its original ruling request, stated that the Marathon engine is specifically designed to drive a combined heat and power generator set.

- Nickel 13.5–17.0%
- Phosphorus ≤0.1
- Sulfur <0.1
- Chromium 1.0–1.6%
- Copper 5.0–7.0%
- Iron Remainder (68–75.8%)

The ring carrier has an outer diameter of approximately 80mm, an inner diameter of 60mm and a thickness of 5mm.

The ring carrier is designed to be incorporated as part of the piston, and is used in the casting process. Prior to installation the ring carrier will be heat treated and bead blasted, which are not considered to be major finishing operations.

* * * * *

Additionally, in Protest No. 3901–09–100819, filed June 5, 2009, KUS provided a detailed description of a substantially similar ring carrier identified as the “Ni-resist ring carrier.”² Via email dated January 6, 2016, you have confirmed that the following description of the manufacture and pre-importation processing of the Ni-resist ring carrier, originally submitted in support of Protest No. 3901–09–100819, is equally applicable to the subject Marathon engine ring carrier:

The piston ring carriers are cast by pouring the liquid ni-resist alloy into a centrifugal casting machine. The casted circular tubes are subjected only to turning in a lathe until it meets a rough estimation of the specific outside dimension. Once the circular tubes are allowed to cool, the cast iron “tubes” are then sliced into rings to the proper size. The rings are then cleaned and packaged for shipping. The turning, cooling, slicing and cleaning of the piston ring carriers are processes and operations that are all integral to the casting process; with each operation designed to prepare the piston ring carriers to ultimately allow the piston ring carrier to be cast with the piston casting mold. Any “machining” or cleaning is done so as to allow the piston ring carrier to locate itself and to fit within the piston casting mold, the finishing machinery.

The carriers are not machined other than to remove excess material in order to obtain a rough final outside dimension per print specifications.

* * * * *

CBP received a letter dated October 14, 2009 from your office on behalf of your client KUS in support of Protest No. 3901–09–100819. In that letter you stated that the decision in ruling letter NY N073512 involving the subject ring carriers (also referred to as “inserts” within the trade industry) was incorrect and that you intended to appeal that ruling. In your submission dated October 14, 2009, you described the post-importation finishing treatment of the imported “inserts” as follows:

² CBP notes that Protest No. 3901–09–100819 concerned the classification of ring carriers for diesel engines, which are not described by the terms of subheading 8409.91, HTSUS, as parts “suitable for use solely or principally with spark-ignition internal combustion piston engines (including rotary engines).”

After importation, the cast iron inserts are heat treated and then shot blasted. However more is done to the insert. The heat treatment and shot blasting operations prepare the cast iron inserts for the *first* significant post-importation operation, the process of *alfinization*. Alfinization is a process that prepares the cast iron inserts for bonding to the base piston alloy. In the alfinization process, the cast iron insert is completely submerged into a temperature-controlled, aluminum-silicon bath for a prescribed period of time. In the aluminum-silicon bath, aluminum atoms diffuse into the surface of the cast iron and **completely change the surface composition, microstructure and properties of the cast iron insert**. The newly-formed intermetallic alloy is necessary for the manufacture of the piston. This iron-aluminum alloy serves as a “glue” that enable the cast iron insert to fasten itself to the base piston alloy, thus creating a strong metallurgical bond. Without this metallurgical bond that results from the alfinization process, the cast iron insert cannot be bonded to or locate itself in its essential position in the piston, nor will it withstand the extreme conditions within the engine.

The *second* significant post-importation operation that the cast iron inserts must undergo is the *final machining process*. As KUS is largely responsible for piston design, one of the most critical design features on the piston is the shape of the top groove on the cast iron inserts, which is machined at KUS’ domestic facility, post-importation. In high-pressure engines, the top ring groove is located within the cast iron insert. [Footnote omitted]. The geometry of the top ring groove on the cast iron insert is critical for the combustion process which is measured by emission types and levels, oil-consumption and blow-by. The top ring groove must support the critical top ring, which is responsible for generating the high cylinder pressures immediately prior to combustion. Without the proper geometry and the specific grooving and finishing of the cast iron insert, which is different for every engine, the cast iron inserts are useless.

When the cast iron insert undergoes the final machining process, an average of 50% of the cast iron insert is removed in the process. In other words, only 50% of the cast iron insert remains from the original imported cast iron insert. (Emphasis original).

The term “ring carrier” or “piston ring carrier” is used loosely within the industry. However, the articles are truly “cast iron inserts” upon importation and then become ring carriers after the articles are processed through heat treating, shot blasting, alfinization and then finally machined to the specific size necessary to be cast with the piston.

* * * * *

KUS therefore asserts that as imported, the cast iron inserts are not advanced beyond cleaning and machining, as described in the text of sub-headings 8404.91.10 or 8409.99.10, HTSUS. Our own review indicates that as imported, the inserts are in the necessary round shape and finished by machining on all sides. They are imported with and without inner “ledges”

depending on the characteristics of the piston for which they are designed to be used, as well as the characteristics of the mold for said pistons.

ISSUE:

Whether cast iron ring carriers, also known as inserts, for use in spark-ignition engine pistons are classifiable under subheading 8409.91.10, HTSUS, as cast iron parts not advanced beyond cleaning, and machined only for the removal of fins, gates, sprues and risers or to permit location in finishing machinery, or under subheading 8409.91.99, HTSUS, as other parts.³

LAW AND ANALYSIS:

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

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

The 2016 HTSUS provisions under consideration are as follows:

8409	Parts suitable for use solely or principally with the engines of heading 8407 or 8408:
	Other:
8409.91	Suitable for use solely or principally with spark-ignition internal combustion piston engines (including rotary engines):
8409.91.10	Cast-iron parts, not advanced beyond cleaning, and machined only for the removal of fins, gates, sprues and risers or to permit location in finishing machinery
	Other:
8409.91.99	Other
	* * * * *

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 or 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).

There is no dispute that by application of GRI 1, the subject ring carriers are classified in heading 8409, HTSUS, which provides for: “Parts suitable for

³ In ruling letter NY N073512, the merchandise was incorrectly classified in subheading 8409.91.50, HTSUS which provides for parts for vehicles. The merchandise is for heat and power generator sets, which would not have been classifiable as parts for vehicles.

use solely or principally with engines of heading 8407 or 8408.” There is also no dispute that the subject parts are classified in subheading 8409.91, HTSUS, as parts “suitable for use solely or principally with spark-ignition internal combustion piston engines (including rotary engines). At issue is classification at the eight-digit level by application of GRI 6. Specifically, resolution of this matter rests upon whether the subject merchandise is advanced beyond cleaning, and machined only for the removal of fins, gates, sprues and risers or to permit location in finishing machinery.

According to the pre-importation processing description, the turning and cooling operations are integral to the casting process, and the slicing and cleaning of the piston ring carriers are processes and operations that at most, prepare and permit the piston ring carriers to be cast with the piston casting mold, the finishing machinery. *See* ruling letter HQ 954989, dated September 28, 1993, which found that processing integral to the casting process did not constitute an advancement beyond cleaning for the purposes of subheading 8409.99.10, HTSUS. Consequently, while the description of the post-importation processing operation does not indicate whether the merchandise, as imported, was advanced beyond what is permitted in subheading 8409.91.10, HTSUS, those post-importation processes and finishing machinery descriptions are relevant to the classification determination of the ring carriers.

Upon examination of the condition of the ring carriers at the time of importation and the subsequent post-importation processes performed on the merchandise, CBP finds that the imported articles were not advanced beyond cleaning, and they were machined only for the removal of fins, gates, sprues and risers or to permit location in finishing machinery. Accordingly, the ring carriers are fully described by the terms of subheading 8409.91.10, HTSUS, and are therefore classifiable in subheading 8409.91.10, by application of GRI 6 and GRI 1.

HOLDING:

By application of GRI 1, the ring carriers are classified under heading 8409, HTSUS. Specifically, by application of GRI 6 and GRI 1, they are classified in subheading 8409.91.10, HTSUS, which provides for “Parts suitable for use solely or principally with engines of heading 8407 or 8408: Other: Suitable for use solely or principally with spark-ignition internal combustion piston engines (including rotary engines): Cast-iron parts, not advanced beyond cleaning and machined only for the removal of fins, gates, sprues and risers or to permit location in finishing machinery.” The 2016 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>.

EFFECT ON OTHER RULINGS:

NY N073512, dated September 24, 2009, is hereby **REVOKED**.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

19 CFR PART 177**MODIFICATION OF ONE RULING LETTER, REVOCATION OF ONE RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF ALUMINUM COMPOSITE SHEETS**

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

ACTION: Notice of modification of one ruling letter, revocation of one ruling letter, and revocation of treatment relating to the classification of certain types of Aluminum Composite (ACP) sheets.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this Notice advises interested parties that Customs and Border Protection (“CBP”) is modifying a ruling letter concerning the classification of beBond-branded painted Aluminum Composite (ACP) sheets, consisting of one polyethylene layer bonded between two aluminum sheets and having peelable plastic protective film on both sides, under the Harmonized Tariff Schedule of the United States (“HTSUS”), and revoking a ruling letter concerning the classification of SIGNABOND®, a composite article also consisting of one polyethylene layer bonded between two aluminum sheets, under HTSUS. Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 50, Nos. 2 and 3, on January 20, 2016. No comments were received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after August 8, 2016.

FOR FURTHER INFORMATION CONTACT: Anthony L. Shurn, Tariff Classification and Marking Branch (202) 325–0218.

SUPPLEMENTARY INFORMATION:**Background**

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. §1625 (c)(1)), as amended by section 623 of Title VI, a notice was published in the *Customs Bulletin*, Vol. 50, No. 2 and 3, on January 29, 2016, proposing to modify a ruling letter pertaining to the tariff classification of painted beBond ACP sheets, consisting of one polyethylene layer bonded between two aluminum sheets and having peelable plastic protective film on both sides, and revoke a ruling letter concerning the classification of SIGNABOND®, a composite article also consisting of one polyethylene layer bonded between two aluminum sheets. As stated in the notice, this action will cover the modification of CBP Ruling NY N230615 (September 13, 2012) and the revocation of CBP Ruling NY N200119 (February 10, 2012), as well as any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this Notice should have advised 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 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 Notice.

In CBP Ruling NY N230615, CBP ruled that painted beBond ACP sheets, consisting of one polyethylene layer bonded between two aluminum sheets and having peelable plastic protective film on both sides, are to be classified under HTSUS subheading 7607.19.3000, which provides for “Aluminum foil (whether or not printed, or backed with paper, paperboard, plastics, or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2 mm, not backed, other, other, cut to shape, of a thickness not exceeding 0.15 mm”; or HTSUS subheading 7607.19.6000, which provides for “Aluminum foil (whether or not printed, or backed with paper, paperboard, plastics, or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2 mm, not backed, other, other”, depending on the thickness of the ACP sheet. CBP has reviewed CBP Ruling NY 230615 and has determined the ruling letter to be in error. It is now CBP’s position that painted beBond ACP sheets, consisting of one polyethylene layer bonded between two aluminum sheets and having peelable plastic protective film on both sides, are properly classified, by operation of HTSUS General Rules of Interpretation (GRI) 1, 3, 5(b), and 6, in heading 7607, HTSUS, specifically in subheading 7607.20.50, HTSUS, which provides for “Aluminum foil (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness excluding any backing) not exceeding 0.2 mm: Backed: Other.....”

In NY N230615, CBP also ruled on the tariff classification of mill-finished (unpainted) beBond ACP sheets and painted beBond ACP sheets with peelable plastic film on only one side. Those articles are not subject to the actions taken in this Notice.

In CBP Ruling NY N200119, CBP ruled that ACP sheets known by the name SIGNABOND®, consisting of one polyethylene layer bonded between two aluminum sheets, are to be classified under either HTSUS subheading 7606.11.3060, which provides for “Aluminum plates, sheets and strip, of a thickness exceeding 0.2 mm, rectangular (including square), of aluminum, not alloyed, not clad, with a thickness of 6.3 mm or less”; or HTSUS subheading 7607.19.3000, which provides for “Aluminum foil, (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2 mm, not backed, other, other, cut to shape, of a thickness not exceeding 0.15 mm”; or HTSUS subheading 7607.19.6000, which provides for “Aluminum foil, (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2 mm, not backed, other, other...” The particular subheading depended on the thickness of the ACP sheet. CBP has

reviewed CBP Ruling NY N200119 and has determined the ruling letter to be in error. It is now CBP's position that as a composite consisting of Aluminum Sheet / Polyethylene / Aluminum Sheet, SIGNABOND® is properly classified, by operation of HTSUS GRIs 1, 3, 5(b), and 6, in heading 7607, HTSUS, specifically in subheading 7607.20.50, HTSUS, which provides for "Aluminum foil (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness excluding any backing) not exceeding 0.2 mm: Backed: Other....."

CBP, pursuant to 19 U.S.C. §1625(c)(1), is modifying NY N230615, and any other ruling not specifically identified, to reflect the proper classification of painted beBond ACP sheets having peelable plastic protective film on both sides pursuant to the analysis set forth in CBP Ruling Letter HQ H244174, set forth as Attachment "A" to this Notice. CBP is also revoking NY N200119 pursuant to section 1625(c)(1) and the analysis set forth in CBP Ruling Letter HQ H244174 as noted. 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: February 29, 2016

GREG CONNOR

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachments

HQ H244174

February 29, 2016

CLA-2 OT:RR:CTF:TCM H244174 ALS

CATEGORY: Classification

TARIFF NO.: 7607.20.50

Ms. JULIE VAIR

SENIOR CONSULTANT

EXPEDITORS TRADEWIN, LLC

1015 3RD AVENUE, 12TH FLOOR

SEATTLE, WASHINGTON 98104

RE: Modification of Customs and Border Protection (CBP) Ruling NY N230615 (September 13, 2012) and Revocation of CBP Ruling NY N200119 (February 10, 2012); tariff classification of composite articles consisting of aluminum alloy sheets and polyethylene

DEAR Ms. VAIR:

This letter is in response to your request for reconsideration of CBP Ruling NY N230615 (September 13, 2012), as noted above, on behalf of Right Brain Materials, LLC. The ruling and your request concern the legal tariff classification of beBond painted ACP sheets having peelable plastic protective film on both sides. During our review, we have found CBP Ruling NY N200119 also merits reconsideration along with NY N230615. Based on our review, we published a Proposed Notice of Action in the *Customs Bulletin*, Vol. 50, Nos. 2 and 3, on January 20, 2016, which proposed to modify NY N230615 and revoke NY N200119. No comments supporting the proposed action were received in response to that notice. Our discussion of both cases and our decision are set forth below.

FACTS:

These are the facts as were noted in NY N230615:

The products under consideration are described as beBond ACP sheets, composite articles comprised of a polyethylene core sandwiched and permanently bonded between two Alloy 1100 aluminum sheets. These sheets meet the Chapter 76, Subheading Note 1(a) definition of not alloyed and range in thickness from 0.1 mm to 0.2 mm. They are available in a variety of cut sizes (4' X 8', 4' X 10' and 5' X 10') and are used in the signs and graphics industry.

In your request, you indicate that the sheets are imported two different ways depending on customer requirements. The aluminum is either mill finished (no finish) or painted with a polyester paint. In the case of the painted versions, a clean peel, protective, plastic covering will be applied to either one or both sides of the aluminum sheets. You state the function of the plastic film is to protect the painted surface during transit and will be removed before delivery to the end user.

Historically, peelable plastic film that is protective in nature has been considered backing material when applied to one side of an aluminum foil product. However, when the same film, or some other type of backing material, is applied to both sides of a foil product, the foil is no longer viewed as backed.

You request reconsideration of NY N230615 with regard to the painted beBond ACP sheets with a thickness of 0.1 mm or more but not exceeding 0.15 mm and having a peelable protective plastic film on both sides and the painted beBond ACP sheets with a thickness of at least 0.16¹ mm or more but not exceeding 0.2 mm and having a peelable protective plastic film on both sides. You contend “that there were certain facts that were misunderstood or not taken into consideration....”

You expressly state that you agree with the ruling in NY N230615 with regard to mill finished (non-painted) beBond aluminum composite sheets and painted beBond aluminum composite sheets having a peelable protective plastic film on only one side as being properly classified under HTSUS subheading 7607.20.50.

As noted above, NY N200119 also merits reconsideration in light of our review of this case. The facts of that case were described in that decision as follows:

The product to be imported is SIGNABOND®, a composite article comprised of a polyethylene core sandwiched between two Alloy 1100 aluminum sheets. The exposed sides of the aluminum sheets will be covered with a peelable protective film. These sheets meet the Chapter 76, Subheading Note 1(a) definition of not alloyed and will have a thickness of .15 mm, .20 mm or .30 mm. SIGNABOND® is available in a variety of cut sizes, colors and textures and is used in the sign and graphics industry.

ISSUES:

Are the painted beBond aluminum composite panel sheets with a thickness of 0.1 mm or more but not exceeding 0.15 mm and having a peelable protective plastic film on both sides properly classified under HTSUS subheading 7607.19.30 as “Aluminum foil (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness excluding any backing) not exceeding 0.2 mm: Not backed: Other: Cut to shape, of a thickness not exceeding 0.15mm,” or under HTSUS subheading 7607.20.50 as “Aluminum foil (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness excluding any backing) not exceeding 0.2 mm: Backed: Other”?

Are the painted beBond aluminum composite panel sheets with a thickness of at least 0.16 mm or more but not exceeding 0.2 mm and having a peelable protective plastic film on both sides properly classified under HTSUS subheading 7607.19.60 as “Aluminum foil (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness excluding any backing) not exceeding 0.2 mm: Not backed: Other: Other,” or under HTSUS subheading 7607.20.50 as “Aluminum foil (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness excluding any backing) not exceeding 0.2 mm: Backed: Other”?

¹ In NY N230615, this particular article is described as having “a thickness of 0.15 mm or more but not exceeding 0.2 mm.” This is incorrect. The article is correctly described as having a thickness of at least **0.16** mm or more but not exceeding 0.2 mm.

LAW AND ANALYSIS:

Classification under the HTSUS is determined in accordance with the General Rules of Interpretation (“GRI”) and, in the absence of special language or context which otherwise requires, by the Additional U.S. Rules of Interpretation (“ARI”). 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, GRIs 2 through 6 may be applied in order.

The following HTSUS provisions are under consideration:

- 7607 Aluminum foil (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2 mm:
Not backed:
- 7607.19 Other:
- 7607.19.30 Cut to shape, of a thickness not exceeding 0.15 mm.....
- 7607.19.60 Other.....
- *****
- 7607.20 Backed:
- 7607.20.50 Other.....
- *****

GRI 1 provides the following:

- 1. The table of contents, alphabetical index, and titles of sections, chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to the following provisions:...

GRI 3(b) provides the following:

- 3. 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.

GRI 6 provides the following:

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

Subheading Note 1(a) to Chapter 76, HTSUS, provides the following:

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

(a) Aluminum, not alloyed

Metal containing by weight at least 99 percent of aluminum, provided that the content by weight of any other element does not exceed the limit specified in the following table:

TABLE - Other elements

Element	Limiting content percent by weight
Fe + Si (iron plus silicon)	1
Other elements(1), each	0.1(2)

(1) Other elements are, for example, Cr, Cu, Mg, Mn, Ni, Zn.

(2) Copper is permitted in a proportion greater than 0.1 percent but not more than 0.2 percent, provided that neither the chromium nor manganese content exceeds 0.05 percent.

Before we consider whether the subject article is backed or not, we must address the significance of the protective plastic packaging in this case. You state that “in accordance with GRI [5(b)], it is [CBP’s] precedent to not take into consideration protective plastic packaging when determining the HTS assuming it meets both criteria of GRI [5(b)]: - that it is the type normally used for packing such goods; and that it is not suitable for repetitive use.” You cite to CBP Ruling NY N004056 (December 21, 2006) (plastic film found to be display material) and CBP Ruling NY D81573 (September 29, 1998) (plastic cap found to be protective covering). You also cite to CBP Ruling NY 889128 (September 14, 1993) to distinguish it from the present case, noting that CBP ruled in NY 889128 that “GRI 5b requires that the packing material meet two qualifications: that it is the type normally used for packing such goods; and that it is not suitable for repetitive use”, and as such the article at issue therein did not qualify.

GRI 5(b) states the following:

5. In addition to the foregoing provisions, the following rules shall apply in respect of the goods referred to therein:

(b) Subject to the provisions of rule 5(a) above, packing materials and packing containers entered with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However, this provision is not binding when such packing materials or packing containers are clearly suitable for repetitive use.

Upon further review and consideration of the foregoing, we find that the peelable plastic film applied to the ACP sheets before shipment is in fact packing material of the kind to which GRI 5(b) is applicable. It is normally used for packing the ACP sheets as a protection of the painted side or sides of the ACP sheets during shipment, and since it is discarded upon unpacking, it is not suitable for repetitive use. Thus, the peelable plastic film is not a backing material of the beBond ACP sheets. We find such to be the case whether or not the plastic film is applied to one side of the ACP sheet because only one side is painted, or to both sides when both sides are painted.

With regard to whether or not the subject article is backed or not, you state that “the only difference between the beBond ACP sheets that CBP classified as being ‘not backed’ is whether or not they were painted. The products are otherwise identical.” You quote the following from CBP Ruling HQ H045859 (February 5, 2009):

The tariff does not define the term “backed.” 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.’” *Id.* (quoting *C.J. Tower & Sons of Buffalo, Inc. v. United States*, 673 F.2d 1268, 1271, 69 C.C.P.A. 128 (C.C.P.A. 1982); *Simod Am. Corp. v. United States*, 872 F.2d 1572, 1576 (Fed. Cir. 1989)). The *Random House Dictionary of the English Language* defines “backing” as “that which forms the back or is placed at or attached to the back of anything to support, strengthen, or protect it. The aluminum industry defines the term “backed foil” as “a lamination composed of foil and a coherent substrate. The substrates or backing may be either self-adherent or bonded to the foil by means of an interposed adhesive. Paper, woven fabrics, cellophane, polyethylene film and the like are typical examples of such backings or substrates.” (Cited in *HQ 965210*, March 20, 2002, and *HQ 966769*, January 5, 2004.) Based on these sources, CBP has previously found that the word “backed” is defined, in pertinent part, as “having a back, setting or support.” *Id.* We now note that the *Oxford English Dictionary* (Oxford University Press, 2008) defines the noun “back” as: “3. a. gen. That side or surface of any part ... of any object, which answers in position to the back; that opposite to the face or front, or side approached, contemplated or exposed to view; e.g. the back of the head, of the leg; the back of a house, door, picture, bill, tablet, etc.” Also, “5. a. The side of any object away from the spectator, or spectators generally, the other or far side, at the back of: behind, on the farther side of[.]”

Furthermore, EN 74.10² (which applies, *mutatis mutandis*, to heading 76.07 (see EN 76.07)) explains that “backing” *may be added to a good to facilitate handling or transport or in order to facilitate subsequent treatment*. Based on the common and commercial meaning of the word “backed” and the explanation provided in the ENs, we find that foil to one

² **74.10 - Copper foil (whether or not printed or backed with paper, paperboard, plastics or similar backing materials), of a thickness (excluding any backing) not exceeding 0.15 mm.**

- Not backed:

7410.11 - - Of refined copper

7410.12 - - Of copper alloys

- Backed:

7410.2 - - Of refined copper

7410.22 - - Of copper alloys

This heading covers the products defined in Chapter Note 1 (g) when of a thickness not exceeding 0.15 mm.

side of which a coherent substrate has been added (the “back”) in order to strengthen, support, or protect the foil or to facilitate handling, transport or subsequent treatment may be classified in heading 7607 as “backed” foil on the basis of GRI 1. (*Emphasis added.*)

We note at this point that 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. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989). The EN for heading 7607 is as follows:

76.07 Aluminium foil (whether or not printed or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2 mm (+).

-Not backed:

7607	-- Rolled but not further worked
7607.19	-- Other
7607.20	-- Backed

This heading covers the products defined in Chapter Note 1 (d), when of a thickness not exceeding 0.2 mm.

The provisions of the Explanatory Note to heading 74.10 relating to copper foil apply, mutatis mutandis, to this heading.

Aluminium foil is used in the manufacture of bottle caps and capsules, for packing foodstuffs, cigars, cigarettes, tobacco, etc. Aluminium foil is also used for the manufacture of the finely divided powder of heading 76.03, in crinkled sheets for thermal insulation, for artificial silvering, and as a wound dressing in veterinary surgery.

Foil classified in this heading is obtained by rolling, hammering or electrolysis. It is in very thin sheets (in any case, **not exceeding 0.15 mm** in thickness). The thinnest foils, used for imitation gilding, etc., are very flimsy; they are generally interleaved with sheets of paper and put up in booklet form. Other foil, such as that used for making fancy goods, is often backed with paper, paperboard, plastics or similar backing materials, either for convenience of handling or transport, or in order to facilitate subsequent treatment, etc. Foil remains in the heading whether or not it has been embossed, cut to shape (rectangular or otherwise), perforated, coated (gilded, silvered, varnished, etc.), or printed.

The limiting thickness of 0.15 mm includes coatings of varnish, etc., but, on the other hand, backings of paper, etc., are excluded.

The heading **does not include**:

- (a) Stamping foils (also known as blocking foils) composed of copper powder agglomerated with gelatin, glue or other binder, or of copper deposited on paper, plastics or other support, and used for printing book covers, hat bands, etc. (**heading 32.12**).
- (b) Printed copper foil labels being identifiable individual articles by virtue of the printing (**heading 49.11**).
- (c) Metallised yarn of **heading 56.05**.
- (d) Plates, sheets and strip, of a thickness exceeding 0.15 mm (**heading 74.09**).
- (e) Foil in the form of Christmas tree decorations (**heading 95.05**).

The heading **does not cover**:

- (a) Stamping foils (also known as blocking foils) composed of aluminium powder agglomerated with gelatin, glue or other binder, or of aluminium deposited on paper, plastics or other support, and used for printing book covers, hat bands, etc. (**heading 32.12**).
- (b) Paper and paperboard for the manufacture of containers for milk, fruit juice or other food products and lined with aluminium foil (i.e., on the face which will form the inside of the containers) **provided** they retain the essential character of paper or paperboard (**heading 48.11**).
- (c) Printed aluminium foil labels being identifiable individual articles by virtue of the printing (**heading 49.11**).
- (d) Plates, sheets and strip, of a thickness exceeding 0.2 mm (**heading 76.06**).
- (e) Foil in the form of Christmas tree decorations (**heading 95.05**). (*Emphasis added*.)

The guidance of the World Customs Organization's (WCO's) Harmonized System Committee (HSC) is also relevant and helpful in this case. As stated in T.D. 89-80, CBP accords HSC opinions the same weight as that of ENs, i.e., while not legally dispositive nor binding, these opinions are generally indicative of the proper interpretation of these headings. The HSC just recently issued an official position at its 56th Session³ on reflective insulation consisting of a layer of polyethylene air bubble wrap sandwiched between two layers of aluminum foil. The HSC concluded that the aluminum foil/polyethylene air bubble wrap/aluminum foil article should be classified "under [HTSUS] heading 76.07 (subheading 7607.20) by application of GIRs [GRIs] 1, 3(b) and 6..." The HSC finds that the aluminum foil imparts the essential character of the article and that the inner layer bubble wrap functions as an insulator and as a backing, citing, *mutatis mutandis*, [Harmonized Tariff Schedule Explanatory Note] 74.10.

In this case, we find the aluminum sheet/polyethylene/aluminum sheet construction of the ACP sheets to be sufficiently similar to that of the article that the HSC recently issued its opinion on. In that regard the ACP sheet's polyethylene inner layer provides backing to the aluminum sheet layers to prevent "bowing, warping, swelling, and delamination" as is marketed by at least one retailer. Consequently, we find that our ruling in CBP Ruling HQ 960276 (August 1, 1997), that an article comprised of aluminum/polypropylene/aluminum is properly classified under HTSUS subheading 7607.20.50 as "Aluminum foil...: Backed: Other" is correct and dispositive in this case.

Based on these findings, the proper legal tariff classification of painted beBond aluminum composite panel sheets with a thickness of 0.1 mm or more but not exceeding 0.15 mm and having a peelable protective plastic film on both sides is HTSUS subheading 7607.20.50 as "Aluminum foil (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness excluding any backing) not exceeding 0.2 mm: Backed: Other....." The proper legal tariff classification of painted beBond aluminum composite panel sheets with a thickness of 0.16 mm or more but not exceeding 0.2 mm and having a peelable protective plastic film on both sides is also HTSUS subheading 7607.20.50 as "Aluminum foil (whether or

³ The 56TH Session of the HSC was held on September 16-25, 2015.

not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness excluding any backing) not exceeding 0.2 mm: Backed: Other.....” Accordingly, CBP Ruling NY N230615 should be modified only with respect to the beBond ACP sheets discussed in this paragraph.

As noted above, there are other rulings that warrant reconsideration in light of our findings here along with the underlying case. In CBP Ruling HQ H045859 (February 5, 2009), we held that a tri-laminate foil of PET (*polyethylene terephthalate*)/aluminum foil/peelable HDPE (high-density polyethylene) was not backed aluminum foil because the plastic composite layers comprised the two outer sides of the article, rather than one side of the aluminum foil layer. We distinguish H045859 from the present case in noting that the subject article is comprised of one inner layer of plastic composite with the two outer sides being aluminum sheets, and that the peelable plastic protective film is immaterial to its tariff classification, whether it is applied to one side or both sides.

In CBP Ruling NY N200119 (February 10, 2012), CBP held that a composite article called SIGNABOND®, which consists of a polyethylene core sandwiched between two aluminum sheets and covered with peelable protective film on both outer sides was not aluminum foil because the peelable protective film was applied to both sides, rather than just one side. As we now find such peelable protective film to be packing as defined under GRI 5(b), and given the very similar constitution of SIGNABOND® to beBond ACP sheets, we conclude that CBP Ruling NY N200119 should be revoked.

HOLDING:

In accordance with GRI 1, GRI 3(b), GRI 5(b), GRI 6, and Subheading Note 1(a) to Chapter 76, HTSUS, painted beBond aluminum composite panel sheets with a thickness of 0.1 mm or more but not exceeding 0.15 mm and having a peelable protective plastic film on both sides are properly classified under HTSUS subheading 7607.20.50 as “Aluminum foil (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness excluding any backing) not exceeding 0.2 mm: Backed: Other.....”

In accordance with GRI 1, 3(b), GRI 5(b), GRI 6, and Subheading Note 1(a) to Chapter 76, HTSUS, painted beBond aluminum composite panel sheets with a thickness of 0.16 mm or more but not exceeding 0.2 mm and having a peelable protective plastic film on both sides are properly classified under HTSUS subheading 7607.20.50 as “Aluminum foil (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness excluding any backing) not exceeding 0.2 mm: Backed: Other.....”

The general column one rate of duty, for merchandise classified under HTSUS subheading 7607.20.50 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:

CBP Ruling NY N230615 (September 13, 2012) is hereby modified as noted above.

CBP Ruling NY N200119 (February 10, 2012) 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



19 CFR PART 177

MODIFICATION OF ONE RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF A MOBILE PUMPER

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

ACTION: Notice of modification of one ruling letter and revocation of treatment relating to the tariff classification of a mobile pumper.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP is modifying one ruling letter concerning tariff classification of a mobile pumper under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP to revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 50, No. 4, on January 27, 2016. No comments were received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after August 8, 2016.

FOR FURTHER INFORMATION CONTACT: Emily Beline, Tariff Classification and Marking Branch, Regulations and Rulings, Office of Trade, at (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 public and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the *Customs Bulletin*, Vol. 50, No. 4, on January 27, 2016, proposing to modify one ruling letter pertaining to the tariff classification of a mobile pumper. As stated in the Notice, this action will cover New York Ruling Letter (“NY”) N049598, dated February 3, 2009, as well as any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

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

In NY N049598, CBP classified the mobile FRAC pumper in heading 8705, HTSUS, specifically in subheading 8705.90.00, HTSUS, which provides for “Special purpose motor vehicles, other than those principally designed for the transport of persons or goods...: Other.” CBP has reviewed NY N049598 and has determined the ruling letter to be in error with regards to the product’s classification. It is now

CBP's position that mobile FRAC pumper is properly classified, by operation of GRI 1, in heading 8413, HTSUS, specifically in subheading 8413.50.0090, HTSUS, which provides for "Pumps for liquids, whether or not fitted with a measuring device; liquid elevators; parts thereof: Other reciprocating positive displacement pumps: Other." The remainder of the ruling which addresses whether the goods qualify for NAFTA preferential treatment remains intact and is not affected by this revocation.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is modifying NY N049598 and revoking 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") H155596, set forth as an attachment to this Notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: March 3, 2016

ALLYSON MATTANAH
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachment

HQ H155596

March 03, 2016

CLA-2OT:RR:CTF:TCM: H155596 ERB

CATEGORY: Classification

TARIFF NO.: 8413.50.0090

MR. DANIEL MCKENZIE
TYCROP MANUFACTURING LTD.
9880 McGRATH ROAD
ROSEDALE, BRITISH COLUMBIA V0X 1X0
CANADA

RE: Modification of NY N049598; Tariff classification of a mobile pumper from Canada

DEAR MR. MCKENZIE:

U.S. Customs and Border Protection (CBP) issued you New York Ruling Letter (NY) N049598 on February 3, 2009. NY N049598 pertains to the tariff classification under the Harmonized Tariff Schedule of the United States, (HTSUS) of the Mobile FRAC Pumper. We have since reviewed NY N049598 and find it to be in error with respect to the tariff classification component of that ruling, described in detail herein. We are therefore modifying NY N049598.

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 to modify the aforementioned ruling was published in the *Customs Bulletin*, Vol. 50, No. 4, on January 27, 2016. No comments were received in response to the proposed notice of action.

FACTS:

NY N049598 states the following, in relevant part:

The purpose of the FRAC Pumper is to pump propan, at high-pressure, into an oil well to fracture and stimulate hydrocarbons and create a shell for pumping oil from the well. The FRAC Pumper's main components include one or two large radiators, an engine, which you state in your ruling request is in the 2250 to 2500 HP range, a matching torque converter and transmission and the FRAC pump, itself, all connected by drive shafts. The FRAC Pumper is its own power source as it has its own diesel fuel tanks, on-board control systems, batteries, etc. The Mobile FRAC Pumper does require a mated truck tractor for transporting it between service locations.

The applicable classification subheading for the Mobile FRAC Pumper will be 8705.90.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Special purpose motor vehicles, other than those principally designed for the transport of person or goods...Other."

NY N049598 continued to address whether the goods described qualify for NAFTA preferential treatment. That portion of the ruling remains intact and is not affected by this modification.

ISSUE:

Whether the subject Mobile FRAC Pumper is a pump for liquids of heading 8413, HTSUS, or whether it is a special purpose motor vehicle of heading 8705, HTSUS.

LAW AND ANALYSIS:

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

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

8413	Pumps for liquids, whether or not fitted with a measuring device; liquid elevators; parts thereof:
8413.50.00	Other reciprocating positive displacement pumps

8705	Special purpose motor vehicles, other than those principally designed for the transport of persons or goods (for example, wreckers, mobile cranes, fire fighting vehicles, concrete mixers, road sweepers, spraying vehicles, mobile workshops, mobile radiological units):
8705.90	Other

Note 1(l) to Section XVI, which covers Chapter 84, states that Articles of Section XVII, which covers Chapter 87, are not classified therein. Therefore, if the subject merchandise is classified in heading 8705, HTSUS, then it is precluded from classification in heading 8413, HTSUS.

Note 3 to Section XVI, HTSUS, provides, in pertinent part, the following:

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.

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

The EN 84(B) General Arrangement of the Chapter provides, in relevant part:

(2) Headings 84.02 to 84.24 cover the other machines and apparatus which are classified mainly by reference to their function, and regardless of the field of industry in which they are used.

The EN 84.13 provides, in relevant part:

This heading covers most machines and appliances for raising or otherwise continuously displacing volumes of liquids (including molten metal and wet concrete), whether they are operated by hand or by any kind of power unit, integral or otherwise.

It continues:

The machines of this heading can be subdivided, according to their system of operation, into the following five categories:

(A) Reciprocating Positive Displacement Pumps

These use the linear suction or forcing action of a piston or plunger driven within a cylinder, the inlet and outlet being regulated by valves. "Single-acting" pumps utilize the thrust or suction of one end of the piston only; "double-acting" types pump at both ends of the piston thus using both the forward and reverse strokes. In simple "lift" pumps, the liquid is merely raised by suction and discharged against atmospheric pressure. In "force" pumps, the compression stroke is used, in addition to the suction stroke, to force the liquid to heights or against pressure. Multi-cylinder pumps are used for increased output. The cylinders may be either in line or in a star shape.

The EN 87.05, HTSUS, states, in subsection Motor Vehicle Chassis or Lorries (Trucks) Combined With Working Machines, the following, in relevant part:

It should be noted that to be classified in this heading, a vehicle comprising lifting or handling machinery, earth levelling, excavating or boring machinery, etc., must form what is in fact an essentially complete motor vehicle chassis or lorry (truck) in that it comprises at least the following mechanical features: propelling engine, gear box and controls for gear changing, and steering and braking facilities.

In HQ H243822, dated July 30, 2014, this office classified a single unit consisting of multiple rotary positive displacement pumps, and a mixing and stirring device, used to keep chemicals from settling and becoming unusable during transport and storage. There, CBP noted that the items of heading 8413, HTSUS, are machines and appliances for raising or otherwise continuously displacing volumes of liquids, including molten metal and wet concrete. *See* H243822, citing EN 84.13. The heading includes reciprocating positive displacement pumps which move fluid using one or more oscillating pistons, plungers, or membranes, while valves restrict fluid motion to the desired direction.

The main components of the subject merchandise are either one or two radiators, an engine, a torque converter, a transmission, diesel fuel tanks, on-board control systems, batteries and a pump. The pumper is permanently bolted or affixed to a chassis trailer. The trailer itself, is not self-propelled, rather it must be hitched to a truck tractor for travel to the site. The pumper does not have any of the following features: a propelling engine, gear box and controls for gear-changing, and steering and braking facilities. *See* EN 87.05, HTSUS, which states that goods classified therein have those features.

Hence, the merchandise is not described by heading 8705, HTSUS, and Note 1(I) does not exclude it from classification in Chapter 84.

The Mobile FRAC Pumper is used to pump chemical mixtures into an oil or gas well, which is mounted onto its prime mover, i.e. a diesel engine on a non-driven trailer chassis. Once the pumper is transported to a fracking site, it pumps chemical mixtures into the well. It relies on a reciprocating plunger to displace the liquid which is being pumped into the wells. This is a description of a positive displacement liquid pump. Under Note 3 to Section XVI, HTSUS, the merchandise is classified according to its principal function. Thus, the principal function of the subject merchandise is as a pump. It is described by the terms of heading 8413, HTSUS, as a pump for liquids. This is consistent with prior CBP rulings of similar goods. *See* NY N239029, dated March 26, 2013 (classifying a trailer mounted unit which pumps chemicals into the well service as a rotary positive displacement pump of heading 8413, HTSUS); NY E85413, dated August 17, 1999 (classifying axial piston pumps in heading 8413, HTSUS); and *see* NY 850742, dated April 26, 1990 (classifying a chassis mounted concrete pump in heading 8413, HTSUS).

HOLDING:

By application of GRI 1, the subject Mobile FRAC Pumper is classified in heading 8413, HTSUS, specifically subheading 8413.50.0090, HTSUS A (Annotated), which provides for: “Pumps for liquids, whether or not fitted with a measuring device; liquid elevators; part thereof: Other reciprocating positive displacement pumps: Other.” The general column one rate of duty is free.

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

EFFECT ON OTHER RULINGS:

NY N049598, dated February 3, 2009, is hereby MODIFIED, as regards the tariff classification of the subject mobile pumper from Canada. In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after its publication in the *Customs Bulletin*.

ALLYSON MATTANAH

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**PROPOSED REVOCATION OF ONE RULING LETTER AND
MODIFICATION OF ONE RULING LETTER AND
REOVICATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFCIATION OF COTTON KNIT YARN**

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

ACTION: Notice of proposed revocation of one ruling letter and modification of one ruling letter and revocation of treatment concerning the tariff classification of tubular cotton knit yarn measuring more than 20,000 decitex.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, (19 U.S.C. §1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP intends to revoke one ruling letter and modify one ruling letter, pertaining to the tariff classification of tubular cotton knit yarn made of 92% cotton and 8% elastane (spandex), measuring more than 20,000 decitex, under the Harmonized Tariff Schedule of the United States (HTSUS). CBP also proposes to revoke any treatment previously accorded by it to substantially identical transactions. Comments are invited on the correctness of the proposed action.

DATES: Comments must be received on or before July 8, 2016.

ADDRESSES: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K Street NE, 10th Floor, Washington, DC 20229–1177. Submitted comments may also be inspected at this 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: 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 commu-

nity's responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and 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 one ruling letter and modify one ruling letter pertaining to the classification of tubular cotton knit yarn measuring more than 20,000 decitex. Although in this notice CBP is specifically referring to New York Ruling Letter (NY) N200641, dated January 23, 2012 (Attachment A), and NY N244143, dated July 24, 2013 (Attachment B), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ones 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. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, CBP personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or CBP's previous interpretation of the HTSUS. 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 N200641, CBP classified the yarn called "Hooked Zopagetti"¹ in subheading 5607.90.900, HTSUS, which provides for "Twine, cordage, ropes and cables, whether or not plaited or braided and whether

¹ The sample named in NY N200641 is Hooked Zopagetti. This is a typographical error. The company and product are called Hooooked Zpagetti. The three "o"s in "Hooooked" are not a typo. The extra "o" in Zpagetti is a typo. See www.zpagetti.com.au

or not impregnated, coated, covered or sheathed with rubber, or plastics: Other: Other.” It is now CBP’s opinion that the goods are properly classified in subheading 5606.00.0010, HTSUSA (Annotated), which provides for loop wale-yarn.

Similarly, in NY N244143 CBP classified Hooooked Zpagetti yarn sold as part of a craft kit in subheading 5607.90.9000, HTSUSA. It is now CBP’s opinion that the craft kit, with the yarn imparting the kit’s essential character, is also properly classified in subheading 5606.00.0010, HTSUSA.

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke NY N200641, and modify NY N244143, as regards the Style Hooooked Zpagetti yarn and craft kit, 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) H249752 (Attachment C). 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, we will give consideration to any written comments timely received.

Dated: March 3, 2016

ALLYSON MATTANAH
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N200641

January 23, 2012

CLA-2-56:OT:RR:NC:N3:351

CATEGORY: Classification

TARIFF NO.: 5607.90.9000

MS. KELLY MORRISON
METROPOLIS CUSTOMS BROKERS, INCORPORATED
156-15 146TH AVENUE, SUITE 110
JAMAICA, NY 11434

RE: The tariff classification of a yarn from Turkey

DEAR MS. MORRISON:

In your letter dated January 17, 2012, you requested a tariff classification ruling on behalf of your client, Orchard Yarn of Carlstadt, New Jersey.

You submitted a sample of a yarn called Hooked Zopagetti. It is described as 92% cotton and 8% elastane (spandex). Our examination reveals it to be a knit yarn of a decitex well over 20,000. Legal Note 3(A)(e) to Section XI, Harmonized Tariff Schedule of the United States (HTSUS), states that any cotton yarn of greater than 20,000 decitex is to be classified as twine, cordage, rope or cables in heading 5607, HTSUS.

The applicable subheading for Hooked Zopagetti will be 5607.90.9000, HTSUS, which provides for "Twine, cordage, ropes and cables, whether or not plaited or braided and whether or not impregnated, coated, covered or sheathed with rubber or plastics: Other: Other." The rate of duty will be 6.3% ad valorem.

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

The sample will be returned to you.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177). A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Mitchel Bayer at (646) 733-3102.

Sincerely,

THOMAS J. RUSSO

Director

National Commodity Specialist Division

[ATTACHMENT B]

N244143

July 24, 2013

CLA-2-56:OT:RR:NC:N3:351

CATEGORY: Classification

TARIFF NO.: 5006.00.1000, 5607.90.9000,
5511.10.0030, 5605.00.1000, 6307.90.9889

MS. KELLY MORRISON
METROPOLIS CUSTOMS BROKERS
156-15 146TH AVENUE, SUITE 110
JAMAICA, NY 11434

RE: The tariff classification of yarns, cordage, a craft kit, and knit pile puffs from Italy and Turkey

DEAR MS. MORRISON:

This replaces Ruling Number N242975, dated July 10, 2013, which contained a clerical error which resulted in a misclassification. We miscalculated the decitex of the yarn. While we correctly stated that it exceeds 2,000, we should have stated that it exceeds 20,000. A complete corrected ruling follows.

Dear Ms. Morrison:

In your letter dated June 5, 2013, you requested a tariff classification ruling on behalf of your client, Orchard Yarn of Carlstadt, New Jersey. The samples were returned with the original letter.

Style Hoooked Zpagetti is a narrow fabric constructed of 92% cotton and 8% elastane (spandex). (You state that the fiber content may vary. Once again, please note that this ruling only classifies the sample we have received. A different fiber content may result in a different classification.) It curls to the center from the edges and is approximately 10 mm wide, but 30 mm wide when flattened. It comes in a 312-gram hank that measures 50 meters, with a decitex greater than 20,000. The yarn meets the tariff definition cordage found in Section XI, Note 3(A)(e), Harmonized Tariff Schedule of the United States (HTSUS).

Style Hoooked Zpagetti yarn is also sold as part of a craft kit that you indicate contains everything needed to create a handbag. The kit also contains a crocheting hook and/or knitting needles, a handle for the purse made of bamboo, wood or plastic, along with step-by-step instructions.

It is the opinion of this office that the craft kit is a set for tariff purposes. The Explanatory Notes, which constitute the official interpretation of the HTSUS at the international level, state in Note X to Rule 3(b) that the term "goods put up in sets for retail sale" means goods that: (a) consist of at least two different articles which are, prima facie, classifiable in different headings; (b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and (c) are put up in a manner suitable for sale directly to users without repacking. In the set, the cordage imparts the essential character and thus determines the classification.

The applicable subheading for both style Hoooked Zpagetti cordage and Hoooked Zpagetti craft kit will be 5607.90.9000, HTSUS, which provides for "Twine, cordage, ropes and cables, whether or not plaited or braided and whether or not impregnated, coated, covered or sheathed with rubber or plastics: Other: Other." The rate of duty will be 6.3% ad valorem.

Style Glitter Ribbon is a tubular knit yarn composed of 62% polyester and 38% metallic polyester. The yarn comes in a 50-gram hank that measures 63 meters.

The applicable subheading for the metalized yarn will be 5605.00.1000, HTSUS, which provides for metalized yarn, metal coated or metal laminated man-made filament or strip or the like, ungimped, and untwisted or with a twist of less than 5 turns per meter. The rate of duty will be 7.5% ad valorem.

Style Unique is 100% acrylic. The yarn comes in a 100-meter, 100-gram hank with a decitex of approximately 10,000. It is considered put up for retail sale according to the terms of Section XI, Note 4.

The applicable subheading for Style Unique will be 5511.10.0030, HTSUS, which provides for yarn (other than sewing thread) of man-made staple fibers, put up for retail sale, of synthetic staples fibers, containing 85 percent or more by weight of such fibers, acrylic. The duty rate will be 7.5% ad valorem.

Style Silk Purse is 100% silk in a 50-gram skein. It is considered put up for retail sale according to the terms of Section XI, Note 4.

The applicable subheading for the silk yarn will be 5006.00.1000, HTSUS, which provides for silk yarn, put up for retail sale, containing 85% or more by weight of silk. The rate of duty will be Free.

The two samples of merchandise you call pompoms do not meet the terms of the Explanatory Note to heading 5808, wherein pompons are described as follows:

- (4) Pompons, i.e., short threads secured together in the middle and fluffed out in all directions.

Your items are actually each made up from a piece of knit pile fabric cut into a square. The edges of the square knit pile fabrics are sewn together over a centered cotton ball creating the spherical puffs. Each knit pile puff has a short textile cord attached to the underside so the puff can be dangled. This is a made up textile article as the term is described in Note 7 to Section XI, HTSUS. We also note that pompoms are typically made of long textile strips attached to a handle or stick, to be used by cheerleaders.

The applicable subheading for the knit pile fabric puff will be 6307.90.9889, Harmonized Tariff Schedule of the United States, (HTSUS), which provides for other made up textile articles, other. The rate of duty will be 7% ad valorem. Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on World Wide Web at <http://www.usitc.gov/tata/hts/>. The samples will be returned.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177). A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Mitchel Bayer at (646) 733-3102.

Sincerely,

THOMAS J. RUSSO
Director

National Commodity Specialist Division

[ATTACHMENT C]

HQ H249752
CLA-2 OT: RR: CTF: TCM H249752 ERB
CATEGORY: Classification
TARIFF NO.: 5606.00.0010

Ms. KELLY MORRISON
METROPOLIS CUSTOMS BROKERS
156-15 146TH AVENUE, SUITE 110
JAMAICA, NY 11434

RE: Revocation of NY N200641, Modification of NY N244143; Tariff classification of tubular knit cotton yarn measuring more than 20,000 decitex

DEAR Ms. MORRISON,

This letter is to inform you that U.S. Customs and Border Protection (CBP) has reconsidered New York Ruling Letters (NY) N200641, issued to you January 23, 2012, and NY N244143, issued to you July 24, 2013, each concerning the tariff classification of a knit cotton textile, under the Harmonized Tariff Schedule of the United States (HTSUS). We find them to be in error as regards the tubular cotton knit yarn. One small sample swatch, approximately one inch in length, (2.54 centimeters) was provided to this office.

FACTS:

NY N200641 describes the product at issue as follows:

You submitted a sample of a yarn called Hoooked Zopagetti¹. It is described as 92% cotton and 8% elastane (spandex). Our examination reveals it to be a knit yarn of a decitex well over 20,000. Legal Note 3(A)(e) to Section XI, Harmonized Tariff Schedule of the United States (HTSUS), states that any cotton yarn of greater than 20,000 decitex is to be classified as twine, cordage, rope or cables in heading 5607, HTSUS.

NY N244143 describes the product at issue as follows:

Style Hoooked Zpagetti is a narrow fabric constructed of 92% cotton and 8% elastane (spandex). (You state that the fiber content may vary. Once again, please note that this ruling only classifies the samples we have received. A different fiber content may result in a different classification.) It curls to the center from the edges and is approximately 10 mm wide, but 30 mm wide when flattened. It comes in a 312-gram hank that measures 50 meters, with a decitex greater than 20,000. The yarn meets the tariff definition [of] cordage found in Section XI, Note 3(A)(3), Harmonized Tariff Schedule of the United States (HTSUS).

Style Hoooked Zpagetti yarn is also sold as part of a craft kit that you indicate contains everything needed to create a handbag. The kit also contains a crocheting hook and/or knitting needles, a handle for the purse made of bamboo, wood or plastic, along with step-by-step instructions.

¹ The sample named in NY N200641 is Hoooked Zopagetti. This is a typographical error. The company and product are called Hoooked Zpagetti. The three "o"s in "Hoooked" are not a typo. The extra "o" in Zpagetti is a typo. See www.zpagetti.com.au

It is the opinion of this office that the craft kit is a set for tariff purposes. ... In the set, the cordage imparts the essential character and thus determines the classification. The applicable subheading for both style Hooooked Zpagetti cordage and Hooooked Zpagetti craft kit will be 5607.90.9000, HTSUS, which provides for “Twine, cordage, ropes and cables, whether or not plaited or braided and whether or not impregnated, coated, covered or sheathed with rubber or plastics: Other: Other.”

The remainder of NY N244143 remains intact (e.g. Style Glitter Ribbon, Style Unique, and Style Silk Purse), and the classification of the same is not affected by the instant ruling.

ISSUE:

What is the classification of a tubular knit yarn, described as 92% cotton and 8% elastane, with a decitex over 20,000.

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 classification headings under consideration are as follows:

- | | |
|------|--|
| 5606 | Gimped yarn, and strip and the like of heading 5404 or 5405, gimped (other than those of heading 5605 and gimped horsehair yarn); chenille yarn (including flock chenille yarn); loop wale-yarn: |
| 5607 | Twine, cordage, ropes and cables, whether or not plaited or braided and whether or not impregnated, coated, covered or sheathed with rubber or plastics: |

Note 2 to Section XI which covers textiles states the following, in relevant part:

- (A) Goods classifiable in chapters 50 to 55 or in heading 5809 or 5902 and of a mixture of two or more textile materials are to be classified as if consisting wholly of that one textile material which predominates by weight over each other single textile material.

- (C) The provisions of paragraphs (A)...apply also to the yarns referred to in notes 3, 4, 5 or 6 below.

Note 3 to Section XI states the following, in relevant part:

- (A) For the purposes of this section, and subject to the exceptions in paragraph (B) below, yarns (single, multiple (folded) or cabled) of the following descriptions are to be treated as “*twine, cordage, ropes and cables.*”

- (e) Of other vegetable fibers, measuring more than 20,000 decitex; or

(B) Exceptions:

(e) Chenille yarn, gimped yarn, and loop wale-yarn of heading 5606

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

The General EN to Section XI, which covers textiles, specifically in Section (I) which regards Chapters 50 to 55, is relevant here. Specifically, subsection (B) Yarns, Table 1, which regards the classification of yarns, twine, cordage, rope and cables of textile materials. Table 1 states the following, in relevant part:

Gimped yarn, other than those of headings 51.10 and 56.05, chenille yarn and loop wale yarn [are] in all cases [to be classified in] heading 56.06.

The EN to 56.06 states the following, in relevant part:

(C) LOOP WALE-YARN

Loop Wale-yarn is a tubular yarn made on a circular knitting machine and is 1.5 to 2 mm wide when pressed flat. This yarn is used for making fringes and other textile accessories and for making woven fabrics on conventional warp and weft looms.

The EN to 56.07 states the following, in relevant part:

This heading covers twine, cordage, ropes and cable, produced by twisting or by plaiting or braiding.

(1) Twine, cordage, ropes and cables, not plaited or braided.

Parts (I)(B)(1) and (2) (particularly the Table) of the General Explanatory Note to Section XI set out the circumstances in which single, multiple (folded) or cabled yarns are regarded as twine, cordage, ropes or cables of this heading.

Twine, cordage, ropes and cables are used as binder twine, for tying packages, towing, loading, etc. Their cross-section is usually round but some (e.g. some transmission cables) have a square, trapezoidal or triangular section. They are normally unbleached, but may be dyed, impregnated to make them rot-proof, formed of different coloured strands, or impregnated, coated, covered or sheathed with rubber or plastics.

It continues:

The heading excludes:

(b) Gimped yarn, chenille yarn and loop wale-yarn of heading 56.06.

The rulings at issue here relied on Note 3(A)(e) to Section XI, to classify yarn of vegetable fiber which is more than 20,000 in decitex, as twine, cordage, ropes and cables. While the subject textile is cotton of the requisite decitex it is not produced by twisting, plaiting or braiding, as is the case with twine, cordage, ropes and cables. And further, pursuant to the EN 56.07 the subject cotton yarn is not manufactured as binder twine for tying packages,

towing, or loading. Rather, it is a knitted yarn. Therefore it is not described by the tariff terms of heading 5607, HTSUS.

The subject textile is 98% cotton and 2% elastene². It is a knit tubular yarn which features successive interlocking loops. This is called loop wale-yarn. The General EN to Section XI, Section (I), Subsection (B) Yarn, Table 1 directs that loop wale-yarn is, “in all cases” to be classified in heading 5606, HTSUS.

This classification comports with the Informed Compliance Publication, entitled, “*What Every Member of the Trade Community Should Know About: Classification of Fibers and Yarns under the HTSUS*” (published in September 2011). Therein, CBP clarifies that “Loop Wale-Yarn” is described as a textile created by knitting a fabric that is narrow enough to have the appearance of a yarn, with successive interlocking loops typical of knit construction. The ICP further cites the ENs, which state that in all cases, it is to be classified in heading 5606, HTSUS, and is excluded from classification in heading 5607, HTSUS, under the EN 56.07(1)(b).

HOLDING:

By application of GRI 1, the subject Hoooked Zpagetti tubular knit yarn is classified in heading 5606, HTSUS. It is specifically provided for under subheading 5606.00.0010, HTSUSA (Annotated), which provides for, “Gimped yarn, and strip and the like of heading 5404 or 5405, gimped (other than those of heading 5605 and gimped horsehair yarn); chenille yarn (including flock chenille yarn); loop wale-yarn: Containing elastomeric filaments.” The column one, general rate of duty is 8% *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 at www.usitc.gov.

EFFECT ON OTHER RULINGS:

NY N200641, dated January 23, 2012, is hereby REVOKED, and NY N244143, dated July 24, 2013, is hereby MODIFIED, as regards Style Hoooked Zpagetti yarn contained in a craft kit.

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

² Chapter 52 provides for cotton textiles. However, Note 4(A)(b)(i) through (iii) provides a weight limit on goods classified in Chapter 52. The subject cotton yarn exceeds that weight limit and thus cannot be classified therein, or as goods “put up for retail sale”, as that phrase is understood in Note 4.

19 CFR PART 177**MODIFICATION OF TWO RULING LETTERS AND
REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF WOMEN'S SUIT-TYPE
JACKETS AND PANTS**

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

ACTION: Notice of modification of two ruling letters, and revocation of treatment relating to the tariff classification of women's suit-type jackets and 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 modifying two ruling letters concerning tariff classification of women's suit-type jackets and pants under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 49, No. 43, on October 28, 2015. No comments were received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after August 8, 2016.

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

SUPPLEMENTARY INFORMATION:**BACKGROUND**

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the *Customs Bulletin*, Vol. 49, No. 43, on October 28, 2015, proposing to modify two ruling letters pertaining to the tariff classification of women's suit-type jackets and pants. As stated in the notice, this action will cover NY N086736, dated December 9, 2009, and N086592, dated December 7, 2009, as well as any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the two identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

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

In NY N086736 and N086592, CBP classified certain styles of women's jackets and pants separately in heading 6204, HTSUS, specifically in subheading 6204.33.50, HTSUS, and 6204.63.35. CBP has reviewed N086736 and N086592 and has determined the ruling letters to be in error. It is now CBP's position that the garments are properly classified as "suits", by operation of GRI 1, in heading 6204, HTSUS, specifically in subheading 6204.13.20, HTSUS, which provides for "Women's or girls suits, ensembles, suit-type jackets, blaz-

ers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts: Suits: Of synthetic fibers: Other.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is modifying NY N086736 and N086592 and revoking 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”) H110416, 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: February 29, 2016

ALLYSON MATTANAH
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachment

HQ H110416

February 29, 2016

CLA-2 OT:RR:CTF:TCM H110416 HvB

CATEGORY: Classification

TARIFF NO.: 6204.13.20.10

CATHY SPIOTTA

ALBA WHEELS UP INTERNATIONAL INC.

150-30 132ND AVENUE, SUITE 208

JAMAICA, NY 11434

RE: Tariff classification of women's suits; Modification of NY N086736 and NY N086592

DEAR Ms. SPIOTTA:

This letter is in response to your request for reconsideration, dated May 21, 2010, on behalf of your client, American Apparel Co., of New York Ruling Letter ("NY") N086736, issued on December 9, 2009, concerning the tariff classification of women's suit-type jackets and pants, specifically, Styles 37715-05 and 171897-05.¹ In addition, this letter also addresses your request for reconsideration of NY N086592, dated December 7, 2009, also on behalf of American Appeal Co. NY N086592 concerns the classification of women's suit-type jackets and pants, which you identify as Styles 17821-05, 37821-05, and 17828-40.²

In NY N086736, U.S. Customs and Border Protection ("CBP") classified the jackets of Styles 37715-05 and 171897-05 as "suit-type jackets and blazers" under subheading 6204.33.50, Harmonized Tariff Schedule of the United States ("HTSUS") which provides for "Women's or girls' suits, ensembles, suit-type jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear): Suit-type jackets and blazers: Of synthetic fibers: other." CBP classified the corresponding pants of Styles 37715-05 and 171897-05 as "trousers..." under subheading 6204.63.35, HTSUS, which provides for "Women's or girls', suits, ensembles, suit-type jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear): Trousers, bib and brace overalls, breeches and shorts: Of synthetic fibers: Other: Other: Other: Other: Other."

In NY N086592, CBP classified the jackets of Styles 17821-05, 37821-05, and 17828-40 in HTSUS subheading 6204.33.55, which provides for "Women's or girls', suits, ensembles, suit-type jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear): Suit-type jackets and blazers: Of synthetic fibers: Other." CBP classified the corresponding pants for each style at issue as "trousers..." in subheading 6204.63.35, HTSUS, which provides for "Women's or girls', suits, ensembles, suit-type jackets, blazers, dresses, skirts, divided skirts,

¹ NY N086736 also concerned Style 171901-05, which is not at issue in this ruling.

² NY N086592 also concerned Style 39123-05 and Style 10905-40, which are not at issue in this ruling. In addition, in NY N086592, a typographic error referred to Style # 17828-40 as Style # 17828-05 in the garments' descriptions, but the ruling correctly referred to the article as Style # 17828-40.

trousers, bib and brace overalls, breeches and shorts (other than swimwear): Trousers, bib and brace overalls, breeches and shorts: Of synthetic fibers: Other: Other: Other: Other: Other.”

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

Your submission included samples of each style at issue. Per your request, the garments are being returned to you.

FACTS:

Each style at issue consists of a set of garments consisting of a jacket and a pair of pants in the same style, color, construction, and composition. Each garment is made from synthetic fabric consisting of 63% polyester, 33% rayon, and 4% spandex. The jackets are not lined.

Style 37715-05 consists of a woman's jacket and pants. The jacket is comprised of six panels which are sewn together lengthwise; two panels in the front and four panels in the back. The jacket features $\frac{3}{4}$ length sleeves with cuffs, a notched collar, two chest pockets with flaps, self-fabric loops and a tie belt, shoulder pads and a full front opening secured by three buttons. The pants features a waistband with two front hook and eye closures, a front zipper closure and long hemmed legs. Both the pants and the jacket are a Women's size 18W. Both the jacket and pants have a hang tag that states “2 Piece Set”.

Style 171897-05 features a jacket which is comprised of seven panels sewn together lengthwise; three panels in the front and four panels in the back. It also features long sleeves, a shawl collar, thread belt loops, a self-fabric tie, shoulder pads, and a full front opening secured by a snap closure. The pair of pants for this style features a waistband with two front hook and eye closures, a front zipper, and long hemmed legs. The jacket and pants are both labeled Size 8. Both the jacket and pants have a hang tag that states “2 Piece Set”.

Style 37821-05 consists of a woman's jacket and pants, which both have hang tags that states “2 Piece Set”. The jacket has three panels in the front on each side of the opening that are sewn together lengthwise with four panels in the back. Both the back and the front of the garment feature seams at the waistband. The jacket features shoulder pads, a notched collar, and a 2 button closure that secures a full frontal opening. A fabric self-tie belt is attached to the jacket. The pant features a waistband with two hook and eye closures, a front zipper opening, and long hemmed legs.

Style 17821-05 consists of jacket and pants. The jacket is composed of more than three panels. It also features long sleeves, a notched collar, shoulder pads, two pockets at the waist and a full front opening secured by two buttons. There are belt loops above the pockets for a belt. The pant features a waistband with two hook and eye closures, a front zipper opening, and long hemmed legs. Both the jacket and pants have a hang tag that states “2 Piece Set”. The items are both labeled Women's size 8.

Style 17828-40 also consists of a woman's jacket and pants. The jacket features six panels in total, with three panels in the front and the back. The panels are sewed together lengthwise. The jacket has a notched collar, shoulder pads, two faux pockets at the waist and a full front opening that is

secured by one button. The jacket and pants are both labeled Size 8. Both the jacket and pants have a hang tag that states “2 Piece Set”.

You request classification of these garments in subheading 6204.13, HTSUS, the subheading which provides for women’s or girls’ “suits”.

ISSUE:

Whether the instant garments are classified together as suits in subheading 6204.13, HTSUS, or as “suit-type jackets and blazers” and “trousers” in subheading 6204.33, HTSUS, and 6204.63, respectively?

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.

Because the instant classification dispute occurs beyond the four-digit heading level, GRI 6 is implicated. GRI 6 states:

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

The HTSUS provisions under consideration are as follows:

- | | |
|----------------|--|
| 6204 | Women’s or girls’ suits, ensembles, jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear):
Suits:
*** |
| 6204.13 | Of synthetic fibers

Suit-type jackets and blazers |
| 6204.33 | Of synthetic fibers:

Trousers, bib and brace overalls and shorts (other than swimwear)
*** |
| 6204.63 | Of synthetic fibers |

Note 3 to Chapter 62, HTSUS, in pertinent part, states:

For the purposes of headings 6203 and 6204:

- (a) The term “suit” means a set of garments composed of two or three pieces made up, in respect of their outer surface, in identical fabric and comprising:
- one suit coat or jacket the outer shell of which, exclusive of sleeves, consists of four or more panels, designed to cover the upper

part of the body, possibly with a tailored waistcoat in addition whose front is made from the same fabric as the outer surface of the other components of the set and whose back is made from the same fabric as the lining of the suit coat or jacket; and

- one garment designed to cover the lower part of the body and consisting of trousers, breeches or shorts (other than swimwear), a skirt or a divided skirt, having neither braces nor bibs.

All of the components of a “suit” must be of the same fabric construction, color and composition; they must also be of the same style and of corresponding or compatible size. However, these components may have piping (a strip of fabric sewn into the seam) in a different fabric.

...

* * *

There is no dispute that the subject women’s garments are classified in heading 6204, HTSUS. To the contrary, the dispute is at the 6-digit level. You argue that the instant garments should be classified as “suits” in subheading 6204.13, HTSUS, whereas in NY N086736 and NY N086592, CBP classified the jacket and pants of each style at issue separately, in subheadings 6204.33 and 6204.63, HTSUS.

Note 3(a) to Chapter 62, HTSUS, defines the term “suit” as “a set of garments composed of two or three pieces made up, in respect of their outer surface, in identical fabric, and which are comprised of one of a number of specific type of garments designed to cover the lower body and a suit coat or suit jacket. *See* Headquarters Ruling Letter (HQ) 962125, dated May 5, 2000. Thus, we must evaluate each pair of garments as a whole before we can determine if the individual articles meet the criteria for suit jackets and suit pants. In this case, we are presented with garments each composed of a jacket and a pair of pants. The components of each style at issue are of the same fabric construction, style, color, and composition. Each pant and jacket are also of corresponding sizes. *See* HQ 953237, dated February 2, 1993. Accordingly, the first definitional requirement is met.

Note 3(a) requires that the outer shell of suit-jackets in heading 6204, HTSUS, consist of at least four panels. Each jacket presented meets this requirement as each jacket features at least four panels, as noted above. Therefore, we find that the instant merchandise, Styles 37715-05, 171897-05, 37821-05, 17821-05, and 17828-40, each meet the requirements of Note 3(a) to Chapter 62, HTSUS. Accordingly, by operation of GRI 1, the instant merchandise are classified in subheading 6204.13.20, HTSUS, as “Women’s or girl suits...: Suits: Of Synthetic fibers: Other.”

HOLDING:

By application of GRI 1, the women’s pants suits, Styles 37715-05, 171897-05, 37821-05, 17821-05, and 17828-40, are classified in heading 6204, HTSUS, and specifically in subheading 6204.13.20.10, HTSUSA, which provides for “Women’s or girl’s suits, ensembles, suit-type jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts: Suits: Of Synthetic Fibers: Other: Women’s.” Under the 2016 HTSUS, the column one, general rate of duty is 35.3¢/kg + 25.9% *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 N086736, dated December 9, 2009, is hereby MODIFIED with respect to Style 37715-05 and Style 171897-05.

NY N086592, dated December 7, 2009, is hereby MODIFIED with respect to Style 17821-05, Style 37821-05, and Style 17828-40.

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

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

ALLYSON MATTANAH



19 CFR PART 177

**REVOCATION OF THREE RULING LETTERS,
MODIFICATION OF ONE RULING LETTER, AND
REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF LUO HAN GUO POWDER
AND LIQUID PRODUCTS**

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

ACTION: Notice of revocation of three ruling letters, modification of one ruling letter, and revocation of treatment relating to the tariff classification of luo han guo powder and liquid products.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking three ruling letters and modifying one ruling letter concerning tariff classification of luo han guo powder and liquid products under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 49, No. 44, on November 11, 2015. Two comments were received in response to that Notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after August 8, 2016.

FOR FURTHER INFORMATION CONTACT: Nikolai C. Diamond, Tariff Classification and Marking Branch, at (202) 325-0292.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the *Customs Bulletin*, Vol. 49, No. 44, on November 11, 2015, proposing to revoke three ruling letters and modify one ruling letter pertaining to the tariff classification of luo han guo powder and liquid products. As stated in the Notice, this action will cover Headquarters Ruling Letter (“HQ”) W967214, dated April 4, 2006, New York Ruling Letter K84522, dated April 9, 2004, HQ H106785, dated October 14, 2010, and NY N046672, dated January 7, 2009, as well as any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the four identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice

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

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

In NY K84522, CBP classified a luohan guo powder comprised 80 percent of mogrosides in subheading 3824.90.91, HTSUS (2004), which provided for "Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other: Other: Other: Other: Other." CBP affirmed that ruling in HQ W967214. In HQ H106785, CBP classified a luohan guo liquid comprised 55.90 percent of mogrosides in subheading 1302.19.91, HTSUS, which provides for "Vegetable saps and extracts; pectic substances, pectinates and pectates; agar-agar and other mucilages and thickeners, whether or not modified, derived from vegetable products: Vegetable saps and extracts: Other: Other." In NY N046672, CBP classified a luohan guo liquid comprised 80 percent of mogrosides in subheading 3824.90.92, HTSUS. It is now CBP's position that the luohan guo powder of HQ W967214 and NY K84522 and the luohan guo liquid of NY N046672 are properly classified, by operation of GRI 1, in heading 2938, HTSUS, specifically in subheading 2938.90.00, HTSUS, which provides for "Glycosides, natural or reproduced by synthesis, and their salts, ethers, esters and other derivatives: Other." It is also our position that the luohan guo liquid of HQ H106785 is properly classified, by operation of GRI 1, in heading 3824, HTSUS, specifically in subheading 3824.90.92, HTSUS, which provides for "Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other: Other: Other: Other: Other."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking HQ W967214, NY K84522, and NY N046672, modifying HQ H106785, and revoking any other ruling not specifically identified to reflect the tariff classification of the subject merchandise according to the analysis con-

tained in HQ H249896, 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: February 29, 2016

ALLYSON MATTANAH
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachment

HQ H249896

February 29, 2016

CLA-2 OT:RR:CTF:TCM H249896 NCD

CATEGORY: Classification

TARIFF NO.: 2938.90.0000; 3824.90.9290

ANDREW L. RUBMAN, ND
BIOVITTORIA
27 STONY CORNER LANE
SOUTHBURY, CT 06488

RE: Revocation of HQ W967214, NY N046672, and NY K84522 and modification of HQ H106785; Classification of luohanguo powder and liquid products

DEAR MR. RUBMAN:

This letter is in reference to Headquarters Ruling Letter (“HQ”) W967214, issued to you on April 4, 2006, and New York Ruling Letter (“NY”) K84522, issued to you on April 9, 2004, both of which involve the tariff classification of a luohanguo powder under the Harmonized Tariff Schedule of the United States (“HTSUS”). In both rulings, U.S. Customs and Border Protection (“CBP”) classified the subject powder in subheading 3824.90.91, HTSUS, which provides for “Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other: Other: Other: Other: Other.”¹ We have reviewed these rulings and determined that they are incorrect.

We have also reviewed NY N046672, dated January 7, 2009, and HQ H106785, dated October 14, 2010, both of which involve luohanguo liquids. Upon reviewing these rulings, we have determined that the former is incorrect and that the latter is incorrect with respect to the luohanguo liquid at issue in that ruling. Therefore, for the reasons set forth below, we hereby revoke HQ W967214, NY K84522, and NY N046672, and modify HQ H106785.

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. 44, on November 11, 2015. Two comments concerning the proposed action, submitted on behalf of Tate & Lyle Ingredients Americas LLC (“Tate & Lyle”) and Monk Fruit Corp. (“Monk Fruit”) respectively, were received in response to the notice. Both comments are addressed in this decision.

FACTS:

At issue in all four rulings under reconsideration are products derived from the fruit of the luohanguo plant. In HQ W967214 and NY K84522, this product was in the form of a dry powder, which, as we noted in HQ W967214,

¹ We note that subheading 3824.90.91 of the HTSUS was re-designated subheading 3824.90.92 as part of the 2007 amendments to the HTSUS. Because the two subheadings are identical in language, we consider whether the instant products are classifiable in subheading 3824.90.92, HTSUS.

is provided a sweet taste by its constituent mogrosides, a group of terpene glycosides. In NY K854522, CBP stated as follows with regard to the *luo han guo* powder:

You indicate in your letter that the subject product is “[s]imply a powder produced by drying a hot water decoction of a Chinese fruit.” However, the flow chart supplied by the manufacturer shows that, following separation from the fruit pulp, the “[l]iquid is passed through the resin column to remove suspended particulate and then evaporated.” As evidenced by the Product Specification Sheet, this chromatographic processing results in the finished product having a total mogroside content of $\geq 80\%$.

Based on this, CBP classified the product in subheading 3824.90.92, HT-SUS, which provides for “Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other: Other: Other: Other: Other.” We affirmed this determination in HQ W967214, in which we provided the following additional description of the product:

A process for making the *luo han guo* powder was patented in 1995. The process is used to remove undesired flavors created by the drying process. The patented process entails picking the fruit before it is ripe and completing the ripening process during storage. The peel and seeds are removed and the fruit is mashed or pressed to become the basis for a concentrated fruit juice or puree. The pulp solids are removed from the juice to less than 2%. The juice is acidified to a pH of less than 5.3 (preferably 3.8 to 4.2) by using a selected acid including citric acid, malic acid, lactic acids, tartaric acid, acetic acid, phosphoric acid, sulfuric acid, hydrochloric acid or a mixture thereof. Acidified juice is lighter in color, less bitter, and does not gel when it is concentrated.

The juice is homogenized in a high speed mixer to reduce the particle size to less than 850 microns. Next, solvents are used to remove volatile and undesirable components which produce sulfurous or vegetable-like odors and off-flavors such as at least 80% of the sulfur containing amino acids. The process reduces the amino-nitrogen compounds of the juice, which include sulfur-containing amino acids, peptides and proteins by at least 70% while reducing the mogroside or other sweet terpene glycosides content by no more than 20%.

Off-flavor materials and precursors are removed from the juice by use of an ion exchange resin, such as a cation exchange resin. The ion exchange resin removes sulfur-containing amino acids quicker than it removes mogrosides. Therefore, the time the ion exchange resin is used is limited to maximize the removal of sulfur-containing compounds but minimize the removal of mogrosides. The resulting ion exchange resin adsorbent, fining agent, precipitate material is removed from the juice by filtration or centrifugation. At least 50% of the methylene chloride extractable volatiles fractions are removed from the juice.

The juice is treated with pectinase to remove substantially all the pectin in the juice. Also used to remove off-flavor materials and precursors are adsorbing and/or fining agents such as activated charcoal, bentonite, bleaching earth, kaolin, perlite, diatomaceous earth, cellulose, cyclodextrin polymer, and insoluble polyamide (e.g. nylon). The juice may also be

treated with precipitating agents such as gelatin, tannin/gelatin, sparkoloid, and water colloidal solutions of silicic acid (silica). An evaporator or concentrating equipment is used to remove certain volatiles from the juice and to concentrate it to from 15 degree Brix to 65 degree Brix ("Brix" is essentially equal to the percent of solid content). The concentrated juice is heated to deactivate enzymes and pasteurize the juice. The solution is mechanically dried and packed in mylar-aluminum bags in 5 kg amounts.

In contrast to HQ W967214 and NY K84522, the products at issue in HQ H106785 and NY N046672 are in liquid form. In HQ H106785, we noted as follows with regard to the subject product:

The manufacturing flowcharts submitted (which we note are identical) show that both the Luo han guo and the Goji Liquid Extracts are obtained by washing with water, extraction with ethanol and water, decompressing the extracted liquid below 60° Centigrade, centrifugation, additional decompression below 60° Centigrade, spray drying, breaking and passing through an 80 mesh. Counsel provides a slightly different narrative which describes the process as squeezing the fruit, filtration, ethanol solvent extraction, sterilizing and packing.

A final description of the methods applied to obtain the instant product and the composition of the imported product was provided by counsel for the protestant after consultation with the supplier, which confirmed that "[t]he extract is obtained through the production process shown in the flow chart. Mogrosides and dietary fibers are not added to this product."

We additionally note that, according to a product specification sheet submitted by the protestant in HQ H106785, the luo han guo liquid at issue in that case is comprised 55.90 percent of mogrosides, 18.4 percent of fructose, 10.6 percent of glucose, 8.9 percent of sucrose, 3.37 percent of moisture, 2.38 percent of protein, and 0.45 percent of ash. The chemical composition of the goji liquid at issue was not reported. We classified both of the subject products in subheading 1302.19.91, HTSUS, which provides for "Vegetable saps and extracts; pectic substances, pectinates and pectates; agar-agar and other mucilages and thickeners, whether or not modified, derived from vegetable products: Vegetable saps and extracts: Other: Other."

Finally, NY N046672 involved a luo han guo liquid comprised 80 percent of mogroside which, according to the inquirer, is derived from the luo han guo fruit through alcohol/water extraction and subsequently dried to remove all traces of the alcohol. CBP noted in that case that the product had been extensively processed and, on this basis, classified the product in that case in subheading 3824.90.92, HTSUS.

ISSUE:

Whether the subject luo han guo products are classified as extracts in heading 1302, HTSUS, as glycosides in heading 2938, HTSUS, or as other chemical mixtures in heading 3824, HTSUS?

LAW AND ANALYSIS:

Merchandise imported into the United States is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context which requires otherwise, by the Additional U.S. Rules of Interpre-

tation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law for all purposes.

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

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

The HTSUS provisions under consideration are as follows:

1302	Vegetable saps and extracts; pectic substances, pectinates and pectates; agar-agar and other mucilages and thickeners, whether or not modified, derived from vegetable products:
	Vegetable saps and extracts:
1302.19	Other:
1302.19.91	Other
2938	Glycosides, natural or reproduced by synthesis, and their salts, ethers, esters and other derivatives:
2938.90.00	Other
3824	Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included:
3824.90	Other:
	Other:
	Other:
3824.90.92	Other

At the outset, we note that the subject products can only be classified in heading 3824, HTSUS, if they are not classifiable in heading 2938, or more specifically classifiable in heading 1302. *See* Chapter 29, Note 1, HTSUS (“Except where the context otherwise requires, the headings of this chapter apply only to...separate chemically defined organic compounds.”); Chapter 38, Note 1, HTSUS (“This chapter does not cover...separate chemically defined elements or compounds.”); *see also Cargill, Inc. v. United States*, 318 F. Supp. 2d 1279, 1278–88 (Ct. Int’l. Trade 2004) (characterizing heading 3824 as a basket provision). Moreover, the subject products can only be classified in heading 1302, HTSUS, if they are not classifiable in heading 2938. *See* Chapter 13, Note 2, HTSUS (“The heading does not apply to... Camphor, glycyrrhizin or other products of heading 2914 or 2938.”). Consequently, we first consider whether the subject products are classifiable in heading 2938; if they are not, we will consider heading 1302 before finally considering heading 3824.

Heading 2938 describes glycosides and their derivatives. As referenced above, Note 1 to Chapter 29 provides, in relevant part, as follows:

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

(a) Separate chemically defined organic compounds, whether or not containing impurities;

...

(c) The products of headings 2936 to 2939 or the sugar ethers, sugar acetals and sugar esters, and their salts, of heading 2940, or the products of heading 2941, whether or not chemically defined...

With regard to “chemically defined” and “impurities” as referenced in Note 1(a) to Chapter 29, the EN to Chapter 29 states as follows:

A separate chemically defined compound is a substance which consists of one molecular species (e.g., covalent or ionic) whose composition is defined by a constant ratio of elements and can be represented by a definitive structural diagram. In a crystal lattice, the molecular species corresponds to the repeating unit cell.

...

The term “impurities” applies exclusively to substances whose presence in the single chemical compound results solely and directly from the manufacturing process (including purification). These substances may result from any of the factors involved in the process and are principally the following:

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

EN 29.38 states, in pertinent part, as follows:

This heading also covers **natural mixtures** of glycosides and of their derivatives (e.g., a natural mixture of digitalis glycosides containing purpurea glycosides A and B, digitoxin, gitoxin, gitaloxin, etc.); but deliberate intermixtures or preparations are **excluded**.

Per Note 1(a) and the EN to Chapter 29, a substance is classifiable within heading 29 where it is comprised almost entirely by a single molecular structure, so long as any structural deviations, i.e., impurities, are the result of processing. *See Degussa Corp. v. United States*, 508 F.3d 1044, 1047–48 (Fed. Cir. 2007) (discussing the scope of, and applying, identical language concerning chemical impurities in the EN to Chapter 28); Richard J. Lewis, Sr., *Hawley’s Condensed Chemical Dictionary* 324 (15th ed. 2007) [hereinafter *Hawley’s*] (similarly defining compound as “a homogeneous entity where the elements have definite proportions by weight and are represented by a chemical formula”). Note 1(c) and EN 29.38 establish an even broader degree of permissible chemical heterogeneity in specific relation to glycoside prod-

ucts, insofar as they set the scope of heading 2938 to include mixtures consisting of multiple, varying glycosidic structures in addition to any incidental impurities.²

Notwithstanding this allowance for impurities, it is CBP's position that there do exist limits to the proportional weights of permissible impurities in a Chapter 29 product. Specifically, any impurities cannot be so prevalent so as to marginalize the product's chemical identity and render it a chemical mixture classifiable elsewhere. *Compare* HQ 967971, dated March 2, 2006 (classifying extract with 80 percent silymarin content in heading 2932 on the grounds that remaining 20 percent content, comprised of starting material and solvent, constituted permissible impurities) *with* HQ 966448, dated July 9, 2004 (excluding extracts containing between 6 percent and 30 percent alkaloids as well as maltodextrin and ash from heading 2939); *see also* HQ W968424, dated December 19, 2006 (excluding from a product containing "proanthocyanidin, in concentrations of 76 percent or greater to the exclusion of other constituents" from Chapter 29); *see* Hawley's, *supra*, at 685 (defining impurity as "[t]he presence of one substance in another, often in such low concentration that it cannot be measured quantitatively by ordinary analytical methods...").

Here, each of the instant products contains varying amounts of mogrosides, which comprise a group of chemical compounds within the broader glycoside family. Our research indicates that mogrosides *in toto* encompass several different individual chemical compounds, most commonly mogrosides I-V, each of which bears a unique molecular make-up. *See* Dr. Subhuti Dharmananda, *Luo Han Guo: Sweet Fruit Used as Sugar Substitute and Medicinal Herb*, Institute for Traditional Medicine, Jan. 2004, <http://www.itmonline.org/arts/luohanguo.htm>. Our research further indicates that while mogroside V is typically the largest component by weight in luohan guo extracts, these extracts generally contain other mogroside compounds, albeit in much smaller amounts. *Id.* Even when mixed together, however, these individual mogroside compounds remain classifiable in heading 2938, HTSUS, by operation of Chapter 29, Note 1(c).

In HQ W967214, NY K84522, and NY N046672, unspecified mogrosides account for 80 percent of the respective subject products' chemical compositions, with the remaining 20 percent constituent matter comprised of various undefined materials. Assuming they lack glycosidic content, these 20 percent remainder portions qualify as impurities if they result from processing such as purification. According to CBP's analyses of the manufacturing flowcharts you submitted, the powder at issue in HQ W967214 and NY K84522 is subjected to filtration, centrifugation, and column chromatographic procedures designed to remove certain materials from the substance. Specifically, we noted in HQ W967214 that the ion exchange resin used in the chromatographic procedure enables disposal of unwanted sulfur-containing compounds, and that, additionally, 50 percent of the unwanted methylene chloride extractable volatiles fractions and various off-flavor materials are removed. As a result, the remaining 20 percent constituent matter can be

² While Note 1(c) does not specifically carve out an allowance for impurities, one can be read in by implication, as the note would otherwise be rendered *de facto* inoperable. *See* Hawley's, *supra*, at 685 ("It is impossible to prepare an ideally pure substance").

characterized as either unconverted starting materials or impurities in the starting materials. Likewise, CBP concluded in NY N046672 that the luohan guo liquid at issue has been extensively processed; hence, the remaining materials left unaffected by this processing can be considered impurities. Consequently, both the luohan guo powder of HQ W967214 and NY K84522 and the luohan guo liquid of NY N046672 are classifiable in heading 2938, HTSUS, as glycosides not chemically defined containing impurities from the starting material.

In HQ H106785, by contrast, the subject luohan guo liquid contains only 55.90 percent mogrosides as its most predominant chemical constituent, although an additional 37.9 percent of the liquid is comprised by glucose, fructose and sucrose. The presence of a sugar may in some cases be indicative of glycoside content, as the latter by definition includes the former as a constituent part, but it is not necessarily dispositive of such. Hawley's, *supra*, at 616 (defining glycosides as "acetals derived from a combination of various hydroxyl compounds with various sugars"). In HQ H106785, it is unclear whether the constituent sugars are incorporated into glycosides. In addition, the mixture contains other non-glycosidic substances. Therefore, the presence of glycosides combined with other materials renders the liquid a heterogeneous mixture rather than a mixture of glycosides for classification purposes. As such, it is excluded from Chapter 29 and must be classified elsewhere.

We accordingly consider whether the liquid is classifiable in heading 1302, HTSUS, which covers vegetable extracts. EN 13.02 provides, in relevant part, as follows:

The heading covers saps and extracts (vegetable products usually obtained by natural exudation or by incision, or extracted by solvents)...

The saps and extracts classified here include:

(1) **Opium**, the dried sap of the unripe capsules of the poppy (*Papaver somniferum*) obtained by incision of, or by extraction from, the stems or seed pods. It is generally in the form of balls or cakes of varying size and shape. However, concentrates of poppy straw containing not less than 50% are **excluded** from this heading...

(11) **Quassia amara** extract, obtained from the wood of the shrub of the same name (*Simaroubaceae* family), which grows in South America.

Quassin, the principal bitter extract of the wood of the *Quassia amara*, is a heterocyclic compound of **heading 29.32**...

(18) **Papaw juice**, whether or not dried, but not purified as papain enzyme. (The agglomerated latex globules can still be observed on microscopic examination.). Papain is **excluded (heading 35.07)**...

(20) **Cashew nutshell extract**. The polymers of cashew nutshell liquid extract are, however, **excluded (generally heading 39.11)**...

The vegetable saps and extracts of this heading are generally raw materials for various manufactured products...

It is our long-standing position that, consistent with EN 13.02, heading 1302 applies to products that have been created through standard extraction

methods, but not to those that have subsequently been enriched, purified, or otherwise refined so as to increase the contents of certain desirable compounds. See HQ H106785, dated October 14, 2010 (“CBP has determined that extensive processing can exclude a product from 1302.”); HQ 959099, dated May 1, 1998 (“As pointed out in the ENs to heading 1302, what is covered in the heading are vegetable products obtained by natural exudation or by incision or by solvent extraction.”). In HQ H195716, dated February 19, 2015, we provided the following justification for this position:

CBP’s position is supported by the text of EN 13.02. For example, opium is the dried sap of the unripe capsules of the poppy (*Papaver somniferum*), obtained by incision of or extraction from the stems or seed pods. Opium contains about 10% morphine. However, concentrate of poppy straw is a different product. A procedure for obtaining concentrate of poppy straw was first patented in 1935, and describes a process of drying the stems and pods of the poppy plant, treating them with sodium bisulphite, concentrating the aqueous solution into a paste by application of a vacuum, treating the paste with alcohol, and then precipitating the morphine base by treating the solution with ammonium sulphate and benzene, to yield a product with over 50% morphine. EN(1) to 13.02 (and Note 1(f) to Chapter 13, HTSUS) excludes concentrates of poppy straw containing not less than 50% by weight of alkaloids. In another example, quassia amara extract obtained from the bark of the *Quassia amara* shrub. The extract is used in herbal medicine, and contains numerous compounds including both beta-carbonile and cantin-6 alkaloids as well as, primarily, the bitter compounds known as quassinoids. Quassin (2,12-dimethoxypicrasa-2,12-diene-1,11,16-trione, CAS No. 76-78-8) however, is a specific chemical compound contained in the *Quassia amara* shrub. A patented procedure for obtaining quassin describes a process which percolates first the gum or residue of the wood chips of the *Quassia amara* shrub in ethanol and evaporates the solvent, then dissolves the residue in water and washes it with hexane. The hexane fraction is discarded, and sodium chloride is added to the aqueous fraction. A residue is extracted using ethyl acetate and the crystallized into quassin and neoquassin. This process yields a crystal composed of 39% quassin. This chemical is one of the most bitter substances found in nature, and is used mainly as a food additive. EN(11) to 13.02 excludes quassin from classification under the heading, and directs it to be classified under heading 29.32. In these examples, EN 13.02 excludes products extracted from plants which undergo extensive further processing. See EN(1), (11), (18), and (20) to 13.02.

See also HQ H061203, dated August 12, 2010 (“There appears to be a limit on the degree and extent of purification that can occur for the product to remain in heading 1302. For instance, EN 13.02, explicitly excludes certain refined extracts of opium, quassia amara, papaw juice, and cashew nut shell liquid, once the refining process concentrates a certain group of chemical compounds to a particular point. Hence, poppy straw concentrates containing more than 50% alkaloids are excluded from heading 1302. Likewise, quassin, a chemical compound extracted and refined from the quassia amara shrub is classified in

Chapter 29. Papain enzyme, once purified from the extraction process of papaw juice, is classified as an enzyme of Chapter [35]. And polymers extracted and refined from cashew nut shell liquid are classified in Chapter 39 as polymers.”); HQ H237599, dated May 27, 2015; and HQ W968424, dated December 19, 2006.

Accordingly, we have consistently ruled that products in which certain chemical compounds have deliberately been targeted and enriched cannot be classified in heading 1302. In HQ H195716, for example, we held that silymarin powders subjected to concentration measures for the purpose of increasing their relative flavonolignan contents were not described by heading 1302. We have also excluded from heading 1302 a pine bark extract that had been processed extensively following initial water extraction so as to increase its proanthocyanidin content, a red cabbage extract that had been concentrated and standardized so as to leave only the desired coloring matter, and a grape product that had undergone processes “designed to specifically target the polyphenol compounds in the grape pomace source material,” among other products. *See* HQ W968424; HQ H023701, dated May 29, 2009; and HQ H056377, dated August 9, 2010; *see also* HQ H061203, dated August 12, 2010 (“It is thus the opinion of this office that phenolic compounds are targeted and further concentrated in the extraction and purification process, resulting in a relatively pure chemical product that can no longer be considered a simple extract of heading 1302, HTSUS.”); and HQ H965030, dated May 20, 2002 (“Substances obtained from a plant are not considered ‘vegetable extracts’ if they only contain one ingredient divorced from the composition of the vegetable source.”).

The luo han guo liquid of HQ H106785 is initially extracted with water and ethanol, but is subsequently subjected to additional processes such as centrifugation and decompression. These steps, which are methods of concentrating desired chemical compounds, yield a product that contains 55.90 percent mogrosides among other naturally-occurring materials. *See* Hawley’s at 254. Our review of patents for the processing of luo han guo plants indicates that a chemical composition in which mogrosides account for as much as 55.90 percent of the constituent content is achieved by means of post-extraction enrichment. U.S. Patent No. 8,449,933 (filed June 30, 2004) (describing process of involving microfiltration of luo han guo fruit juice that yields product containing at most 25 percent mogrosides); U.S. Patent No. 5,411,755 (filed Jan. 26, 1994) (describing process involving fractionalization of Cucurbitaceae fruit juice that yields product containing at most 15 percent mogrosides); U.S. Patent No. 2,425,721 (filed June 30, 2004) (demonstrating use of column separation to increase mogroside content in extracts from 35 percent to 60 to 87 percent). In light of this, we conclude that the luo han guo liquid of HQ H106785 has been deliberately enriched with mogrosides through the use of post-extraction processing. Consequently, like the products of HQ H195716, HQ W968424, HQ H023701, and HQ H056377, the instant liquid cannot be classified in heading 1302.

Having excluded the remaining luo han guo liquid from headings 2938 and 1302, we now consider whether it is classifiable under heading 3824. Heading 3824 provides for “chemical products and preparations of the chemical or

allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included.” General Note 1 to Chapter 38 provides, in relevant part, that “[t]his Chapter...does not cover chemically defined elements or compounds (usually classified in Chapter 28 or 29....” Additionally, EN 38.24 states, in pertinent part, as follows:

(B) **CHEMICAL PRODUCTS AND CHEMICAL OR OTHER PREPARATIONS**

With only three exceptions... this heading does not apply to separate chemically defined elements or compounds.

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

The **chemical or other preparations** are either mixtures (of which emulsions and dispersions are special forms) or occasionally solutions...

Consistent with General Note 1 to Chapter 38 and the EN 38.24, it is CBP's practice to classify products in heading 3824 where they lack the chemical purity to qualify as a product of Chapter 29, yet have been so purified so as to fall outside the scope of heading 1302. *See* HQ H061203; HQ 959099, dated May 1, 1998. As in our previous cases, the *luo han guo* liquid of HQ H106785, as a purified chemical product or preparation lacking chemical definition, is classifiable in heading 3824.

In their aforementioned comment letters, both Tate & Lyle and Monk Fruit assert that products entitled “40 Percent Mogroside V” and “50 Percent Mogroside V” are properly classified in heading 1302, rather than in heading 2938 or heading 3824. However, neither 40 Percent Mogroside V nor 50 Percent Mogroside V is at issue in any of the ruling letters under reconsideration in the instant matter. Accordingly, the proper classification of these products cannot be addressed here.

Monk Fruit also asserts that the *luo han guo* liquid at issue in HQ H106785 cannot be classified in heading 3824 based upon our foregoing analysis. Specifically, Monk Fruit states as follows:

Several of the precedent examples U.S. Customs used to justify this analysis involved products that were not classified under the ‘basket provision’ of Chapter 38 but were classified under completely different headings. Quassin extracts, for example, fall under Chapter 29. Papain enzymes, in turn, are classified as enzymes under Chapter 37. And polymers extracted from cashew nuts are classified as polymers under chapter 39 [sic]. With none of these products classified under Chapter 38, it is difficult to *see* why one should apply such analysis to the sort of *luo han guo* liquid described in HQ H106785.

In so arguing, Monk Fruit conflates exclusion from heading 1302 with inclusion in heading 3824. However, the above-referenced examples are germane only to the former issue. That the instant products may ultimately be classified in heading 3824 or elsewhere in the HTSUS is immaterial to their exclusion from heading 1302, as supported by the exemplars of EN 13.02, on

the basis of their post-extraction enrichment. *See, e.g.*, HQ H195716 (classifying various extract-based products in headings 2106, 2932, and 3824 upon determining that they are excluded from heading 1302 by application of EN 13.02); *see also* HQ H237599, HQ H06120, and HQ H056377 (employing similar reasoning in excluding products from heading 1302 and classifying them in heading 3824).

Finally, Monk Fruit argues that CBP should, “as the guidance directs,” classify products in heading 3824 only where they cannot be described as products of heading 1302 or a heading of Chapter 29, and should “avoid classifying an edible food ingredient in the same category as chemical products used in industrial applications.” As to the first point, we have in fact determined that the subject *luo han guo* products cannot be classified more specifically in heading 1302 or within Chapter 29, and that they consequently must be classified in heading 3824. This determination is set forth in the preceding paragraphs of this decision. As to the second point, nowhere in the HTSUS or the relevant ENs is it indicated that heading 3824 excludes products that are edible or applies to only those with industrial applications. We consequently remain unconvinced that the *luo han guo* liquid of HQ H106785 is classifiable in any provision other than heading 3824.

HOLDING:

Under the authority of GRI 1, the *luo han guo* powder of HQ 967214 and NY K84522 and the *luo han guo* liquid of NY N046672 are classified in heading 2938, HTSUS, specifically in subheading 2938.90.0000, HTSUSA, which provides for “Glycosides, natural or reproduced by synthesis, and their salts, ethers, esters and other derivatives: Other.” The 2015 column one general rate of duty rate is 3.7% ad valorem.

By application of GRI 1, the *luo han guo* liquid of HQ H106785 is classified in heading 3824, HTSUS, specifically in subheading 3824.90.9290, HTSUSA, which provides for “Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other: Other: Other: Other: Other.” The 2015 column one general rate of duty is 5.0% ad valorem.

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

EFFECT ON OTHER RULINGS:

Headquarters Ruling Letter W967214, dated April 4, 2006, and New York Ruling Letters K84522, dated April 9, 2004, and NY N046672, dated January 7, 2009, are hereby REVOKED in accordance with the above analysis. Headquarters Ruling Letter H106785, dated October 14, 2010, is MODIFIED as set forth above in regards to classification of the *luo han guo* liquid, but the classification of the *Goji* liquid extract in that case remains in effect.

Sincerely,

ALLYSON MATTANAH

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

CC: Port Director, Port of Los Angeles
U.S. Customs and Border Protection
301 East Ocean Boulevard
Long Beach, CA 90802

Jonathan Andrew Selzer
HerbaSway Laboratories
101 North Plains Industrial Rd.
Wallingford, CT 06492



**PROPOSED REVOCATION OF THREE RULING LETTERS
AND REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF SECURITY ANALYTICS
APPLIANCES**

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

ACTION: Notice of proposed revocation of three ruling letters and revocation of treatment relating to the tariff classification of security analytics appliances which scan incoming data.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP intends to revoke three ruling letters concerning tariff classification of security analytics appliances which scan incoming data under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before July 8, 2016.

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

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

FOR FURTHER INFORMATION CONTACT: Emily Beline, Tariff Classification Branch, Regulations and Rulings, Office of Trade, at (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 public and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP is proposing to revoke three ruling letters pertaining to the tariff classification of security analytics appliances which scan incoming data. Although in this notice, CBP is specifically referring to New York Ruling Letters (NY) N213277, dated May 4, 2012 (Attachment A), NY N247242, dated November 13, 2013 (Attachment B), and NY N247732, dated December 3, 2013 (Attachment C), this notice covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the three identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling

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

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

In NY N213277, CBP classified the Blue Coat full proxy edition Proxy SG 900/9000 in heading 8517, HTSUS, specifically in subheading 8517.62.00, HTSUS, which provides for "Other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network): Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus: Other." Similarly, in NY N247242, CBP classified the Blue Coat full proxy edition of the Proxy SG in subheading 8517.62.00, HTSUS. Also, in NY N247732, CBP classified the Blue Coat SSL network device in subheading 8517.62.00, HTSUS.

CBP has reviewed NY N213277, NY N247242, and NY N247732 and has determined the ruling letters to be in error. It is now CBP's position that these products are properly classified, by operation of GRI 1, in heading 8543, HTSUS, specifically in subheading 8543.70.96, HTSUS, which provides for "Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other machines and apparatus: Other: Other: Other."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke NY N213277, NY N247242, and NY N247732 and to revoke any other ruling not specifically identified to reflect the tariff classification of the subject merchandise according to the analysis contained in the proposed Headquarters Ruling Letter ("HQ") H271470, set forth as Attachment D to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: March 3, 2016

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

Attachments

[ATTACHMENT A]

N213277

May 4, 2012

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

CATEGORY: Classification

TARIFF NO.: 8517.62.0050

MR. DANIEL D. HUGHES
BLUE COAT SYSTEMS, INCORPORATED
420 N. MARY AVENUE
SUNNYVALE, CA 94085

RE: The tariff classification of a blue coat full proxy edition ProxySG 900/9000

DEAR MR. HUGHES:

In your letter dated April 09, 2012, you requested a tariff classification ruling.

The merchandise under consideration is a blue coat full proxy edition of an Internet proxy appliance. It is referred to as ProxySG 900/9000, which is part of blue coat's web security solutions that provides complete web security and WAN optimization.

The blue coat full proxy edition ProxySG 900/9000 delivers a scalable proxy platform architecture to secure web communications and accelerates the delivery of business applications. ProxySG 900/9000 enables flexible, granular, policy controls over content, user's applications, web applications and protocols. It provides the ability to deliver web security and acceleration in one solution to a branch office. This enables branch users to have access directly to the Internet, with the same security coverage as those users in the main office.

You have suggested that the classification of the blue coat full proxy edition ProxySG 900/9000 should be Harmonized Tariff Schedule of the United States (HTSUS) subheading 8471.80.9000, which provides for "Automatic data processing machines and units thereof...Other units of automatic data processing machines: Other: Other." However, the blue coat full proxy edition ProxySG 900/9000 is not an automatic data processing machine or a unit thereof. Rather, it provides architecture for secure web (Internet) communications, WAN (Wide Area Network) optimization, and accelerates the delivery of web-enabled business applications. It is not covered by heading 8471 when presented separately, even if it meets all of the conditions in Note 5 (C). Note 5 (D) (ii) to Chapter 84, HTSUS, excludes apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network). Apparatus that executes these functions are provided for within heading 8517. As such, subheading 8471.80.9000 is inapplicable.

The applicable subheading for the blue coat full proxy edition ProxySG 900/9000 will be 8517.62.0050, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network): Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus: Other." The rate of duty will be free.

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 Hackett at (646) 733-3015.

Sincerely,

THOMAS J. RUSSO

Director

National Commodity Specialist Division

[ATTACHMENT B]

N247242

November 13, 2013

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

CATEGORY: Classification

TARIFF NO.: 8517.62.0050

MS. SOPHIA CHAN
BLUE COAT SYSTEMS
420 NORTH MARY AVENUE
SUNNYVALE, CA 94085

RE: The tariff classification of the Blue Coat Full Proxy Edition of the ProxySG from China

DEAR MS. CHAN:

In your letter dated October 25, 2013, you requested a tariff classification ruling.

The merchandise under consideration is the SG-S500 ProxySG, which is part of Blue Coat's security solution that provides complete web security and WAN optimization for businesses. The ProxySG delivers a scalable proxy platform architecture to secure web communications and accelerate the delivery of business applications.

The applicable subheading for the SG-S500 ProxySG will be 8517.62.0050, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network): Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus: Other. The rate of duty will be free.

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

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

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

Sincerely,

GWENN KLEIN KIRSCHNER

Acting Director

National Commodity Specialist Division

[ATTACHMENT C]

N247732

December 3, 2013

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

CATEGORY: Classification

TARIFF NO.: 8517.62.0050

MS. SOPHIA CHAN
BLUE COAT SYSTEMS
420 NORTH MARY AVENUE
SUNNYVALE, CA 94085

RE: The tariff classification of the Blue Coat SSL network devices from China

DEAR MS. CHAN:

In your letter dated November 7, 2013, you requested a tariff classification ruling.

The merchandise under consideration is the Blue Coat SSL Visibility appliances, which provide existing security appliances used for intrusion detection and prevention (IDS/IPS), forensics, compliance and data loss with access to the decrypted plaintext of SSL flows. These devices enable network appliance manufacturers to provide their security applications with visibility into both SSL and non-SSL network traffic and to increase their application performance to avoid becoming the cause of reduced network throughput. Moreover, these network devices allow inspection capabilities to network security architecture.

The applicable subheading for the Blue Coat SSL network devices will be 8517.62.0050, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network): Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus: Other. The rate of duty will be free.

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

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

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

Sincerely,

GWENN KLEIN KIRSCHNER

Acting Director

National Commodity Specialist Division

[ATTACHMENT D]

HQ H271470

CLA-2 OT: RR: CTF: TCM: H271470 ERB

CATEGORY: Classification

TARIFF NO.: 8543.70.9650

Ms. SOPHIA CHAN
COMPLIANCE ANALYST
BLUE COAT SYSTEMS
420 NORTH MARY AVENUE
SUNNYVALE, CA 94085

RE: Revocation of NY N213277, Revocation of NY N247242, Revocation of NY N247732; Tariff classification of Blue Coat Systems Security Analytics Appliances

DEAR Ms. CHAN:

U.S. Customs and Border Protection (CBP) issued Blue Coat Systems New York Ruling Letters (NY) N213277, dated May 4, 2012, NY N247242, dated November 13, 2013, and NY N247732, dated December 3, 2013. We have since reviewed these rulings and find them to be in error with respect to the classification of the various Blue Coat security system appliances.

FACTS:

NY N213277, dated May 4, 2012 stated the following:

The merchandise under consideration is a blue coat full proxy edition of an Internet proxy appliance. It is referred to as ProxySG 900/9000, which is part of blue coat's web security solutions that provides complete web security and WAN optimization.

The blue coat full proxy edition ProxySG 900/9000 delivers a scalable proxy platform architecture to secure web communications and accelerates the delivery of business applications. ProxySG 900/9000 enables flexible, granular, policy controls over content, user's applications, web applications and protocols. It provides the ability to deliver web security and acceleration in one solution to a branch office. This enables branch users to have access directly to the Internet, with the same security coverage as those users in the main office.

You have suggested that the classification of the blue coat full proxy edition ProxySG 900/9000 should be Harmonized Tariff Schedule of the United States (HTSUS) subheading 8471.80.9000, which provides for "Automatic data processing machines and units thereof...Other units of automatic data processing machines: Other: Other." However, the blue coat full proxy edition ProxySG 900/9000 is not an automatic data processing machine or a unit thereof. Rather, it provides architecture for secure web (Internet) communications, WAN (Wide Area Network) optimization, and accelerates the delivery of web-enabled business applications. It is not covered by heading 8471 when presented separately, even if it meets all of the conditions in Note 5 (C). Note 5 (D) (ii) to Chapter 84, HTSUS, excludes apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network). Apparatus

that executes these functions are provided for within heading 8517. As such, subheading 8471.80.9000 is inapplicable.

The applicable subheading for the blue coat full proxy edition ProxySG 900/9000 will be 8517.62.0050, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network): Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus: Other.” The rate of duty will be free.

NY N247242, dated November 13, 2013, and NY N247732 dated December 3, 2013 classified substantially similar goods in the same subheading as the goods of NY N213277¹.

ISSUE:

Whether merchandise which receives data, processes data, and transmits data over a wired or wireless network is classified in heading 8471 as automatic data processing machines, in heading 8517 as apparatus for communication in a wireless network, or whether it is classified in heading 8543 as other electrical apparatus.

LAW AND ANALYSIS:

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

¹ NY N247242 described the merchandise as follows: The merchandise under consideration is the SG-S500 ProxySG, which is part of Blue Coat’s security solution that provides complete web security and WAN optimization for businesses. The ProxySG delivers a scalable proxy platform architecture to secure web communications and accelerate the delivery of business applications. The applicable subheading for the SG-S500 ProxySG will be 8517.62.0050, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network): Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus: Other. The rate of duty will be free. NY N247732 described the merchandise as follows: The merchandise under consideration is the Blue Coat SSL Visibility appliances, which provide existing security appliances used for intrusion detection and prevention (IDS/IPS), forensics, compliance and data loss with access to the decrypted plaintext of SSL flows. These devices enable network appliance manufacturers to provide their security applications with visibility into both SSL and non-SSL network traffic and to increase their application performance to avoid becoming the cause of reduced network throughput. Moreover, these network devices allow inspection capabilities to network security architecture. The applicable subheading for the Blue Coat SSL network devices will be 8517.62.0050, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network): Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus: Other. The rate of duty will be free.

The HTSUS headings under consideration are the following:

- 8471 Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included
- 8517 Telephone sets, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 8443, 8525, 8527 or 8528; parts thereof.
- 8543 Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof.

Note 3 to Section XVI which covers Chapter 85, provides, in part, that unless the context otherwise requires, machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component which performs the principal function.

Note 5 (A) to Chapter 84 states:

- (A) For the purposes of heading 8471, the expression “automatic data processing machines” means machines capable of:
 - (i) Storing the processing program or programs and at least the data immediately necessary for the execution of the program;
 - (ii) Being freely programmed in accordance with the requirements of the user;
 - (iii) Performing arithmetical computations specified by the user; and
 - (iv) Executing, without human intervention, a processing program which requires them to modify their execution, by logical decision during the processing run.

Note 5 (D) to Chapter 84 states, in relevant part:

- (D) Heading 8471 does not cover the following when presented separately, even if they meet all of the conditions set forth in Note 5(C) above:
 - (ii) Apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network);

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While not legally binding, the ENs provide a commentary on the scope of each heading of the HS and are thus useful in ascertaining the proper classification of merchandise. *See* T.D. 89–90, 54 Fed. Reg. 35127 (August 23, 1989).

The ENs to heading 8517, HTSUS, state, in relevant part:

This heading covers apparatus for the transmission or reception of speech or other sounds, images or other data between two points by variation of an electric current or optical wave flowing in a wired network or by electro-magnetic waves in a wireless network. The signal may be ana-

logue or digital. The networks, which may be interconnected, include telephony, radio-telephony, radio-telegraphy, local and wide area networks.

The subject appliances are user specific data processing devices. The function of these network security devices is to receive, record, and process data in an effort to ensure a secure network environment. They run security programs against the incoming data to check for security issues, to ensure a secure network environment. If or once a threat is identified, it is flagged for the user or monitor. The appliances are not freely programmable. While they operate within a network, the network would transmit and receive data without these devices. These appliances scan and identify threats, pursuant to an algorithm. This is why such large amounts of data storage are needed and included with the product.

Note 5(A) to Chapter 84 defines “automatic data processing machines” as articles which satisfy four enumerated requirements. The merchandise described in NY N213277, NY N247242, and NY N247732 are not freely programmable, and therefore do not meet the terms of Note 5(A), and are excluded from classification in heading 8471, HTSUS. Furthermore, as the subject appliances communicate identified threats within a specified network (whether wired or wireless), they are also excluded from heading 8471, pursuant to Note 5(D) to Chapter 84.

Note 3 to Section XVI states that machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component which performs the principal function. As noted above, the subject appliances have multiple key functions. The first function is to process incoming transmissions to identify threats. The processing function is described by the heading text of 8543, HTSUS. The second function is to communicate those threats to the system or the user. This function is described as the transmission of data in a wired or wireless network, of goods of heading 8517, HTSUS

In HQ W967550, dated January 28, 2008, this office classified a similar product which had two functions, one each in heading 8517 and 8543, HTSUS. There we noted that Additional U.S. Rule of Interpretation 1(a) was relevant when determining the “principal use” of the class or kind of good to which an imported good belongs. In citing the “Carborundum Factors”², CBP found that the functions (so-called primary and secondary by the importer) were in fact equal. In applying the General ENs to Section XVI with respect to multi-function and composite machines: “Where it is not possible to determine the principal function, and where, as provided in Note 3 to the Section, the context does not otherwise require, it is necessary to apply GRI 3(c)”. GRI 3(c) provides that goods cannot be classified by reference to GRI 3(a) or (b) must be classified in the heading which occurs last in numerical order among those which equally merit consideration.

² The Carborundum factors include: (1) general physical characteristics, (2) expectation of the ultimate purchaser, (3) channels of trade, environment of sale (accompanying accessories, manner of advertisement and display), (4) use in the same manner as merchandise which defines the class, (5) economic practicality of so using the import, and (6) recognition in the trade of this use. *United States v. Carborundum Co.*, 63 C.C.P.A.98, 102, 536 F.2d 373, 377 (1976).

Here, the two functions work in tandem and are necessary for the security appliances to work. The appliances must identify incoming threats, *and* transmit and communicate those threats within the network to the end-user by reproducing the data. One without the others is useless. As such, no single principal function can be identified, and classification pursuant to GRI 3(c) is appropriate. Under GRI 3(c) the Blue Coat full proxy Proxy SG900/9000 appliance, SG-S500 Proxy SG appliance, and the Blue Coat SSL Visibility appliance are provided for in heading 8543, HTSUS, which is the last in the tariff of the headings under consideration.

HOLDING:

By application of GRI 1, the subject merchandise is classified in heading 8543, HTSUS. Specifically, it is provided for in subheading 8543.70.9650, HTSUSA (Annotated) which provides for, “Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other machines and apparatus: Other: Other: Other: Other.” The 2015 column one, general rate of duty for merchandise of this subheading is 2.6% *ad valorem*.

Duty rates are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided at www.usitc.gov. A copy of this ruling letter should be attached to the entry documents filed at the time the goods are entered. If the documents have been filed without a copy, this ruling should be brought to the attention of the CBP officer handling the transaction.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

19 CFR PART 177

**REVOCAION OF ONE RULING LETTER AND
REVOCAION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF “TAPEFFITI” DESIGN
GUIDE BOOK, TAPE, AND CUTTER SET**

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 tariff classification of the “Tapeffiti” design guide set which includes twelve (12) rolls of tape, one cutter, and a cardboard backed book.

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 CBP is revoking one ruling letter concerning tariff classification of the “Tapeffiti” design guide set under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 49, No. 51, on December 23, 2015. No comments were received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after August 8, 2016.

FOR FURTHER INFORMATION CONTACT: Emily Beline, Tariff Classification and Marking Branch, Regulations and Rulings, Office of Trade, at (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 public and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the *Customs Bulletin*, Vol. 49, No. 51, on December 23, 2015, proposing to revoke one ruling letters pertaining to the tariff classification of the “Tapeffiti” design guide set. As stated in the

proposed notice, this action will cover New York Ruling Letter (“NY”) N248844, dated January 15, 2014, as well as any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

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

In NY N248844, CBP classified Fashion Angels’ “Tapeffiti Design Guide Book” in heading 8479, HTSUS, specifically in subheading 8479.89.9899, HTSUSA (Annotated), which provides for “Machines and mechanical appliances having individual functions, not specified or included elsewhere (in chapter 84): other machines and mechanical appliances: Other: Other: Other: Other.” CBP has reviewed NY N248844 and has determined the ruling letter to be in error. It is now CBP’s position that Fashion Angels’ “Tapeffiti Design Guide Book” is properly classified, by operation of GRI 1, in heading 9503, HTSUS, specifically in subheading 9503.00.00, HTSUS, which provides for “toys.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY N248844 and revoking any other ruling not specifically identified to reflect the tariff classification of the subject merchandise according to the analysis contained in HQ H254152, 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: February 29, 2016

ALLYSON MATTANAH
for

MYLES B. HARMON
Director,

Commercial & Trade Facilitation Division

Attachment

HQ H254152

February 29, 2016

CLA-2 OT: RR: CTF: TCM: H254152 ERB

CATEGORY: Classification

TARIFF NO.: 9503.00.0073

MR. JOSEPH D. PATERICK
FASHION ANGELS ENTERPRISES
3511 W. GREEN TREE ROAD
MILWAUKEE, WI 53209

RE: Revocation of NY N248844; Tariff Classification of the Fashion Angels
“Tapeffiti Design Guide Book”

DEAR MR. PATERICK:

This is in response to your correspondence, dated May 6, 2014, on behalf of Fashion Angels Enterprises (Fashion Angels), requesting that U.S. Customs and Border Protection (CBP) reconsider New York Ruling Letter (NY) N248844, dated January 15, 2014. NY N248844 pertains to the tariff classification under the Harmonized Tariff Schedule of the United States (HTSUS) of the “Tapeffiti Design Guide” kit. We have reviewed NY N248844 and find it to be incorrect. A sample was provided for inspection and was used in this analysis. It is being returned with this ruling. This ruling revokes NY N248844.

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. 51, on December 23, 2015. No comments were received in response to the notice.

FACTS:

In NY N248844, CBP stated the following:

The “Tapeffiti Design Guide Book”, Item 11734, is designed for use by individuals ages 6 and older. The set is comprised of the following items: a spiral bound design guide book containing illustrated instructions and cut-out sheets, 15 rolls of fashion decal tape¹, and a manual tape cutting device referred to as a “tape dispenser”. The tape roll is placed on the cutting device’s spool so that the tape can be manually pulled over the cutting channel. By manually sliding the cutting edge through the cutting channel, the tape is cut to the desired length. The tape can then be affixed to the object that is to be decorated.

In your letter, you propose that the “Tapeffiti Design Guide Book”, Item 11734, be classified in subheading 4903.00.0073, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Children’s picture, drawing or coloring books”. However, the “Tapeffiti Design Guide Book” is marketed as a “set”. The articles are imported packaged together for retail sale. No components will be added subsequent to importation. In view of these facts, consideration was given to General Rule of Interpretation 3(b) (“GRI 3(b)"). Explanatory Note X to GRI 3(b) provides that for

¹ There are 12 rolls of tape contained in the subject merchandise. This is a typographical error.

the purpose of this rule, the term “goods put up in sets for retail sale” shall be taken to mean goods which:

(a) consist of at least two different articles, which are, *prima facie*, classifiable in different headings.

(b) consist of products or articles put up together to meet a specific activity; and

(c) are put up in a manner suitable for sale directly to users without repackaging (e.g. in boxes or cases or on boards).

General Rule of Interpretation (“GRI”) 1, HTSUS, states in part that for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes. Goods that are, *prima facie*, classifiable under two or more headings, are classifiable in accordance with GRI 3, HTSUS. GRI 3(a) states in part that when two or more headings each refer to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific, even if one heading gives a more precise description of the good.

The instant decorating set consists of at least two different articles that are, *prima facie*, classifiable in different subheadings. The set consists of articles put up together to carry out a specific activity (i.e., decal decorating). Finally, the articles are put up in a manner suitable for sale directly to users without repacking. Therefore, the set in question is within the term “goods put up in sets for retail sale.” GRI 3(b) states in part that goods put up in sets for retail sale, which cannot be classified by reference to 3(a), are to be classified as if they consisted of the component which gives them their essential character. Inasmuch as no essential character can be determined, GRI 3(b) does not apply. GRI 3(c) says that, if neither GRI 3(a) nor GRI 3(b) applies, merchandise shall be classified in the heading which occurs last in numerical order among those equally meriting consideration. After reviewing your submission, this office is of the opinion that subheading 4903.00.0000, HTSUS (the book), subheading 3919.10.2055, HTSUS (the rolls of tape) and subheading 8479.89.9899, HTSUS (the cutting device) merit equal consideration.

In accordance with GRI 3(c), the applicable subheading for the “Tapeffiti Design Guide Book”, Item 11734, will be 8479.89.9899, HTSUS, which provides for “Machines and mechanical appliances having individual functions, not specified or included elsewhere (in chapter 84): Other machines and mechanical appliances: Other: Other: Other: Other”. The rate of duty will be 2.5 percent *ad valorem*.

As noted above, a sample was provided to this office with the request for reconsideration. The subject merchandise is packaged containing three items: (1) a spiral bound design book, composed of cardboard and paper, (2) twelve (12) rolls of thin plastic adhesive tape, and (3) a plastic manual tape cutting device. The packaging of the sample provided to this office states that the product is recommended for ages 6 and up.

The design book features 35 pages and is attached to the heavy duty cardboard backing via a spiral binding. It has a snap feature which allows users to secure the design book closed to the cardboard back cover. The design book contains brightly illustrated instructions (there are few verbal instructions given for the crafts depicted, directions are nearly all pictorial), young

girls modelling items created with the tape, inspiration ideas for the user, and interactive pages (templates) upon which the user may place the tape to fill out certain patterns and subsequently cut out and play with, use, or wear. A perusal of various online stores indicates that Fashion Angels Tapeffiti brand offers a variety of similar kits, each revolving around decorating objects with the tape, and children or young girls are the targeted audience.

Each of the twelve rolls of adhesive tape are three-quarters of one inch (3/4 inch) in diameter, one half an inch (1/2 inch) in width, and has 9 feet of tape. Each roll also features a different design or pattern that can be used in the manner depicted in the design book, as well as on the design pages. Refills or replacements of the tape are available for sale by Fashion Angels.

The cutter is composed of plastic, and has a small spool upon which three rolls may be held simultaneously. The user will unspool or unwind the tape and pull it over the cutting channel, slide the cutting edge through the cutting channel so the tape is cut to the desired length. The cutter is 3 1/8 inches in length and 3 1/8 inches in width. It is very lightweight and insubstantial. The cutting blade is fully enclosed and safe for a child's use, but it does not cut cleanly or evenly given the safety blade. Children or adults could use a pair of scissors to cut the tape just as easily. Furthermore, to fulfill some of ideas on the inspiration pages, children would not use the cutter at all, but would have to use scissors or another cutting device.²

Fashion Angels asserts that the correct classification is under subheading 4903.00.00, HTSUS, which provides for "Children's picture, drawing or coloring books."

ISSUE:

What is the tariff classification of the subject "Tapeffiti Design Guide Book," Item number 11734, which is comprised of a spiral bound design guide book, twelve rolls of fashion tape, and a manual tape cutting device, under the 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 heading provisions under consideration in this case are as follows:

3919	Self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plastics, whether or not in rolls

4903	Children's picture, drawing or coloring books

² For example, wrapping a pen or pencil with the tape requires a user to unspool the tape around the pen or pencil to adhere the tape to the pen. Users would then cut the tape with scissors once the desired amount was used.

8479 Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof:

9503 Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls; other toys; reduced-size ("scale") models and similar recreational models working or not; puzzles of all kinds.

Note 4 to Chapter 95 provides the following:

Subject to the provisions of Note 1 above³, heading 9503 applies, *inter alia*, to articles of this heading combined with one or more items which cannot be considered as sets under the terms of General Interpretive Rule 3(b), and which, if presented separately would be classified in other headings, provided the articles are put up together for retail sale and the combinations have the essential character of toys.

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 IT.D. 89–80, 54 Fed. Reg. 35127 (Aug. 23, 1989).

The ENs to 95.03 (D) elaborated on the scope of "Other toys":

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

These include:

(xviii) Educational toys (e.g. toy chemistry, printing, sewing and knitting sets).

(xx) Books or sheets consisting essentially of pictures, toys or models, for cutting out and assembly; also books containing "stand-up" or movable figures provided they have the essential character of toys...

Collections of articles, the individual items of which if presented separately would be classified in other headings in the Nomenclature, are classified in this heading when they are put up in a form clearly indicating their use as toys (e.g., instructional toys such as chemistry, sewing, etc., sets).

Also, as provided by Note 4 to this Chapter, subject to Note 1 to this Chapter, this heading includes articles of the heading combined with one or more items which would be classified in other headings if presented separately, provided that:

- (a) The combined items are put up together for retail sale, but the combination cannot be considered as a set under the terms of General Interpretative Rule 3(b); and

³ Note 1 to Chapter 95 enumerates exclusions not relevant here.

- (b) The combination has the essential character of toys. Such combinations generally consist of an article of this heading and one or more items of minor importance (e.g., small promotional articles or small amounts of confectionary.)

Heading 9503, HTSUS, is the provision for “other toys”. The term “toy” is not defined in the tariff. As such, CBP is tasked with determining the scope of the term by relying upon its own understanding of the term, and by consulting dictionaries, lexicons, and other reliable sources. *Medline Indus. v. United States*, 62 F.3d 1407, 1409 (Fed. Cir. 1995). “[T]he meaning of a tariff term is presumed to be the same as its common or dictionary meaning.” *Brookside Veneers, Ltd. v. United States*, 847 F.2d 786, 789 (Fed. Cir. 1988) (citations omitted), *cert. denied*, 488 U.S. 943, 109 S. Ct. 369, 102 L. Ed. 2d 358 (1988). *Webster’s Third New International Dictionary of the English Language Unabridged* (1981) at 2419, provides, in relevant part that “toys” are:

- 3a: something designed for amusement or diversion rather than practical use
b: an article for the playtime use of a child either representational (as persons, creatures, or implements) and intended esp. to stimulate imagination, mimetic activity, or manipulative skill or nonrepresentational (as balls, tops, jump ropes) and muscular dexterity and group integration....

Merriam Webster’s Collegiate Dictionary (1998) at 41, defines “amusement,” in relevant part,” as: “3: a pleasurable diversion.” This common meaning of toy—an object primarily designed and used for pleasurable diversion—is consistent with judicial interpretation. See *Processed Plastic Co. v. United States*, 473 F.3d 1164, 1170 (Fed. Cir. 2006) (noting that the principal use of a “toy” is amusement, diversion, or play value rather than practicality); *Minnetonka Brands, Inc. v. United States*, 24 CIT 645, 651, ¶37, 110 F. Supp. 2d 1020, 1026 (2000) (noting that for purposes of Chapter 95, HTSUS, “an object is a toy only if it is designed and used for amusement, diversion or play, rather than practicality”).

Although neither heading 9503, HTSUS nor the relevant chapter notes explicitly state that an item’s classification as a “toy” is dependent upon how it is used, the courts have found inherent in the above definitions the concept that an object is a toy only if it is designed and used for diversion, amusement, or play, rather than for practical purposes. The CIT specifically concluded that heading 9503, HTSUS, is a “principal use” provision as it pertains to “toys.” See *Minnetonka Brands, Inc.*, 110 F. Supp. 2d at 1026, ¶ 37 (construing 9503 as a “principal use” provision). As such, classification under this provision is controlled by the principal use of goods of that class or kind to which the imported goods belong in the United States at or immediately prior to the date of importation, and the controlling use is the principal use. See Additional US Rule of Interpretation 1(a). The CIT has stressed that it is the principal use of the “class or kind of goods to which the imports belong[ed],” at or immediately prior to the dates of importation, “and not the principal use of the specific imports[,] that is controlling under the Rules of Interpretation.” *Grp. Italglass U.S.A., Inc. v. United States*, 17 CIT 1177, 1177, 839 F. Supp. 866, 867 (1993). “Principal use” is defined as the use “which exceeds any other single use of the article.” Conversion of the Tariff Schedules of the United

States Annotated Into the Nomenclature Structure of the Harmonized System: Submitting Report at 34-35 (USITC Pub. No. 1400) (June 1983). Ultimately, the “class or kind” of articles considered to be “toys” under heading 9503 are articles whose principal use is for amusement, diversion, or play of children or adults. This use must exceed any other single use of that class or kind of article, such as practicality or utility.

The subject merchandise is an educational toy in accordance with the CIT’s decision in *Minnetonka Brands, Inc. v. United States*, 24 C.I.T. 645, *supra.*, and is progeny. Its principal use is as a toy and the value of the items individually is subservient to the play value of all of the items used together.

As noted, the book is largely pictorial and in cases where there are step-by-step instructions, they don’t number more than a few steps and are accompanied by pictures. In circumstances where the child does not follow the book exactly, the opportunity to twist or manipulate the tape into shapes or onto objects provides an opportunity for play utilizing the child’s imagination and creativity. If the child does follow the instructions this play will lead to learning basic skills: design of various objects, following step-by-step directions, and creating small crafts. The child derives amusement value from the creation of the products and the amusement exceeds the utilitarian function of any of the items decorated. Completed projects or assembled crafts utilizing the tape (for example, a mask template whereby the user places tape on the guide and cuts it out with scissors from the book), will be flimsy given the material and it is unlikely the child will keep the product for very long. An object, such as a phone case or a picture frame, decorated with the tape may last longer. Furthermore, the practicality of the finished product is secondary to the play value of creating that object. *See Spring Creative Prods. Group v. United States*, 35 Int’l Trade Rep. 1955 (Ct. Int’l Trade Aug. 16, 2013). The merchandise is sold in toy stores, or alongside other items that would be recognizable as toys. For example, one large online retailer sells the product, and other similar Fashion Angels products, under its “Toys and Games” section, specifically, it is available under “Kids Arts and Crafts.”

In NY H86941, dated January 24, 2002, this office distinguished among multiple activity kits for children which contained books and supplies. The “Paper Punch Art” kit contained an idea book, plastic container that held four paper punches, and colored or patterned paper to be used with the punches. There, CBP determined that the activity kit did not provide play or amusement. Conversely, the “Paper Clip Jewelry Kit” was determined to be a classic educational toy which taught manipulative play. In comparing these kits to the instant Fashion Angels kit, the Tapeffiti Design Guide provides similar amusement value as the paper clip jewelry kit because it takes advantage of a child’s natural curiosity and desire to role-play at design, art, crafting, or fashion.

HQ H154039, dated May 27, 2011 is also instructive here. In classifying the “Giant Art Jar” (consisting of 26 ABC felt shapes, 15 wooden craft sticks, 40 wiggly eyes, 15 wooden buttons, 7 spools, 30 buttons of assorted shapes, confetti, 10 colored sheets of paper, 6 colors of crepe paper, white craft glue, glitter glue, craft scissors, 3 paper plates, 3 paper bags, 15 feathers, 78 assorted pom-poms, 2 ricrac, 10 pipe cleaners, sequins and 6 foam shapes) this office noted that this kit was a collection of disparate items that could be used for various crafts. A menagerie of general craft supplies is distinguishable from a kit which contains a precise amount of materials to create a single

or a finite number of items or toys. Ultimately, this office ultimately classified each item in the Giant Art Jar individually.

In the instant case, the printed fashion tape and its corresponding cutter and idea book, is exclusively focused on crafts that utilize the tape in creative designs and projects depicted in the book. It also contains about the amount of tape needed for the projects described and labelled in the book. Since the cutter is particularly flimsy, it is likely that the child would have amused him/herself decorating or creating a few items over the course of a few sittings and would subsequently discard the cutter and possibly the book, and use up the tape. Like other Tapeffiti craft kits classified as toys, it is composed of several articles, all essentially designed for the amusement and creativity of children over a short duration of time. *See* EN 95.03(D) subsection (xviii) which includes educational toys, and subsection (xx) which provides for books made for cutting out and assembly. *And see* *Spring Creative Prods. Group v. United States*, 35 Int'l Trade Rep. 1955 *25 - 26 (Ct. Int'l Trade Aug. 16, 2013), (citing CBP rulings classifying craft kits designed for children to create, produce or assemble articles, NY N044840, dated December 5, 2008 ("My Super Knot-a-Quilt"); NY N004742, dated January 22, 2007 ("Begin to Crochet Kit" to make a stuffed pillow, and "Crochet Fun Kit" to make a handbag or scarf); and NY J89344, dated October 7, 2003 ("Make Your Own Fleece Pillow"). *See also* NY N244536, dated August 15, 2013 (classifying "Tapeffiti Fashion Design kit" in subheading 9503.00.00).

This Tapeffiti Design Guide kit is an educational toy, consistent with CBP's prior rulings addressing similar issues. It encourages self-learning, direction following as well as fostering imagination, and supporting manipulative play value. *See* HQ H195956, dated February 27, 2012 (classifying a child's "Science Kit"). CBP has also previously classified substantially similar merchandise, that is, kits including an idea book or a design book, assorted rolls of decorative Tapeffiti tape, a tape dispenser, and in some cases, an object to decorate, as a toy. *See* NY N246510, dated October 22, 2013 (classifying a "Tapeffiti" jewelry craft kit); NY N248809, dated January 15, 2014 (classifying "Tapeffiti Eyeglass Designer" craft kit); NY N244554, dated August 20, 2013 (classifying "Tapeffiti Models to the Runway kit"); NY N244719, dated August 20, 2013 (classifying "Tapeffiti" headband craft kit); NY N244725, dated August 20, 2013 (classifying a "Tapeffiti: bracelet craft kit); As the subject merchandise is classified pursuant to GRI 1, as a "toy", analysis pursuant to GRI 3 is unnecessary.

HOLDING:

By application of GRI 1, the subject merchandise is classified under heading 9503, HTSUS. Specifically, it is provided for under subheading 9503.00.0073, HTSUSA (Annotated), which provides for "Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls, other toys; reduced scale models, working or not; puzzles of all kinds; parts and accessories thereof: "Children's products" as defined in 15 U.S.C. § 2052: Other: Labeled or determined by importer as intended for use by persons: 3 to 12 years of age." The column one duty rate is free.

EFFECT ON OTHER RULINGS:

New York Ruling Letter N248844, dated January 15, 2014, is REVOKED. In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after its publication in the *Customs Bulletin*.

Sincerely,

ALLYSON MATTANAH

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division


19 CFR PART 177**REVOCAION OF 13 RULING LETTERS AND REVOCAION
OF TREATMENT RELATING TO THE TARIFF
CLASSIFICATION OF ROADSIDE EMERGENCY KITS**

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

ACTION: Notice of revocation of thirteen ruling letters, and revocation of treatment relating to the tariff classification of roadside emergency kits.

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 13 ruling letters concerning tariff classification of roadside emergency kits under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 49, No. 37, on September 16, 2015. No comments supporting the proposed revocation were received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after August 8, 2016.

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the *Customs Bulletin*, Vol. 49, No. 37, on September 16, 2015, proposing to revoke 13 ruling letters pertaining to the tariff classification of roadside emergency kits. As stated in the notice, this action will cover Headquarters Ruling Letters (HQ) 964937, dated March 19, 2002, HQ 084074, dated July 3, 1989, HQ 965021, dated March 19, 2002, HQ 950678, dated December 30, 1991, HQ 951092, dated February 11, 1992, HQ 951943, dated June 26, 1992, New York Ruling Letters (NY) D87008, dated February 3, 1999, NY E80250, dated April 19, 1999, NY E81728, dated May 17, 1999, NY I81218, dated May 17, 2002, NY J86419, dated July 1, 2003, NY N008721, dated April 9, 2007, and NY N080536, dated November 13, 2009, as well as any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the 13 identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

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

In the above cited rulings, CBP found that emergency roadside kits containing a range of articles packaged together to enable motorists to address roadside emergencies did not constitute a retail set for purposes of GRI 3(b), and classified the items separately pursuant to GRI 1.

CBP has reviewed these rulings and determined that the classification decisions set forth therein are incorrect. It is now CBP's position that the emergency roadside kits in each ruling are properly classified pursuant to GRI 3(b) as "retail sets."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking HQ 964937, dated March 19, 2002, HQ 084074, dated July 3, 1989, HQ 965021, dated March 19, 2002, HQ 950678, dated December 30, 1991, HQ 951092, dated February 11, 1992, HQ 951943, dated June 26, 1992, NY D87008, dated February 3, 1999, NY E80250, dated April 19, 1999, NY E81728, dated May 17, 1999, NY I81218, dated May 17, 2002, NY J86419, dated July 1, 2003, NY N008721, dated April 9, 2007, and NY N080536, dated November 13, 2009, and revoking any other ruling not specifically identified to reflect the tariff classification of the subject merchandise according to the analysis contained in HQ H031458, 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: February 29, 2016

ALLYSON MATTANAH
for

MYLES B. HARMON
*Director, Commercial & Trade
Facilitation Division*

Attachment

HQ H031458

February 29, 2016

CLA-2 OT:RR:CTF:TCM H031458 HvB

CATEGORY: Classification

TARIFF NO.: Unknown

MR. JUAN DOMINGUEZ
IMPORT AND CUSTOMS COMPLIANCE
WAL-MART STORES, INC
702 SW 8TH ST
BENTONVILLE, AR 72716-0410

RE: Revocation of HQ 964937, HQ 965021, HQ 950678, HQ 951092, HQ 951943, HQ 084074, NY D87008, NY I81218, NY N008721, NY E80250, NY E81728, NY J86419, and NY N080536; Classification of Roadside Emergency Kits

DEAR MR. DOMINGUEZ:

This letter is to inform you that U.S. Customs and Border Protection (CBP) has reconsidered Headquarter Ruling Letter (HQ) HQ 964937, issued to you on March 19, 2002, on the classification of the "99 Piece Emergency Roadside Kit". In that ruling, CBP classified each item of the 99-piece kit separately under the Harmonized Tariff Schedule of the United States (HTSUS). For example, the hose clamps were classified in heading 7326, HTSUS, as an article of steel, while the gas siphon was classified in heading 3917, HTSUS, which provides for "Tubes, pipes and hoses and fittings therefor (for example, joints, elbows, flanges), of plastics." The items were stored in soft-sided plastic reinforced zippered bag with straps.

In addition, this ruling letter concerns the following rulings in which CBP classified substantially similar merchandise: HQ 084074, dated July 3, 1989, HQ 965021, dated March 19, 2002, HQ 950678, dated December 30, 1991, HQ 951092, dated February 11, 1992, HQ 951943, dated June 26, 1992, New York Ruling Letter (NY) D87008, dated February 3, 1999, NY E80250, dated April 19, 1999, NY E81728, dated May 17, 1999, NY I81218, dated May 17, 2002, NY J86419, dated July 1, 2003, NY N008721, dated April 9, 2007, and NY N080536, dated November 13, 2009. In these rulings, like the merchandise at issue in HQ 964937, the items of each kit were packed in either a carrying case or bag meant to be stored in the trunk of an automobile. We have reviewed these rulings and found them to be in error. Therefore, this ruling revokes these rulings pursuant to 19 USC §1625(c)(1).

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. 37, on September 16, 2015. No comments were received in response to the notice.

FACTS:

The products at issue were described as follows in HQ 964937:

The "99 piece Emergency Roadside Kit" (Stock # SDA178) consists of a 10' battery booster cable, accident information guide, emergency thermal blanket, radiator water bag, 2 light sticks, 2 hose clamps, gas siphon, vinyl glove, a paper flag that reads "Emergency Help Call Police," red shop towel, multi-function knife, flashlight, 2 D-size batteries, poncho,

roll of radiator repair tape, 6 blade fuses, 27 cable nylon ties, flammable tire sealer and first aid kit, all packed inside a soft-sided plastic, reinforced, zippered bag with straps. The bagged is monogrammed with the words "Emergency Roadside Kit" and the triangular yellow symbol for emergencies. The kit is intended to be stored in a vehicle.

ISSUE:

Whether the emergency roadside kits are classifiable as retail sets pursuant to GRI 3?

LAW AND ANALYSIS:

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

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs.

We note that we are presented with an assortment of items that are packaged and sold in a carrying case. The goods are potentially classifiable under more than one heading because they consist of separate components and no one heading in the tariff provides for the goods as entered. The kit consists of 99 items and includes a 10' battery booster cable, accident information guide, emergency thermal blanket, radiator water bag, 2 light sticks, 2 hose clamps, gas siphon, vinyl glove, a paper flag that reads "Emergency Help Call Police," and the remaining items of the set. Since no heading of the HTSUS completely describes the goods, and they are *prima facie* classifiable in two or more headings, the kits may not be classified solely on the basis of GRI 1. Thus, classification must fall to GRI 3.

GRI 3 provides, in pertinent part, as follows:

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

- (a) The heading which provides the most specific description shall be preferred to headings providing a more general description [...]
- (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

...

The relevant ENs for GRI 3 provide:

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

...

- (X) For the purposes of this Rule, the term “goods put in sets for retail sale” shall be taken to mean goods which:
- (a) consist of at least two different articles which are, *prima facie*, classifiable in different headings. Therefore, for example, six fondue forks cannot be regarded as a set within the meaning of this Rule;
 - (b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and
 - (c) are put up in a manner suitable for sale directly to users without repackaging (e.g., in boxes or cases or on boards).

GRI 3(b) provides for the classification of goods put up in retail sets. Applying the definition of the phrase “goods put up as sets for retail sale” provided in EN (X) to GRI 3(b), the subject merchandise meets the first requirement because the product consists of two or more goods, which are *prima facie* classifiable in two or more headings of the HTSUS. In addition, the subject merchandise meets the second requirement because the items are put up together to assist the particular needs of motorists who experience a roadside emergency. The goods are put up in a manner suitable for sale because the goods are packaged in a carrying bag suitable for retail sale. Therefore, the subject 99 Piece Emergency Roadside Kit qualifies as a set for purposes of GRI 3(b).

CBP has addressed the particular need or specific activity requirement of EN(X)(b) to GRI 3 as requiring a relationship between the articles contained in a group, and such relationship must establish that the articles are clearly intended for use together for a single purpose or activity to comprise a set under GRI 3(b). *See, e.g.,* Headquarters Ruling Letter (HQ) 953472, dated March 21, 1994. Consistent with CBP’s analysis of GRI 3(b), the United States Court of International Trade (CIT) agreed that “for goods put up together to meet the ‘particular need’ or ‘specific activity’ requirement and thereby be deemed a set, they must be so related as to be clearly intended for use together or in conjunction with one another for a single purpose or activity.” The bag facilitates the storage and transportation of the items and is directly related to the activity of managing roadside emergencies. *See Estee Lauder, Inc. v. United States*, 815 F. Supp. 2d 1287, 1295 (Ct. Int’l. Trade 2012); *see also Dell Products LP v. United States*, 714 F. Supp 2d. 1252 (Ct. Int’l Trade 2010) (*Dell Products I*) (stating that GRI 3(b) “only requires that the component satisfies a ‘particular’ need”), *aff’d Dell Products LP v. United States*, 642 F.3d 1055 (Fed. Cir. 2011) (*Dell Products II*). In *Estee Lauder*, the CIT considered the classification of cosmetic items put up together for the activity of applying makeup, and concluded that because each item by itself was specifically related to makeup and had an identifiable, individual use

that was intended for use together or in conjunction with one another for the single activity of putting on makeup, the cosmetic items met a particular need and were therefore “retail sets” pursuant to GRI 3(b). *Estee Lauder*, 815 F. Supp. 2d at 1295–1296. *See also* HQ H190656, dated July 21, 2014, in which we classified certain medical supplies as retail sets.

The Explanatory Notes (ENs) to GRI 3(b)¹ provide that, if this rule applies, goods shall be classified as if they consisted of the material or component which gives them their essential character. EN Rule 3(b)(VIII) lists as factors to help determine the essential character of such goods: the nature of the materials or components, their bulk, quantity, weight or value, and the role of a constituent material in relation to the use of the goods.

As stated by the CIT in *Structural Industries v. United States*, 360 F. Supp. 2d 1330, 1336 (citations omitted) (Ct. Int’l Trade 2005), “the essential character of an article is that which is indispensable to the structure, core or condition of the article, i.e., what it is.” *See also Conair Corporation v. United States*, 29 Ct. Int’l Trade, 888, 895 (citations omitted) (2005) (discussing “the concept of ‘essential character’ found in GRI 3(b)”).

The emergency kits are being imported to provide motorists with the supplies necessary to address roadside emergencies. Each kit in the aforementioned rulings varies in its contents and thus, the essential character will vary according to each kit’s contents. Without such information, we therefore conclude that the emergency kits are classified as “retail sets” pursuant to GRI 3(b) in the heading that provides the kits with their essential character.

HOLDING:

By application of GRI 3(b), the emergency kits are classified in the heading for the item which provides the emergency kit its essential character. Accordingly, HQ 964937 is revoked.

Should you require further clarification on your specific merchandise, please contact NCSA for a ruling request. Requests for a binding ruling may be made electronically via CBP’s website, <https://apps.cbp.gov/erulings/index.asp>, or by writing to NCSA at the following address:

Director, National Commodity Specialist Division,
U.S. Customs and Border Protection
Attn: CIE/Ruling Request
One World Trade Center, Suite 51.201
New York, NY 10007

EFFECT ON OTHER RULINGS:

HQ 084074, dated July 3, 1989, HQ 965021, dated March 19, 2002, HQ 950678, dated December 30, 1991, HQ 951092, dated February 11, 1992, HQ 951943, dated June 26, 1992, NY D87008, dated February 3, 1999, NY E80250, dated April 19, 1999, NY E81728, dated May 17, 1999, NY I81218,

¹ The Harmonized Commodity Description and Coding System ENs, constitute the official interpretation 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 the headings. It is Customs and Border Protection (CBP) practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

dated May 17, 2002, NY J86419, dated July 1, 2003, NY N008721, dated April 9, 2007, and NY N080536, dated November 13, 2009, are hereby REVOKED in accordance with the above analysis.

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

Sincerely,

ALLYSON MATTANAH

for

MYLES B. HARMON,

Director

Commercial & Trade Facilitation Division



COPYRIGHT, TRADEMARK, AND TRADE NAME RECORDATIONS

(No. 4 2016)

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

SUMMARY: The following copyrights, trademarks, and trade names were recorded with U.S. Customs and Border Protection in April 2016. The last notice was published in the CUSTOMS BULLETIN on April 27, 2016.

Corrections or updates may be sent to: Intellectual Property Rights Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 90 K Street, NE., 10th Floor, Washington, D.C. 20229-1177.

FOR FURTHER INFORMATION CONTACT: LaVerne Watkins, Paralegal Specialist, Intellectual Property Rights Branch, Regulations & Rulings, Office of International Trade at (202) 325-0095.

Dated:

CHARLES R. STEUART

Chief,

*Intellectual Property Rights Branch
Regulations and Rulings, Office of Trade*

CBP IPR RECORDATION — APRIL 2016

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
COP 16-00077	04/06/2016	03/14/2036	GARDEN JOY Packaging	Telebrands Corp.	No
COP 16-00078	04/06/2016	03/14/2036	DIAL VISION Packaging	Telebrands Corp.	No
COP 16-00079	04/14/2016	02/22/2036	DINOSAUR WORLD print	KEVIN NOH	No
COP 16-00080	04/14/2016	02/22/2036	FIRE TRUCK FRIEND POLICE CAR CITY print	KEVIN NOH	No
COP 16-00081	04/14/2016	10/19/2035	CITY ELEPHANT print	KEVIN NOH	No
COP 16-00082	04/14/2016	02/22/2036	ROBOT IN SPACE print	KEVIN NOH	No
COP 16-00083	04/14/2016	03/02/2036	SOUTHERN VINE DESIGN print	KEVIN NOH	No
COP 16-00084	04/14/2016	03/02/2036	CRAB IN OCEAN print	KEVIN NOH	No
COP 16-00085	04/14/2016	09/16/2035	COASTAL SEA TURTLE print	KEVIN NOH	No
TMK 02-00153	04/13/2016	05/20/2026	PIONEER	Pioneer Kabushiki Kaisha	No
TMK 02-00153	04/13/2016	05/20/2026	PIONEER	Pioneer Kabushiki Kaisha	No
TMK 03-00109	04/22/2016	04/30/2026	KIOTI	Daedong Industrial Co., Ltd.	No
TMK 03-00109	04/22/2016	04/30/2026	KIOTI	Daedong Industrial Co., Ltd.	No
TMK 03-00916	04/13/2016	03/12/2026	SATIN CARE	GILLETTE COMPANY, THE	No
TMK 03-00916	04/13/2016	03/12/2026	SATIN CARE	GILLETTE COMPANY, THE	No
TMK 03-00930	04/13/2016	05/06/2026	ADVANTAGE	PROCTER & GAMBLE BUSINESS SERVICES CANADA COMPANY	No
TMK 03-00930	04/13/2016	05/06/2026	ADVANTAGE	PROCTER & GAMBLE BUSINESS SERVICES CANADA COMPANY	No
TMK 03-00932	04/19/2016	06/05/2026	BRAUN (STYLIZED)	BRAUN GMBH	No
TMK 03-00932	04/19/2016	06/05/2026	BRAUN (STYLIZED)	BRAUN GMBH	No
TMK 04-00083	04/18/2016	02/05/2023	Split-Ender (Stylized)	TALavera HAIR PRODUCTS, INC.	No
TMK 04-00083	04/18/2016	02/05/2023	Split-Ender (Stylized)	TALavera HAIR PRODUCTS, INC.	No

CBP IPR RECORDATION — APRIL 2016

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 04-00399	04/20/2016	04/23/2026	PATRON XO CAPE (Stylized)	PATRON SPIRITS INTERNATIONAL AG	No
TMK 04-00399	04/20/2016	04/23/2026	PATRON XO CAPE (Stylized)	PATRON SPIRITS INTERNATIONAL AG	No
TMK 05-00214	04/21/2016	05/13/2026	NETS	BROOKLYN NETS, LLC	No
TMK 05-00214	04/21/2016	05/13/2026	NETS	BROOKLYN NETS, LLC	No
TMK 06-00964	04/12/2016	06/27/2026	HARTMANN	SAMSONITE IP HOLDINGS S.A R.L.	No
TMK 06-00964	04/12/2016	06/27/2026	HARTMANN	SAMSONITE IP HOLDINGS S.A R.L.	No
TMK 06-01002	04/07/2016	04/10/2026	SWISS MADE	Federation of the Swiss Watch Industry	No
TMK 06-01002	04/07/2016	04/10/2026	SWISS MADE	Federation of the Swiss Watch Industry	No
TMK 06-01065	04/07/2016	04/24/2026	SWISS	Federation Of The Swiss Watch Industry	No
TMK 06-01065	04/07/2016	04/24/2026	SWISS	Federation Of The Swiss Watch Industry	No
TMK 06-01183	04/06/2016	08/23/2026	DARE A PART OF VIADER	Viader Vineyards	No
TMK 06-01183	04/06/2016	08/23/2026	DARE A PART OF VIADER	Viader Vineyards	No
TMK 06-01271	04/26/2016	10/11/2025	MANKIND	SEVEN FOR ALL MANKIND, LLC	No
TMK 06-01271	04/26/2016	10/11/2025	MANKIND	SEVEN FOR ALL MANKIND, LLC	No
TMK 06-01411	04/13/2016	01/14/2026	PARAMOUNT	BACON FELT COMPANY, INC.	No
TMK 06-01411	04/13/2016	01/14/2026	PARAMOUNT	BACON FELT COMPANY, INC.	No
TMK 06-01465	04/19/2016	04/16/2026	BICYCLE	UNITED STATES PLAYING CARD COMPANY, THE	No
TMK 06-01465	04/19/2016	04/16/2026	BICYCLE	UNITED STATES PLAYING CARD COMPANY, THE	No
TMK 07-00103	04/06/2016	04/28/2023	CAROT'S (Stylized)	GAPARDIS HEALTH AND BEAUTY, INC.	No
TMK 07-00103	04/06/2016	04/28/2023	CAROT'S (Stylized)	GAPARDIS HEALTH AND BEAUTY, INC.	No
TMK 07-00217	04/06/2016	04/24/2026	EDGE	POWERTEQ, LLC LIMITED LIABILITY COMPANY	No

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Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 07-00217	04/06/2016	04/24/2026	EDGE	POWERTEQ, LLC LIMITED LIABILITY COMPANY	No
TMK 07-00237	04/19/2016	04/23/2026	"BEE"	THE UNITED STATES PLAYING CARD COMPANY	No
TMK 07-00237	04/19/2016	04/23/2026	"BEE"	THE UNITED STATES PLAYING CARD COMPANY	No
TMK 07-00263	04/07/2016	04/08/2026	FEOSOL	MEDA AB	No
TMK 07-00263	04/07/2016	04/08/2026	FEOSOL	MEDA AB	No
TMK 07-00296	04/12/2016	04/30/2026	LIVESTRONG	THE LIVESTRONG FOUNDATION	No
TMK 07-00296	04/12/2016	04/30/2026	LIVESTRONG	THE LIVESTRONG FOUNDATION	No
TMK 07-00306	04/13/2016	04/23/2026	DELTAVISION	GE HEALTHCARE BIO-SCIENCES CORP.	No
TMK 07-00306	04/13/2016	04/23/2026	DELTAVISION	GE HEALTHCARE BIO-SCIENCES CORP.	No
TMK 07-00457	04/20/2016	01/21/2026	PUMA	PUMASE	No
TMK 07-00457	04/20/2016	01/21/2026	PUMA	PUMASE	No
TMK 07-00746	04/14/2016	04/10/2026	BREGUET	Montres Breguet S.A.	No
TMK 07-00746	04/14/2016	04/10/2026	BREGUET	Montres Breguet S.A.	No
TMK 07-00829	04/15/2016	04/16/2026	JL AUDIO	JL AUDIO, INC.	No
TMK 07-00829	04/15/2016	04/16/2026	JL AUDIO	JL AUDIO, INC.	No
TMK 07-00889	04/06/2016	04/24/2026	DESIGN ONLY	TRLJICON, INC.	No
TMK 07-00889	04/06/2016	04/24/2026	DESIGN ONLY	TRLJICON, INC.	No
TMK 08-00214	04/28/2016	05/13/2026	LEXMARK	Lexmark International, Inc.	No
TMK 08-00214	04/28/2016	05/13/2026	LEXMARK	Lexmark International, Inc.	No
TMK 08-00544	04/21/2016	04/28/2026	RENUZIT	THE DIAL CORPORATION	No
TMK 08-00544	04/21/2016	04/28/2026	RENUZIT	THE DIAL CORPORATION	No

CBP IPR RECORDATION — APRIL 2016

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 08-00586	04/15/2016	02/07/2026	BENCHMADE	Benchmark Knife Co., Inc.	No
TMK 08-00586	04/15/2016	02/07/2026	BENCHMADE	Benchmark Knife Co., Inc.	No
TMK 09-00263	04/12/2016	04/24/2026	RELENZA	Glaxo Group Limited	No
TMK 09-00263	04/12/2016	04/24/2026	RELENZA	Glaxo Group Limited	No
TMK 10-00184	04/12/2016	03/03/2026	MAX FACTOR	NOXELL CORPORATION	No
TMK 10-00184	04/12/2016	03/03/2026	MAX FACTOR	NOXELL CORPORATION	No
TMK 10-00965	04/20/2016	04/17/2026	GeoVision Inc. and Design	GeoVision Inc.	No
TMK 10-00965	04/20/2016	04/17/2026	GeoVision Inc. and Design	GeoVision Inc.	No
TMK 10-01314	04/26/2016	06/02/2026	GM	GENERAL MOTORS LLC	No
TMK 10-01314	04/26/2016	06/02/2026	GM	GENERAL MOTORS LLC	No
TMK 11-01464	04/13/2016	05/07/2026	SUPER HARD STEEL	THE NANOSTEEL COMPANY, INC.	No
TMK 11-01464	04/13/2016	05/07/2026	SUPER HARD STEEL	THE NANOSTEEL COMPANY, INC.	No
TMK 12-00213	04/29/2016	04/28/2026	HUGGIES	KIMBERLY-CLARK WORLDWIDE, INC.	No
TMK 12-00213	04/29/2016	04/28/2026	HUGGIES	KIMBERLY-CLARK WORLDWIDE, INC.	No
TMK 12-00251	04/26/2016	08/14/2026	FRAGMIN	KIMBERLY-CLARK WORLDWIDE, INC.	No
TMK 12-00251	04/26/2016	08/14/2026	FRAGMIN	PFIZER HEALTH AB	No
TMK 12-00589	04/13/2016	01/18/2026	AUDI FOUR RINGS LOGO	Audi A.G.	No
TMK 12-00589	04/13/2016	01/18/2026	AUDI FOUR RINGS LOGO	Audi A.G.	No
TMK 12-00621	04/19/2016	12/06/2025	VW	Volkswagen Aktiengesellschaft	No
TMK 12-00621	04/19/2016	12/06/2025	VW	Volkswagen Aktiengesellschaft	No
TMK 12-01266	04/19/2016	04/30/2026	AU (Stylized)	Auburn University	No
TMK 12-01266	04/19/2016	04/30/2026	AU (Stylized)	Auburn University	No
TMK 12-01279	04/06/2016	06/18/2026	PEDIGREE	MARS, INCORPORATED	No

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Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 12-01279	04/06/2016	06/18/2026	PEDIGREE	MARS, INCORPORATED	No
TMK 12-01457	04/26/2016	07/23/2026	HERBALIFE	Herbalife International, Inc.	No
TMK 12-01457	04/26/2016	07/23/2026	HERBALIFE	Herbalife International, Inc.	No
TMK 13-00293	04/25/2016	07/22/2026	TRIJICON (Stylized)	TRIJICON, INC.	No
TMK 13-00293	04/25/2016	07/22/2026	TRIJICON (Stylized)	TRIJICON, INC.	No
TMK 13-00596	04/15/2016	06/14/2025	VW WITHIN A CIRCLE	Volkswagen Aktiengesellschaft	No
TMK 13-00596	04/15/2016	06/14/2025	VW WITHIN A CIRCLE	Volkswagen Aktiengesellschaft	No
TMK 13-01024	04/29/2016	05/07/2026	NOVARA (stylized)	Recreational Equipment, Inc.	No
TMK 13-01024	04/29/2016	05/07/2026	NOVARA (stylized)	Recreational Equipment, Inc.	No
TMK 13-01031	04/29/2016	05/07/2026	NOVARA (stylized)	Recreational Equipment, Inc.	No
TMK 13-01031	04/29/2016	05/07/2026	NOVARA (stylized)	Recreational Equipment, Inc.	No
TMK 13-01132	04/22/2016	04/24/2026	SCAPA	Allied Domecq Spirits & Wine Limited	No
TMK 13-01132	04/22/2016	04/24/2026	SCAPA	Allied Domecq Spirits & Wine Limited	No
TMK 14-00488	04/18/2016	10/30/2022	JOHNNY MATHIS	MATHIS, JOHN R. AKA JOHNNY MATHIS	No
TMK 14-00488	04/18/2016	10/30/2022	JOHNNY MATHIS	MATHIS, JOHN R. AKA JOHNNY MATHIS	No
TMK 16-00329	04/02/2016	08/08/2022	PENNY AUSTRALIA (Design)	Absolute International Pty Ltd	No
TMK 16-00330	04/02/2016	06/16/2024	ANASTASIA BEVERLY HILLS	ANASTASIA BEVERLY HILLS, INC.	No
TMK 16-00331	04/06/2016	08/12/2025	COLDSRING	Cold Spring Granite Company	No
TMK 16-00332	04/06/2016	04/15/2023	BARBICAN	Sahara Enterprise Inc.	No
TMK 16-00333	04/06/2016	08/22/2021	GOODWEAR (Stylized)	The Goodwear Corporation, Inc.	No
TMK 16-00334	04/06/2016	12/18/2022	A and Design	Anastasia Beverly Hills, Inc.	No
TMK 16-00335	04/06/2016	03/29/2026	G35	GLOCK, Inc.	No

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Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 16-00336	04/06/2016	03/29/2026	G41	GLOCK, Inc.	No
TMK 16-00337	04/06/2016	03/22/2026	G42	GLOCK, Inc.	No
TMK 16-00338	04/06/2016	03/22/2026	G43	GLOCK, Inc.	No
TMK 16-00339	04/06/2016	03/29/2026	GLOCK PERFECTION (Stylized)	GLOCK, Inc.	No
TMK 16-00340	04/06/2016	03/22/2026	GLOCK PERFECTION (Stylized)	GLOCK, Inc.	No
TMK 16-00341	04/06/2016	03/24/2024	Pacific Isles & Design	Barrett, Rosie S.	No
TMK 16-00342	04/12/2016	06/01/2026	Peghead Design v2	Taylor-Listug, Inc.	No
TMK 16-00343	04/12/2016	12/29/2019	NASALCARE	TechWorld Corporation, Inc.	No
TMK 16-00344	04/12/2016	01/23/2018	YANKES (Stylized)	New York Yankees Partnership	No
TMK 16-00345	04/12/2016	11/30/2020	SUPERGOOP!	TAYLOR JAMES, LLC	No
TMK 16-00346	04/13/2016	10/04/2016	FREESTYLE	ABBOTT DIABETES CARE INC.	No
TMK 16-00347	04/13/2016	04/10/2026	EL PRIMERO (STYLIZED)	LVMH Swiss Manufactures SA	No
TMK 16-00348	04/13/2016	11/19/2018	FREESTYLE LITE	Abbott Diabetes Care Inc.	No
TMK 16-00349	04/13/2016	12/18/2022	DESIGN ONLY (Butterfly Design)	Abbott Diabetes Care Inc.	No
TMK 16-00350	04/13/2016	05/12/2023	DESIGN ONLY (tear-shaped design)	Moose International Inc.	No
TMK 16-00351	04/13/2016	02/10/2026	DESIGN ONLY (Pattern Design)	Must Win, Inc.	No
TMK 16-00352	04/14/2016	07/11/2016	WINDI	DIPROSERVA MEDICAL AB	No
TMK 16-00353	04/14/2016	05/12/2023	MOOSE KNUCKLES	Moose International Inc.	No
TMK 16-00354	04/14/2016	05/12/2023	MOOSE KNUCKLES and design	Moose International Inc.	No
TMK 16-00355	04/14/2016	03/22/2026	PATHWAY THE LIGHTING SOURCE	Pathway Lighting Products, Inc.	No
TMK 16-00356	04/14/2016	10/21/2025	URBAN EXPRESSIONS	Must Win, Inc.	No
TMK 16-00357	04/14/2016	12/17/2023	MODA LUXE and Design	Must Win Inc.	No

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Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 16-00358	04/14/2016	03/30/2025	McGraw-Hill Education and Design	MCGRAW-HILL GLOBAL EDUCATION HOLDINGS, LLC	No
TMK 16-00359	04/14/2016	02/02/2025	McGraw-Hill and Design	MCGRAW-HILL GLOBAL EDUCATION HOLDINGS, LLC	No
TMK 16-00360	04/14/2016	03/07/2024	COVER GIRL	NOXELL CORPORATION	No
TMK 16-00361	04/14/2016	02/04/2025	BERNZOMATIC and Design	Worthington Torch, LLC	No
TMK 16-00362	04/14/2016	02/10/2026	DESIGN ONLY (Configuration of a Hand-bag)	Must Win, Inc.	No
TMK 16-00363	04/15/2016	04/26/2026	AMOPÉ	LRC Products	No
TMK 16-00364	04/15/2016	01/06/2026	Smooth Sphere	EOS PRODUCTS, LLC	No
TMK 16-00365	04/15/2016	09/16/2025	EOS (Stylized)	EOS PRODUCTS LLC	No
TMK 16-00366	04/18/2016	01/23/2018	ENAMORE	ALLEGRI, MARIA	No
TMK 16-00367	04/18/2016	06/25/2018	INTENSIVE LASH AND BROW TINT	The American Export Group & International Services, Inc. DBA AEGIS, Inc.	No
TMK 16-00368	04/18/2016	04/26/2026	AMOPÉ and Design	LRC Products Limited	No
TMK 16-00369	04/18/2016	08/05/2025	SOUND DEFENSE and Design	Sound Defense, LLC	No
TMK 16-00370	04/19/2016	08/06/2018	CND	Creative Nail Design, Inc.	No
TMK 16-00371	04/19/2016	10/15/2018	CND C & Design	Creative Nail Design	No
TMK 16-00372	04/19/2016	12/02/2024	BENCHMADE and Design	Benchmade Knife Co., Inc.	No
TMK 16-00373	04/19/2016	06/18/2024	INTENSIVE	The American Export Group & International Services, Inc. DBA AEGIS, Inc.	No
TMK 16-00374	04/19/2016	01/04/2022	BENCHMADE and Design	Benchmade Knife Co., Inc.	No
TMK 16-00375	04/19/2016	12/15/2025	SHELLAC	Creative Nail Design, Inc.	No
TMK 16-00376	04/19/2016	03/03/2024	DRYBAR	Drybar Holdings LLC	No

CBP IPR RECORDATION — APRIL 2016

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tm	Owner Name	GM Restricted
TMK 16-00377	04/19/2016	08/13/2024	BUTTERCUP	Drybar Holdings LLC	No
TMK 16-00378	04/19/2016	01/13/2026	THE 3-DAY BENDER	Drybar Holdings LLC	No
TMK 16-00379	04/20/2016	02/06/2023	CND C SHELLAC & Design	Creative Nail Design, Inc.	No
TMK 16-00380	04/20/2016	02/24/2026	SUPERFIGHT	Skybound, LLC	No
TMK 16-00381	04/20/2016	10/14/2025	COPPER FIT	Ideavillage Products Corp.	No
TMK 16-00382	04/21/2016	11/20/2023	INSTANTLY AGELESS	Anti-Age Technologies, LLC DBA Instantly Ageless	No
TMK 16-00383	04/21/2016	05/20/2021	NATURALMAX	NUTRAMARKS, INC.	No
TMK 16-00384	04/21/2016	08/11/2020	SONIX	Lenntek Corporation	No
TMK 16-00385	04/22/2016	10/23/2023	MAMMUT & DESIGN Logo	Mammut Sports Group AG	No
TMK 16-00386	04/22/2016	07/25/2026	VOLCANO (STYLIZED)	STOBI GMBH & CO. KG CORPORATION	No
TMK 16-00387	04/24/2016	12/08/2019	SUPREME MACKEREL BRAND IN TOMATO SAUCE IN TOMATO SAUCE	KONUWA, DENNIS KINI	No
TMK 16-00388	04/25/2016	08/19/2025	LIKE and Design	Facebook Inc.	No
TMK 16-00389	04/25/2016	05/13/2017	VOLCANO (Stylized)	STOBI GMBH & CO. KG	No
TMK 16-00390	04/25/2016	01/15/2024	FILLERINA	Gecomwert Anstalt c/o Schreiber & Zindel	No
TMK 16-00391	04/25/2016	07/03/2022	KUSH	Sunny Merchandise Corp. DBA Sunny Sunglasses	No
TMK 16-00392	04/25/2016	09/03/2024	LENNON + WOLFE	Lennon, Amanda	No
TMK 16-00393	04/25/2016	03/26/2026	AERON	Herman Miller, Inc.	No
TMK 16-00394	04/25/2016	10/16/2023	VELVETINES	DOE DEERE INDUSTRIES, LLC	No
TMK 16-00395	04/26/2016	08/16/2026	KATE SPADE NEW YORK	Kate Spade LLC	No
TMK 16-00396	04/26/2016	12/30/2024	FIRE DEPT	PACIFIC SOLUTION MARKETING, INC.	No
TMK 16-00397	04/27/2016	03/04/2021	ISSI	INTEGRATED SILICON SOLUTION, INC.	No

CBP IPR RECORDATION — APRIL 2016

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 16-00398	04/27/2016	04/29/2022	PELLE PELLE	Pelle Pelle, Inc.	No
TMK 16-00400	04/28/2016	07/16/2026	PELLE PELLE	Pelle Pelle, Inc.	No
TMK 16-00401	04/28/2016	12/23/2023	PP	Pelle Pelle, Inc.	No
TMK 16-00402	04/28/2016	07/09/2026	MARC BUCHANAN	Pelle Pelle, Inc.	No
TMK 16-00403	04/28/2016	07/24/2017	MARC BUCHANAN	Pelle Pelle, Inc.	No
TMK 16-00404	04/28/2016	07/24/2017	SODA CLUB	Pelle Pelle, Inc.	No
TMK 16-00405	04/28/2016	08/15/2017	PELLE PELLE	Pelle Pelle, Inc.	No
TMK 16-00406	04/29/2016	05/24/2025	BIMATIC	Budget Investments LLC DBA Bimatic	No
TMK 96-00611	04/18/2016	01/19/2026	PUMA	PUMA SE	No
TMK 96-00611	04/18/2016	01/19/2026	PUMA	PUMA SE	No
TMK 97-00011	04/12/2016	06/16/2026	LACOSTE	LACOSTE ALLIGATOR S.A.	No
TMK 97-00011	04/12/2016	06/16/2026	LACOSTE	LACOSTE ALLIGATOR S.A.	No
TMK 97-00042	04/22/2016	04/20/2026	HONDA	HONDA GIKEN KOGYO KABUSHIKI KAISHA (HONDA MOTOR CO., LTD.)	No
TMK 97-00042	04/22/2016	04/20/2026	HONDA	HONDA GIKEN KOGYO KABUSHIKI KAISHA (HONDA MOTOR CO., LTD.)	No

NOTICE OF ISSUANCE OF FINAL DETERMINATION CONCERNING CERTAIN INTERMODAL CONTAINERS

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

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection (“CBP”) has issued a final determination concerning the country of origin of a twenty foot long intermodal container. Based upon the facts presented, CBP has concluded that the country of origin of the intermodal container is the Republic of Korea for purposes of U.S. Government procurement.

DATES: The final determination was issued on May 13, 2016. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination within June 20, 2016.

FOR FURTHER INFORMATION CONTACT: Teresa M. Frazier, Valuation and Special Programs Branch, Regulations and Rulings, Office of Trade (202) 325-0139.

SUPPLEMENTARY INFORMATION: Notice is hereby given that pursuant to subpart B of Part 177, U.S. Customs and Border Protection Regulations (19 CFR part 177, subpart B), CBP issued a final determination concerning the country of origin of certain intermodal containers, which may be offered to the U.S. Government under an undesignated government procurement contract. This final determination, HQ H273529, was issued under procedures set forth at 19 CFR part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511-18). In the final determination, CBP concluded that the processing in Korea results in a substantial transformation. Therefore, the country of origin of the intermodal container is Korea for purposes of U.S. Government procurement.

Section 177.29, CBP Regulations (19 CFR 177.29), provides that a notice of final determination shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 CFR 177.30), provides that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register**.

Dated: May 13, 2016.

MYLES B. HARMON,
*Acting Executive Director,
Regulations and Rulings,
Office of Trade.*

Attachment

H273529

May 13, 2016

OT:RR:CTF:VS H273529 TMF
CATEGORY: Country of Origin

MICHAEL G. McMANUS,
DUANE MORRIS LLP,
505 9TH STREET NW.,
SUITE 1000,
WASHINGTON, DC 20004-2166

Re: U.S. Government Procurement; Title III, Trade Agreements Act of 1979 (19 U.S.C. 2511); Substantial Transformation; Twenty Foot Intermodal Shipping Containers

DEAR MR. McMANUS:

This is in response to your correspondence of February 12, 2016, requesting a final determination on behalf of your client, Sea Box, Inc. ("Sea Box"), pursuant to subpart B of part 177, U.S. Customs and Border Protection (CBP) Regulations (19 CFR 177.21 *et seq.*). Under pertinent regulations, which implement Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511 *et seq.*), CBP issues country of origin advisory rulings and final determinations as to whether an article is, or would be, a product of a designated country or instrumentality for the purpose of granting waivers of certain "Buy American" restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

This final determination concerns a twenty foot long Sea Box shipping container that is claimed to be a product of the Republic of South Korea or the United States. We note that Sea Box, Inc. is a party-at-interest within the meaning of 19 CFR 177.22(d)(1) and is entitled to request this determination.

FACTS:

Your client requests a country of origin determination concerning a twenty foot long intermodal container. You state that the twenty foot shipping container is a 20 foot, International Organization for Standardization (ISO) compliant container possessing the following external measurements: 19' 10.5" in length with a tolerance of +0, -1/4 of an inch; 8.0' in width with a tolerance of +0, -3/16 of an inch; 8.0' in height with a tolerance of +0, -3/16 of an inch. The internal dimensions are: 19'4 11/64" (L); 7'8 17/32" (W); 7'4 3/16" (H). The 20 foot container is comprised of corrugated steel sides and roofing which give it a favorable strength to weight ratio; two sets of forklift "pockets" that permit forklifts to lift and move laden or unladen containers; wooden flooring tested to withstand 16,000 lbs. per square foot (144 square inches); 24 top and bottom wall tie down steel lashing rings each having a capacity of 4,000 lbs.; and two vents. The twenty foot containers weigh 5,000 lbs. each and can accommodate a payload of 47,910 lbs.

You state that your client intends to assemble the containers from parts originating in South Korea, the People's Republic of China (PRC) and the United States. You state three of the four principal components (the right and left sidewalls and the roof) of the twenty foot container will be made in Korea. You state that the container floor is made in China as well as the two

container ends, which includes the doors. The U.S. components are prime and finish coatings, decals, tie backs/welding wire, aluminum shot blast media and sealant.

Manufacturing Process

You describe Sea Box's manufacturing of the container to be a complex industrial process which takes more than day to complete. You list fourteen manufacturing steps that require the manipulation of large components to form a structurally sound container to its precise size in accordance with ISO specifications.

You state that the container must be capable of being stacked up to nine units high, with the base of a stack strong enough to support 423,280 static lbs. above it (8 containers × 58,800 lbs. per container). In addition, the container must be able to support a dynamic load taking into account a vessel's motion in conformity with the American Bureau of Shipping (ABS). You also advise that the containers must be International Container Safety Convention (CSC) certified and manufactured according to ISO standards.

You state in order to be CSC certified in the United States, the manufacturer's facility must be pre-approved for manufacturing CSC-certified containers by a testing and certification organization sanctioned by the U.S. Coast Guard. You also state that the manufacturer must design and build prototype containers of the specific kind and type proposed in the specific facility to be certified and then submit them for testing by the approved organization. You note that only after successful completion of these prerequisites will a company be authorized to manufacture and furnish containers to be included in the internationally accepted ISO system of transportation.

ISSUE:

Whether the twenty foot intermodal container is considered to be a product of the United States or Korea for U.S. Government procurement purposes.

LAW AND ANALYSIS:

Pursuant to Subpart B of Part 177, 19 CFR 177.21 *et seq.*, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511 *et seq.*), CBP issues country-of-origin advisory rulings and final determinations as to whether an article is a product of a designated country for the purpose of granting waivers of certain "Buy American" restrictions on U.S. Government procurement.

In rendering final determinations for purposes of U.S. Government procurement, CBP applies the provisions of Subpart B of Part 177 consistent with the Federal Procurement Regulations. *See* 19 CFR 177.21. In this regard, CBP recognizes that the Federal Acquisition Regulations restrict the U.S. Government's purchase of products to U.S.-made or designated country end products for acquisitions subject to the Trade Agreements Act. *See* 48 CFR 25.403(c)(1). The Federal Acquisition Regulations define "U.S.-made end product" as "an article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with name, character, or use distinct from that of the article or articles from which it was transformed." *See* 48 CFR 25.003.

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. *See also* 19 CFR 177.22(a).

In order to determine whether a substantial transformation occurs when components of various origins are assembled into completed products, CBP considers the totality of the circumstances and makes such determinations on a case-by-case basis. Substantial transformation occurs when an article emerges from a process with a new name, character or use different from that possessed by the article prior to processing. A substantial transformation will not result from a minor manufacturing or combining process that leaves the identity of the article intact. *See United States v. Gibson-Thomsen Co.*, 27 C.C.P.A. 267 (1940). In determining whether the combining of parts or materials constitutes a substantial transformation, the determinative issue is the extent of operations performed and whether the parts lose their identity and become an integral part of the new article. *See Belcrest Linens v. United States*, 6 Ct. Int'l Trade 204, 573 F. Supp. 1149 (1983), *aff'd*, 741 F.2d 1368 (Fed. Cir. 1984). Additionally, factors such as the resources expended on product design and development, the extent and nature of post-assembly inspection and testing procedures, and worker skill required during the actual manufacturing process will be considered when determining whether a substantial transformation has occurred. No one factor is determinative.

In *Uniroyal, Inc. v. United States*, the Court of International Trade held that no substantial transformation occurred because the attachment of a footwear upper from Indonesia to its outsole in the United States was a minor manufacturing or combining process which left the identity of the upper intact. *Uniroyal, Inc. v. United States*, 3 CIT 220, 224, 542 F. Supp. 1026, 1029 (1982), *aff'd*, 702 F.2d 1022 (Fed. Cir. 1983). The court found that the upper was readily recognizable as a distinct item apart from the outsole to which it was attached, it did not lose its identity in the manufacture of the finished shoe in the United States, and the upper did not undergo a physical change or a change in use. Also, under *Uniroyal*, the change in name from "upper" to "shoe" was not significant. The court concluded that the upper was the essence of the completed shoe, and was not substantially transformed.

In *National Hand Tool Corp. v. United States*, 16 CIT 308 (1992), *aff'd*, 989 F.2d 1201 (Fed. Cir. 1993), the court considered sockets and flex handles which were either cold formed or hot forged into their final shape prior to importation, speeder handles which were reshaped by a power press after importation, and the grip of flex handles which were knurled in the United States. The imported articles were heat treated, cleaned by sandblasting, tumbling, and/or chemical vibration before being electroplated. In certain instances, various components were assembled together which the court stated required some skill and dexterity. The court determined that the imported articles were not substantially transformed and that they remained products of Taiwan. In making its determination, the court focused on the fact that the components had been cold formed or hot forged "into their final

shape before importation”, and that “the form of the components remained the same” after the assembly and heat treatment processes performed in the United States.

It is your position that the country of origin of the intermodal containers is South Korea because three of the container’s components (the roof and two side panels), like *National Hand Tool and Uniroyal*, impart the container’s essential character because they are already formed in the final shape prior to importation into the United States. You also state that the three Korean components—the roof and side panels predominate in value since they cost more than the Chinese components (front end, door end and floor). In sum, you argue that the country of origin is South Korea, or in the alternative, the United States.

In HQ 555111, dated March 14, 1989, CBP determined that shearing steel sheets to size, along with bending, notching or drilling of the sheared pieces constituted a substantial transformation, such that the container parts were different in character and use from the originally imported steel sheets. It was also determined that the container parts were distinct articles of commerce that were bought and sold in the trade. CBP also found a second substantial transformation occurred when the container parts were assembled into finished steel storage containers. It was also determined that the container parts were distinct articles of commerce that were bought and sold in the trade. CBP found that the assembly was complex, involving a large number of components and a significant number of different operations, requiring a relatively significant period of time as well as skill, attention to detail and quality control.

In HQ 557607, dated December 18, 1993, CBP determined that steel plates imported into Mexico and used in the production of certain railway freight cars (referred therein as “railcar tanks”) underwent a double substantial transformation. The steel plates were sandblasted to remove any foreign debris and particles; cut to same length and width in varying sizes; rolled and cold-formed into cylindrical or near-cylindrical shape; tack-welded to hold their shape with seams, then permanently welded using a design-specific welding fixture. Thereafter, the rings were permanently welded in place; and holes were cut into the tank shell in accordance with design specifications for the placement of miscellaneous parts that were also permanently welded. The seams were then subject to X-ray analysis to ensure against any defects, followed by painting with rust-resistant paint primer. CBP determined that the welding and complex assembling of the steel container parts resulted in a new, finished and different article of commerce possessing a distinct name, character and use.

We find that the essential character of the container is imparted by the Korean-origin roof, and two side panels, which, as in *National Hand Tool*, are already formed in their final shapes prior to importation. Further, the twenty foot containers are similar to the final goods discussed in HQ 555111 and HQ 567607. While these two decisions pertained to the Generalized System of Preferences (GSP), and the GSP often considers whether the second substantial transformation is not just a “pass-through” operation, we note that in those two decisions it was important that the components were formed and created in the final country of assembly. Similarly, in this case we find that the Sea Box container will mostly be comprised of components from Korea,

especially when comparing these components to the container's finished surface area, such that the origin of the finished container may be considered Korea. As noted in our ruling to you, HQ H267876, dated December 23, 2015, the operations in the United States are not sufficient to result in a substantial transformation; therefore, we find that the country of origin of the finished twenty foot intermodal containers will be Korea for government procurement purposes.

HOLDING:

Based upon the specific facts of this case, we find that the country of origin of the intermodal containers for purposes of U.S. Government procurement is Korea.

Notice of this final determination will be given in the **Federal Register**, as required by 19 CFR 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 CFR 177.31, that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 CFR 177.30, any party-at-interest may, within 30 days of publication of the **Federal Register** Notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

MYLES B. HARMON,
*Acting Executive Director,
Regulations and Rulings,
Office of Trade.*

[Published in the Federal Register, May 20, 2016 (81 FR 31951)]

NOTICE ANNOUNCING THE AUTOMATED COMMERCIAL ENVIRONMENT (ACE) AS THE SOLE CBP-AUTHORIZED ELECTRONIC DATA INTERCHANGE (EDI) SYSTEM FOR PROCESSING ELECTRONIC ENTRY AND ENTRY SUMMARY FILINGS

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

ACTION: General notice.

SUMMARY: This document announces that the Automated Commercial Environment (ACE) will be the sole electronic data interchange (EDI) system authorized by the Commissioner of U.S. Customs and Border Protection (CBP) for processing electronic entry and entry summary filings associated with most entry types. This document also announces that the Automated Commercial System (ACS) will no longer be a CBP-authorized EDI system for purposes of processing the electronic filings specified in this notice.

EFFECTIVE DATE: July 23, 2016. ACE will be the sole CBP-authorized EDI system for processing electronic entry and entry summary filings of certain entry types, and ACS will no longer be a CBP-authorized EDI system for purposes of processing the electronic filings specified in this notice.

FOR FURTHER INFORMATION CONTACT: Questions related to this notice may be emailed to ASKACE@cbp.dhs.gov with the subject line identifier reading “ACS to ACE July 23, 2016 transition”.

SUPPLEMENTARY INFORMATION:

Background

Statutory Authority

Section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), establishes the requirement for importers of record to make entry for merchandise to be imported into the customs territory of the United States. Customs entry information is used by U.S. Customs and Border Protection (CBP) and Partner Government Agencies (PGAs) to determine whether merchandise may be released from CBP custody. Importers of record are also obligated to complete the entry by filing an entry summary declaring the value, classification, rate of duty applicable to the merchandise and such other information as is necessary for CBP to properly assess duties, collect accurate statistics and determine whether any other applicable requirement of law is met.

The customs entry requirements were amended by Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057, December 8, 1993), commonly known as the Customs Modernization Act, or Mod Act. In particular, section 637 of the Mod Act amended section 484(a)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1484(a)(1)(A)) by revising the requirement to make and complete customs entry by submitting documentation to CBP to allow, in the alternative, the electronic transmission of such entry information pursuant to a CBP-authorized electronic data interchange (EDI) system. CBP created the Automated Commercial System (ACS) to track, control, and process all commercial goods imported into the United States. CBP established the specific requirements and procedures for the electronic filing of entry and entry summary data for imported merchandise through the Automated Broker Interface (ABI) to ACS.

Transition From ACS to ACE

In an effort to modernize the business processes essential to securing U.S. borders, facilitating the flow of legitimate shipments, and targeting illicit goods pursuant to the Mod Act and the Security and Accountability for Every (SAFE) Port Act of 2006 (Pub. L. 109–347, 120 Stat. 1884), CBP developed the Automated Commercial Environment (ACE) to eventually replace ACS as the CBP-authorized EDI system. Over the last several years, CBP has tested ACE and provided significant public outreach to ensure that the trade community is fully aware of the transition from ACS to ACE.

On February 19, 2014, President Obama issued Executive Order (EO) 13659, *Streamlining the Export/Import Process for America's Businesses*, in order to reduce supply chain barriers to commerce while continuing to protect our national security, public health and safety, the environment, and natural resources. See 79 FR 10657 (February 25, 2014). Pursuant to EO 13659, a deadline of December 31, 2016, was established for participating Federal agencies to have capabilities, agreements, and other requirements in place to utilize the International Trade Data System (ITDS) and supporting systems, such as ACE, as the primary means of receiving from users the standard set of data and other relevant documentation (exclusive of applications for permits, licenses, or certifications) required for the release of imported cargo and clearance of cargo for export.

On October 13, 2015, CBP published an Interim Final Rule in the **Federal Register** (80 FR 61278) that designated ACE as a CBP-authorized EDI system. The designation of ACE as a CBP-authorized EDI system was effective November 1, 2015. In the Interim Final Rule, CBP stated that ACS would be phased out and anticipated that ACS would no longer be supported for entry and entry summary filing by the end of February 2016. Filers were encouraged to adjust their business practices so that they would be prepared when ACS was decommissioned.

CBP has developed a staggered transition strategy for decommissioning ACS. The first two phases of the transition were announced in a **Federal Register** notice on February 29, 2016. (81 FR 10264). The third phase of the transition was announced in a **Federal Register** notice on May 16, 2016. (81 FR 30320). This notice announces the fourth phase of the transition. In this phase, CBP will decommission ACS for most entry and entry summary filings.

ACE as the Sole CBP-Authorized EDI System for the Processing of Certain Electronic Entry and Entry Summary Filings

This notice announces that, effective July 23, 2016, ACE will be the sole CBP-authorized EDI system for the electronic entry and entry

summary filings listed below, for all filers. These electronic filings must be formatted for submission in ACE, and will no longer be accepted in ACS.

- 01—Consumption—Free and Dutiable
- 02—Consumption—Quota/Visa
- 03—Consumption—Antidumping/Countervailing Duty
- 06—Consumption—Foreign Trade Zone (FTZ)
- 07—Consumption—Antidumping/Countervailing Duty and Quota/Visa Combination
- 11—Informal—Free and Dutiable
- 12—Informal—Quota/Visa (other than textiles)
- 21—Warehouse
- 22—Re-Warehouse
- 23—Temporary Importation Bond (TIB)
- 31—Warehouse Withdrawal— Consumption
- 32—Warehouse Withdrawal—Quota
- 34—Warehouse Withdrawal—Antidumping/Countervailing Duty
- 38—Warehouse Withdrawal—Antidumping/Countervailing Duty & Quota/Visa Combination
- 51—Defense Contract Administration Service Region (DCASR)
- 52—Government—Dutiable
- 61—Immediate Transportation
- 62—Transportation and Exportation
- 63—Immediate Exportation
- 69—Transit (Rail only)
- 70—Multi-Transit (Rail only)

ACS as the Sole CBP-Authorized EDI System for the Processing of Certain Electronic Entry and Entry Summary Filings

Electronic entry and entry summary filings for the following entry types must continue to be filed only in ACS. CBP will publish a

subsequent **Federal Register** Notice in the future when these entry and entry summary filings will be transitioned in ACE.

- 08—NAFTA Duty Deferral
- 09—Reconciliation Summary
- 41—Direct Identification Manufacturing Drawback
- 42—Direct Identification Unused Merchandise Drawback
- 43—Rejected Merchandise Drawback
- 44—Substitution Manufacturer Drawback
- 45—Substitution Unused Merchandise Drawback
- 46—Other Drawback

Due to Low Shipment Volume, Filings for the Following Entry Types Will Not Be Automated in Either ACS or ACE

- 04—Appraisalment
- 05—Vessel—Repair
- 24—Trade Fair
- 25—Permanent Exhibition
- 26—Warehouse—Foreign Trade Zone (FTZ) (Admission)
- 33—Aircraft and Vessel Supply (For Immediate Exportation)
- 64—Barge Movement
- 65—Permit to Proceed
- 66—Baggage

Dated: May 18, 2016.

R. GIL KERLIKOWSKA,
Commissioner,
U.S. Customs and Border Protection.

[Published in the Federal Register, May 23, 2016 (81 FR 32339)]


AGENCY INFORMATION COLLECTION ACTIVITIES:
NAFTA Regulations and Certificate of Origin

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: NAFTA Regulations and Certificate of Origin (Forms 434, 446, and 447). CBP is proposing that this information collection be extended with a change to the burden hours. There is no change 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 July 25, 2016 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 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 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: NAFTA Regulations and Certificate of Origin.

OMB Number: 1651-0098.

Form Number: CBP Forms 434, 446, and 447.

Abstract: On December 17, 1992, the U.S., Mexico and Canada entered into an agreement, “The North American Free Trade Agreement” (NAFTA). The provisions of NAFTA were adopted by the U.S. with the enactment of the North American Free Trade Agreement Implementation Act of 1993 (Pub. L. 103-182).

CBP Form 434, *North American Free Trade Certificate of Origin*, is used to certify that a good being exported either from the United States into Canada or Mexico or from Canada or Mexico into the United States qualifies as an originating good for purposes of preferential tariff treatment under NAFTA. This form is completed by exporters and/or producers and furnished to CBP upon request. CBP Form 434 is provided for by 19 CFR 181.11 and is accessible at: <https://www.cbp.gov/newsroom/publications/forms>.

CBP Form 446, *NAFTA Verification of Origin Questionnaire*, is a questionnaire that CBP personnel use to gather sufficient information from exporters and/or producers to determine whether goods imported into the United States qualify as originating goods for the purposes of preferential tariff treatment under NAFTA. CBP Form 446 is provided for by 19 CFR 181.72 and is accessible at: <https://www.cbp.gov/newsroom/publications/forms>.

CBP Form 447, *North American Free Trade Agreement Motor Vehicle Averaging Election*, is used to gather information required by 19 CFR 181 Appendix, section 11, (2) “Information Required When Producer Chooses to Average for Motor Vehicles”. This form is provided to CBP when a manufacturer chooses to average motor vehicles for the purpose of obtaining NAFTA preference. CBP Form 447 is accessible at: <https://www.cbp.gov/newsroom/publications/forms>.

Current Actions: This submission is being made to extend the expiration date for CBP Forms 434, 446, and 447 and to revise the burden hours as a result of updated estimates for the time per response for Forms 434 and 446. There are no changes to the forms or the information collected.

Type of Review: Extension with a change to the burden hours.

Affected Public: Businesses.

Form 434, NAFTA Certificate of Origin:

Estimated Number of Respondents: 40,000.

Estimated Number of Responses per Respondent: 3.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 240,000.

Form 446, NAFTA Questionnaire:

Estimated Number of Respondents: 400.

Estimated Number of Responses per Respondent: 1.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 800.

Form 447, NAFTA Motor Vehicle Averaging Election:

Estimated Number of Respondents: 11.

Estimated Number of Responses per Respondent: 1.28.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 14.

Dated: May 23, 2016.

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

[Published in the Federal Register, May 26, 2016 (81 FR 33541)]



AGENCY INFORMATION COLLECTION ACTIVITIES:

Application To Pay Off or Discharge an Alien Crewman

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

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

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Application to Pay Off or Discharge an Alien Crewman (Form I-408). 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 July 25, 2016 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 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 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: Application to Pay Off or Discharge an Alien Crewman.

OMB Number: 1651–0106.

Form Number: I–408.

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

This form is accessible at: [https:// www.cbp.gov / newsroom / publications / forms](https://www.cbp.gov/newsroom/publications/forms).

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

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 85,000.

Estimated Time per Respondent: 25 minutes.

Estimated Total Annual Burden Hours: 35,360.

Dated: May 23, 2016.

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

[Published in the Federal Register, May 26 2016 (81 FR 33542)]

AGENCY INFORMATION COLLECTION ACTIVITIES:

Passenger List/Crew List (CBP Form I-418)

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: Passenger List/Crew List (Form I-418). CBP is proposing that this information collection be extended with no change to the burden hours or to the information collected. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before July 25, 2016 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 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 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: Passenger List/Crew List.

OMB Number: 1651-0103.

Form Number: Form I-418.

Abstract: CBP Form I-418 is prescribed by CBP, for use by masters, owners, or agents of vessels in complying with Sections 231 and 251 of the Immigration and Nationality Act (INA). This form is filled out upon arrival of any person by commercial vessel at any port within the United States from any place outside the United States. The master or commanding officer of the vessel is responsible for providing CBP officers at the port of arrival with lists or manifests of the persons on board such conveyances. CBP is currently working to allow for electronic submission of the information on CBP Form I-418. This form is provided for in 8 CFR 251.1 and 251.3. A copy of CBP Form I-418 can be found at <https://www.cbp.gov/newsroom/publications/forms?title=i-418&=Apply>.

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

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 48,000.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Hours: 48,000.

Dated: May 23, 2016.

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

[Published in the Federal Register, May 26, 2016 (81 FR 33543)]

