

# U.S. Customs and Border Protection



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

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

**ACTION:** Notice of proposed modification of two ruling letters, and proposed revocation of treatment relating to the tariff classification of thickened beverages.

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

**DATE:** Comments must be received on or before November 1, 2019.

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

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

**SUPPLEMENTARY INFORMATION:****BACKGROUND**

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

Pursuant to 19 U.S.C. § 1625(c)(1), this notice advises interested parties that CBP is proposing to modify two ruling letters pertaining to the tariff classification of thickened beverages. Although in this notice, CBP is specifically referring to New York Ruling Letter ("NY") N301921, dated February 5, 2019 (Attachment A), and NY N301923, dated February 7, 2019 (Attachment B), this notice also covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the 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 advise CBP during the comment period.

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

In NY N301921 and NY N301923, CBP classified certain thickened beverages in heading 2106, HTSUS, which provides for "Food preparations not elsewhere specified or included." CBP has reviewed NY N301921 and NY N301923 and has determined the ruling letters to be in error. It is now CBP's position that the thickened beverages are

properly classified, in heading 2202, HTSUS, which provides for “Waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavored, and other nonalcoholic beverages, not including fruit or vegetable juices of heading 2009.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to modify NY N301921 and NY N301923 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H303137, set forth as Attachment C to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: September 13, 2019

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

Attachments

## ATTACHMENT A

N301921

February 5, 2019

CLA-2-21:OT:RR:NC:N2:228

CATEGORY: Classification

TARIFF NO.: 2106.90.9897

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

RE: The tariff classification of a dietary supplement from Canada

DEAR MR. PETERSON:

In your letter dated November 18, 2018, you requested a tariff classification ruling on behalf of your client, A. Lassonde Inc., Canada.

A list of ingredients, and literature on the product accompanied your letter. The product is known as “Milk Beverage Hydra+,” and is said to contain milk, amidon pureflo, sugar, and disodium phosphate. This Hydra+ product is a specially-thickened liquid which is designed for consumption by persons suffering from dysphagia, a chronic health condition which makes it difficult for a person to swallow. Because of the added thickener, this liquid does not have a normal consistency, but is thicker with the consistencies of nectar and honey. It is available in one-liter packages, with a suggested serving size of 4 ounces, and in single-serve packages of 118 ml.

In your letter, you suggested that “Milk Beverage Hydra+” be classified under subheading 2202.99.90 which provides for waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavored, and other nonalcoholic beverages, not including fruit or vegetable juices of heading 2009 . . . other . . . other . . . other. You also suggested a secondary tariff classification under subheading 9817.00.96 which provides for articles specially designed or adapted for the use or benefit of the blind or other physically or mentally handicapped persons; parts and accessories (except parts and accessories of braces and artificial limb prosthetics) that are specially designed or adapted for use in the foregoing articles . . . other [than for the blind] . . . other.

According to the literature provided, it explains that a dysphagia diet has different textures of foods and liquids. It is used for people with swallowing problems because it makes it easier to chew and move food in the mouth. Also, it reduces the risk of food going into the windpipe or trachea.

Beverages of Chapter 22, Harmonized Tariff Schedule of the United States (HTSUS) must be potable in their imported condition. Due to the thickness consistencies, this product is not potable and is precluded from classification as a beverage of Chapter 22, HTSUS. Further, beverages of Chapter 22 do not have dosage form, consist of drinkable liquid substances which are marketed, sold, or distributed in multi-ounce containers (e.g., bottles, for consumption in significant (i.e., multi-ounce) and non-measured quantities, and not necessarily consumed for strictly health or nutritional purposes.

Headquarters Ruling Letter (HRL) *H121544*, a copy of which was enclosed with your letter, with regard to U.S. Note 4(b), Chapter 98, HTSUS, states that subheadings . . . 9817.00.96 do[es] not cover . . . (iv) medicine or drugs.

. . . It further states that there are no rulings on whether a metabolic disease/disorder or severe food allergies/intolerances are considered a handicap for classification purposes. . . . In all the other CBP rulings regarding classification under heading 9817, the conditions or diseases directly impaired one's physical ability to perform one or more of the major life activities listed. . . . Accordingly, CBP finds that medical foods that provide the nutritional support as part of the dietary management of metabolic disease/disorder or severe food allergy/intolerance are not classifiable under heading 9817, HTSUS. . . . Dietary medical products are classifiable under heading 2106, HTSUS, as food preparations not elsewhere specified or included. Based on the literature, the ingredients, Chapter 22 remarks, and HRL *H121544* remarks, "Milk Beverage Hydra+" will be classified elsewhere.

The applicable subheading for the "Milk Beverage Hydra+" will be *2106.90.9897*, HTSUS, which provides for food preparations not elsewhere specified or included . . . other . . . other . . . other . . . other . . . containing sugar derived from sugar cane and/or sugar beets. The general rate of duty will be 6.4 percent ad valorem.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Bruce N. Hadley, Jr. at [bruce.hadleyjr@cbp.dhs.gov](mailto:bruce.hadleyjr@cbp.dhs.gov).

*Sincerely,*

STEVEN A. MACK

*Director*

*National Commodity Specialist Division*

## ATTACHMENT B

N301923

February 7, 2019

CLA-2-21:OT:RR:NC:N2:228

CATEGORY: Classification

TARIFF NO.: 2106.90.9897; 2106.90.9898

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

RE: The tariff classification of dietary supplements from Canada

DEAR MR. PETERSON:

In your letter dated November 18, 2018, you requested a tariff classification ruling on behalf of your client, A. Lassonde Inc., Canada.

Ingredients lists, and product literature on four Hydra+ brand products in four flavors accompanied your letter. Cranberry Cocktail is said to contain filtered water, amidon pureflo, liquid sugar, potassium citrate, citric acid, cranberry juice concentrate, natural flavor cranberry, colorant bleu #1, colorant rouge #40, fumaric acid cws, and ascorbic acid. Lemon Water is said to contain filtered water, amidon pureflo, potassium citrate, citric acid, natural flavor lemon, natural tastegem flavor, and ascorbic acid. Apple is said to contain filtered water, amidon pureflo, apple juice concentrate, apple flavor, and ascorbic acid. Orange is said to contain filtered water, amidon pureflo, orange juice concentrate, and natural flavor orange.

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

In your letter, you suggested that the four products be classified in Chapter 20 for fruit juices, or Chapter 22 for waters. You also suggested a secondary tariff classification of the four products under Chapter 98 for articles specially designed or adapted for the use or benefit of . . . physically . . . handicapped persons . . . . Based on the ingredients and the literature, the four Hydra+ products will be classified elsewhere.

Beverages of Chapter 22, Harmonized Tariff Schedule of the United States (HTSUS) must be potable in their imported condition. Due to the thickness consistencies, this product is not potable and is precluded from classification as a beverage of Chapter 22, HTSUS. Further, beverages of Chapter 22 do not have dosage form, consist of drinkable liquid substances which are marketed, sold, or distributed in multi-ounce containers (e.g., bottles, for consumption in significant (i.e., multi-ounce) and non-measured quantities, and not necessarily consumed for strictly health or nutritional purposes.

Headquarters Ruling Letter (HRL) *H121544*, a copy of which was enclosed with your letter, with regard to U.S. Note 4(b), Chapter 98, HTSUS, states that subheadings . . . 9817.00.96 do[es] not cover . . . (iv) medicine or drugs. . . . It further states that there are no rulings on whether a metabolic

disease/disorder or severe food allergies/intolerances are considered a handicap for classification purposes. . . . In all the other CBP rulings regarding classification under heading 9817, the conditions or diseases directly impaired one's physical ability to perform one or more of the major life activities listed. . . . Accordingly, CBP finds that medical foods that provide the nutritional support as part of the dietary management of metabolic disease/disorder or severe food allergy/intolerance are not classifiable under heading 9817, HTSUS. . . . Dietary medical products are classifiable under heading 2106, HTSUS, as food preparations not elsewhere specified or included. Based on the literature, the ingredients, Chapter 22 remarks, and HRL *H121544* remarks, the four Hydra+ products will be classified elsewhere.

The applicable subheading for the cranberry cocktail Hydra+ will be *2106.90.9897*, Harmonized Tariff Schedule of the United States (HTSUS), which provides for food preparations not elsewhere specified or included . . . other . . . other . . . other , , , other . . . containing sugar derived from sugar cone and/or sugar beets.. The general rate of duty will be 6.4 percent ad valorem

The applicable subheading for the other three Hydra+ products will be *2106.90.9898*, HTSUS, which provides for food preparations not elsewhere specified or included . . . other . . . other . . . other , , , other . . . other. The general rate of duty will be 6.4 percent ad valorem.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Bruce N. Hadley, Jr. at [bruce.hadleyjr@cbp.dhs.gov](mailto:bruce.hadleyjr@cbp.dhs.gov).

*Sincerely,*

STEVEN A. MACK

*Director*

*National Commodity Specialist Division*

## ATTACHMENT C

HQ H303137  
OT:RR:CTF:FTM H303137 PJG  
CATEGORY: Classification  
TARIFF NO.: 2202.99.24, 2202.99.90

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

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

DEAR MR. PETERSON:

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

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

**FACTS:**

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

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

CBP classified the four products in heading 2106, HTSUS, because it determined that the product is not potable due to its thickness, it is a dietary medical product, and it has a dosage form.<sup>1</sup> Specifically, CBP classified the Cranberry Cocktail Hydra+ in subheading 2106.90.9897, HTSUSA, which provides for “Food preparations not elsewhere specified or included: Other: Other: Other: Other: Other: Other: Other: Other: Containing sugar

<sup>1</sup> We note that in NY N301921 and NY N301923, physical samples were not submitted to CBP along with the request for a ruling.



derived from sugar cane and/or sugar beets,” and the Lemon Water Hydra+, Apple Hydra+, and Orange Hydra+ in subheading 2106.90.9898, HTSUSA, which provides for “Food preparations not elsewhere specified or included: Other: Other: Other: Other: Other: Other: Other: Other: Other: Other.”

In NY N301921, CBP considered the classification of a product known as “Milk Beverage Hydra+,” which was described in the ruling as follows:

The product is known as “Milk Beverage Hydra+,” and is said to contain milk, amidon pureflo, sugar, and disodium phosphate. This Hydra+ product is a specially-thickened liquid which is designed for consumption by persons suffering from dysphagia, a chronic health condition which makes it difficult for a person to swallow. Because of the added thickener, this liquid does not have a normal consistency, but is thicker with the consistencies of nectar and honey. It is available in one-liter packages, with a suggested serving size of 4 ounces, and in single-serve packages of 118 ml.

For the same reasons discussed in NY N301923, CBP classified the product in heading 2106, HTSUS, and specifically under subheading 2106.90.9897, HTSUSA. On February 26, 2019, you filed a request for reconsideration of NY N301921 and NY N301923, opining that the products at issue should be classified as flavored waters of heading 2202, HTSUS. Ingredients lists and product literature on Hydra+ products accompanied your request. We note that while all of the products are composed primarily of filtered water with various additives and amidon pureflo (a starch-based thickener), the “Milk Beverage Hydra+” is composed primarily of milk and amidon pureflo.

You also submitted samples of each of the subject products, in addition to the “Peach Cocktail Hydra+,” in the nectar and honey consistency for our consideration.<sup>2</sup> We have disposed of the samples due to their perishable nature.

#### **ISSUE:**

What is the proper classification under the HTSUS for the subject merchandise?

#### **LAW AND ANALYSIS:**

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

The 2019 HTSUS provisions under consideration are as follows:

<b>2106</b>	Food preparations not elsewhere specified or included:
<b>2202</b>	Waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavored, and other nonalcoholic beverages, not including fruit or vegetable juices of heading 2009:

<sup>2</sup> We are not classifying the “Peach Cocktail Hydra+” in this ruling.

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

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

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

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

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

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

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

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

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

This group includes, *inter alia*:

- (1) **Sweetened or flavoured mineral waters** (natural or artificial).
- (2) **Beverages such as lemonade, orangeade, cola**, consisting of ordinary drinking water, sweetened or not, flavoured with fruit juices or essences, or compound extracts, to which citric acid or

tartaric acid are sometimes added. They are often aerated with carbon dioxide gas, and are generally presented in bottles or other airtight containers.

\* \* \*

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

This group includes, *inter alia*:

\* \* \*

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

\* \* \*

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

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

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

of an infant”). Your submissions and your website<sup>3</sup> indicate that the instant products are designed to provide patients with hydration and nutrition, but unlike infant formula, there is no indication that these drinks are designed to be a vital or primary source of nutrition for individuals with dysplasia.

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

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

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

## **HOLDING:**

Under the authority of GRIs 1 and 6 the nectar and honey consistencies of the Lemon Water Hydra+, Cranberry Cocktail Hydra+, Apple Hydra+, and Orange Hydra+ are classified under heading 2202, HTSUS, and specifically in subheading 2202.99.90, HTSUS, which provides for “Waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavored, and other nonalcoholic beverages, not including fruit or vegetable juices of heading 2009: Other: Other.” The 2019 column one, general rate of duty is 0.2¢/liter.<sup>5</sup>

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

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

<sup>5</sup> Subheading 2202.99.90, HSTUS, cross-references subheading 9903.88.03, HTSUS.

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

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

**EFFECT ON OTHER RULINGS:**

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

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

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

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

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**PROPOSED REVOCATION OF ONE RULING LETTER AND  
REVOCATION OF TREATMENT RELATING TO THE  
COUNTRY OF ORIGIN OF CERTAIN LAMINATED FABRICS**

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

**ACTION:** Notice of proposed revocation of one ruling letter and revocation of treatment relating to the tariff classification of certain laminated fabrics.

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

**DATE:** Comments must be received on or before November 1, 2019.

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

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

**SUPPLEMENTARY INFORMATION:**

**BACKGROUND**

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

Pursuant to 19 U.S.C. § 1625(c)(1), this notice advises interested parties that CBP is proposing to revoke one ruling letter pertaining to the tariff classification of certain laminated fabrics. Although in this notice, CBP is specifically referring to Headquarters Ruling Letter ("HQ") H192977, dated March 15, 2012 (Attachment A), this notice also covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the comment period.

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

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

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

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke HQ H192977 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed HQ H267054, set forth as Attachment B to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: September 6, 2019

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

Attachments

## ATTACHMENT A

March 15, 2012

HQ H192977

CLA-2 OT:RR:CTF:TCM H192977 MG

CATEGORY: Marking

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

RE: Country of origin determination of certain laminated fabrics

DEAR MR. SINGER:

This is in response to your correspondence, dated August 30, 2011, on behalf of your client Louver-Lite (Canada) Limited, requesting a country of origin determination for four laminated fabrics to be used for the manufacture of window blinds.

The fabrics were previously classified in heading 5407, of the Harmonized Tariff Schedule of the United States, in New York Ruling (NY) N183004, dated September 30, 2011. Sample swatches and corresponding specification sheets of all four laminated fabrics were included in this request.

**FACTS:**

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

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

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

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

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

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

**ISSUE:**

What is the country of origin of the laminated fabrics?



**LAW AND ANALYSIS:**

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

(b) Principles

(1) In general

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

\* \* \* \* \*

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

The face fabrics of the instant merchandise are woven in China or India. The fabrics are subsequently laminated in England. CBP has previously determined that lamination is not a fabric-making process. *See* Headquarters Ruling Letter (“HQ”) 968229, dated July 18, 2006. Accordingly, the lamination process does not impact the country of origin under 19 U.S.C. §3592(b)(1)(C). The country of origin is thus the country in which the face fabric of each style fabric is woven. Pursuant to 19 U.S.C. §3592(b)(1)(C) the country of origin for Styles Savoy and Taffeta is China and for the Styles Luna and Dahlia it is India.

**HOLDING:**

Under 19 U.S.C. §3592(b)(1)(C), the country of origin for the Styles Savoy and Taffeta is China and for the Styles Luna and Dahlia it is India, the respective countries in which the face fabric was woven.

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,*

IEVA K. O’ROURKE,

*Chief*

*Tariff Classification and Marking Branch*

## ATTACHMENT B

HQ H267054  
OT:RR:CTF:FTM H267054 TSM  
CATEGORY: Marking

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

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

DEAR MR. SINGER:

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

**FACTS:**

HQ H192977, describes the subject merchandise as follows:

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

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

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

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

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

Based on the information submitted, the greige fabrics are sent to England, where they are printed, laminated together with the adhesive film, treated with a non-visible coating, trimmed and cut to width into long

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

rectangular pieces of fabric with right angled corners. The fabrics are then wound onto rolls for export into the United States for the manufacture of window blinds.

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

**ISSUE:**

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

**LAW AND ANALYSIS:**

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

(b) Principles

(1) In general

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The country of origin of textile and apparel products is determined by the sequential application of paragraphs (c)(1) through (c)(5) of Section 102.21. Paragraph (c)(1) provides that “[t]he country of origin of a textile or apparel product is the single country, territory or insular possession in which the good was wholly obtained or produced.” The components comprising the fabrics at issue were produced in several different countries: the face fabrics were woven in China or India, depending on the style, the backings were woven in Pakistan, and the ethylene vinyl acetate adhesive multi-layer film was made in Italy. The components were then assembled together in England. Therefore, the origin of the finished fabrics cannot be determined by reference to paragraph (c)(1).

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

HTSUS	Tariff Shift and/or Other Requirement
5407–5408	<ol style="list-style-type: none"> <li>(1) A change from greige fabric of heading 5407 through 5408 to finished fabric of heading 5407 through 5408 by both dyeing and printing when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing; or</li> <li>(2) If the country of origin cannot be determined under (1) above, a change to heading 5407 through 5408 from any heading outside that group, provided that the change is the result of a fabric-making process.</li> </ol>

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

In addition, the second portion of the rule is not satisfied, because there is no change to heading 5407 through 5408 from any heading outside that group. The fabrics at issue are classified in heading 5407. Moreover, the fabrics at issue also did not undergo a “fabric-making process” within the meaning of 19 C.F.R. § 102.21, which provides in relevant part that a fabric-making process is any manufacturing operation that begins with polymers, fibers, filaments (including strips), yarns, twine, cordage, rope, or fabric strips and results in a textile fabric. The bonded laminated fabrics at issue here consist of face fabrics, woven in China or India, depending on the style, and backings, woven in Pakistan. The face fabrics and backings are laminated together in England. The fabric-making process occurred in two different countries, China and Pakistan or India and Pakistan, where the face fabrics and backings were woven. In HQ 968229, lamination of a single fabric with a GORE-TEX® membrane was not regarded as fabric-making process and therefore was found to not impact the country of origin under 19 U.S.C. § 3592(b)(1)(C). Therefore, in HQ 968229 the country of origin was found to be the country in which the “fabric-making process” of the single fabric occurred, specifically the country in which the fabric was woven. The fabrics at issue here, however, are different from the fabric at issue in HQ 968229, in that they are composed of two fabrics in addition to the adhesive film. Since the two fabrics underwent the “fabric-making process” in different countries, we find that the country of origin of the laminated fabrics cannot be determined pursuant to 19 C.F.R. § 102.211(c)(2), implementing 19 U.S.C. § 3592(b)(1)(C). Thus, we must turn to 19 C.F.R. § 102.211(c)(3) to determine the country of origin.

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

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

**HOLDING:**

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

**EFFECT ON OTHER RULINGS:**

HQ H192977, dated March 15, 2012, is hereby REVOKED.

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

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

## 19 CFR PART 177

### REVOCACTION OF ONE RULING LETTER AND REVOCACTION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF WOOD FENCE POST BRACKET ASSEMBLY

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

**ACTION:** Notice of revocation of one ruling letter and of revocation of treatment relating to the tariff classification of a wood fence post bracket assembly.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking one ruling letter concerning tariff classification of a wood fence post bracket assembly under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 53, No. 12, on April 24, 2019. One comment was received in response to that notice.

**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after December 2, 2019.

**FOR FURTHER INFORMATION CONTACT:** Michele A. Boyd, Chemicals, Petroleum, Metals and Miscellaneous Classification Branch, Regulations and Rulings, Office of Trade, at (202) 325–0136.

#### SUPPLEMENTARY INFORMATION:

##### BACKGROUND

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

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

Pursuant to 19 U.S.C. § 1625(c)(1), a notice was published in the *Customs Bulletin*, Vol. 53, No. 12, on April 24, 2019, proposing to revoke one ruling letter pertaining to the tariff classification of a wood fence post bracket assembly. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

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

In New York Ruling Letter ("NY") L83439, dated March 25, 2019, CBP classified a wood fence post bracket assembly in heading 7326, HTSUS, specifically in subheading 7326.90.8587, HTSUSA (Annotated), which provides for "Other articles of iron or steel: Other: Other: Other: Other...Other." CBP has reviewed NY L83439 and has determined the ruling letter to be in error. It is now CBP's position that the wood fence post bracket assembly is properly classified, in heading 7318, HTSUS, specifically in subheading 7318.15.5090, HTSUSA, which provides for "Screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter pins, washers (including spring washers) and similar articles. Of iron or steel: threaded articles: Other screws and bolts, whether or not with the nuts or washers: Studs: Other: Other."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY L83439 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter ("HQ") H268650, 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: September 18, 2019

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

*Attachment*

HQ H268650

September 18, 2019

OT:RR:CTF:CPMM H268650 MAB

CATEGORY: Classification

TARIFF NO.: 7318.15.5090

MR. ANURAG CHOPRA  
MARATHON TOOLS, INC.  
10432 BALLS FORD ROAD, #300  
MANASSAS, VIRGINIA 20109

RE: Revocation of NY L83439; Classification of wood fence post bracket assembly

DEAR MR. CHOPRA:

On March 25, 2005, U.S. Customs and Border Protection (CBP) issued New York Ruling Letter (“NY”) L83439 to you on behalf of Marathon Tools, Inc., classifying a wood fence post bracket assembly in heading 7326 of the Harmonized Tariff Schedule of the United States (HTSUS). After reviewing NY L83439, we have found that ruling to be in error with respect to the tariff classification.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke NY L83439 was published on April 24, 2019, in Volume 53, Number 12, of the *Customs Bulletin*. One comment was received in response to this Notice, and is addressed in the ruling below.

**FACTS:**

The merchandise at issue is a wood fence post bracket assembly. The item is used to support a live wire on an electrified fence. It is composed of a wood fence post bracket, a corresponding locknut, and a bobbin.

The wood fence post bracket is an L-shaped, zinc-plated, steel rod measuring approximately three-eighths (3/8) of an inch in diameter and eight (8) inches in length. One end of the rod has coarse (wood screw) threading and a sharp point, which is designed to screw into a wood fence post or a tree. The rod is bent at an approximate right angle roughly six (6) inches from the point. The opposite end of the rod is not pointed and has fine (machine screw) threading to accommodate the locknut. The net weight of the wood fence post bracket is approximately 112 grams. The locknut is made of zinc-plated steel and an injection molded nylon insert. It is designed to hold the plastic bobbin in place when torqued onto the fine thread of the wood fence post bracket. The net weight of the locknut is approximately 11 grams. The insulator bobbin is made of injection molded plastic. It measures approximately one and three-fifths (1–3/5) inches in diameter and one (1) inch in width. When in use, fence wire passes through the bobbin’s groove. The net weight of the insulator bobbin is approximately 20.26 grams.

In NY L83439, CBP classified the instant wood fence post bracket assembly in heading 7326, HTSUS, which provides for “Other articles of iron or steel.”<sup>1</sup>

<sup>1</sup> When this ruling was issued in 2005, CBP classified the instant merchandise in subheading 7326.90.8587, HTSUSA (Annotated) (2005). However, this subheading has been replaced by 7326.90.8688, HTSUSA (2018), and provides for “Other articles of iron or steel: Other: Other: Other: Other..Other.”

**ISSUE:**

Whether the wood fence post bracket assembly is considered “Other articles of plastics and other materials of heading 3901 to 3914” of heading 3926, HTSUS, or “Screws, bolts, nuts...and similar articles, of iron and steel” of heading 7318, HTSUS, or “Other articles of iron or steel” of heading 7326, 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.

GRI 3 provides, in pertinent part, that when goods are *prima facie*, classifiable under two or more headings, classification shall be effected by the following:

(a) [t]he heading which provides the most specific heading shall be preferred to headings providing a more general description. However, ... when two or more headings each refer to part only of the items in a set, those headings are to be regarded as equally specific, even if one of them gives a more complete or precise description of the goods. (b) ... 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 ... (c) [w]hen goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

The 2018 HTSUS provisions under consideration are as follows:

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

\*\*\*\*\*

7318 Screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter pins, washers (including spring washers) and similar articles, of iron or steel:

\*\*\*\*\*

7326 Other articles of iron or steel:

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

Explanatory Note VII to GRI 3(b) states that:

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

In NY L83439, CBP classified the instant wood fence post bracket assembly in heading 7326, HTSUS, by application of GRI 1. However, we find the analysis used for classifying the instant article is incorrect. The wood fence post bracket assembly is a composite good consisting of different components (i.e., the wood fence post bracket made of steel with corresponding locknut and plastic bobbin), each of which, if imported separately, would be classifiable under different tariff headings. Accordingly, we find that the classification of this product should be determined on the basis of GRI 3(b) or 3(c) and not GRI 1.

Thus, we will first consider the correct classification of the wood fence post bracket made of steel with corresponding locknut.

Heading 7326, HTSUS, covers a wide range of iron or steel articles that are not more specifically provided for elsewhere in the HTSUS, whereas heading 7318 provides for more specific articles. In particular, subheading 7318.15.50, HTSUS, provides for threaded studs made of iron or steel, whether or not with their nuts or washers.

The definition of a stud was addressed in Informed Compliance Publication (ICP) “What Every Member of The Trade Community Should Know About: Fasteners of Heading 7318” (April 2012). CBP defined a stud as “a threaded fastener with one end anchored or fixed in place to provide a projection to which something may be attached by a nut or other fastener.” *Id.* at 11.

It is our determination that the wood fence post bracket made of steel in the instant case meets the definition of a stud as described in the aforementioned ICP. One end of the bracket (or rod) has coarse (wood screw) threading and a sharp point which is designed to screw into a wood fence post or a tree. The opposite end of the bracket (or rod) is not pointed and has fine (machine screw) threading to accommodate the locknut and bobbin. Therefore, the instant wood fence post bracket made of steel is classified in heading 7318, HTSUS, and specifically in subheading 7318.15.50, HTSUS, as “Screws, bolts, nut,...and similar articles, of iron or steel: Threaded articles: Other screws and bolts, whether or not with their nuts or washers: Studs.” Because the instant wood fence post bracket made of steel is described more specifically in another heading, it is not classified in heading 7326, HTSUS.

We note that in N265109, dated June 12, 2015, CBP classified a similar wood fence post bracket and corresponding locknut made of steel in heading 7318, HTSUS, and specifically in subheading 7318.15.50, HTSUS.<sup>2</sup> We concur with this classification.

The fact that the instant L-shaped rod is bent at a right angle does not preclude its classification as a stud in heading 7318, HTSUS. In N059835, dated May 20, 2009, CBP classified a threaded steel foundation rod with a right angle bend at one end in heading 7318, HTSUS, and specifically in subheading 7318.15.50, HTSUS.

In NY G81864, dated September 11, 2000, CBP classified a steel extension bracket for an electric fence in subheading 7326.90.85, HTSUS. This L-shaped bracket measured eight (8) inches long by three (3) inches wide and had a plastic clip at its tip to fold an electric wire six (6) inches from the fence post. Although it served a similar function, we note that this article differed

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<sup>2</sup> We note the only difference between NY L83439 and N265109 is that in the former ruling the wood fence post bracket with corresponding locknut included a plastic bobbin, whereas in the latter ruling the wood fence post bracket with corresponding locknut did not.

significantly from the instant merchandise because it did not meet the definition of a stud of heading 7318, HTSUS.

In regard to the classification of the plastic bobbin, it falls under chapter 39 (“Plastics and Articles Thereof”), and is classified in heading 3926, HTSUS, as “Other articles of plastic...” Specifically, it is classified in subheading 3926.90.9996, HTSUSA, as “Other articles of plastics...Other: Other...Other.”<sup>3</sup> (See NY N170381, dated June 20, 2011, classifying plastic bobbins from China in subheading 3926.90.99, HTSUS.)

According to GRI 3(b), composite goods consisting of different materials or made up of different components shall be classified as if they consisted of the material or component which gives them their essential character. Although the GRIs do not provide a definition of “essential character,” EN (VIII) of GRI 3(b) provides guidance. According to this EN, the essential character may 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.

Based on a physical examination of the instant article and information provided by the importer, the steel rod and locknut predominate by weight, bulk, and value over the plastic insulator bobbin. However, the plastic bobbin performs an essential role of holding a live wire on an electrified fence.

In Headquarters Ruling Letter (HQ) H013681, dated June 27, 2008, CBP classified screw and anchor sets comprised of plastic anchors and steel screws in heading 7318, HTSUS, by application of GRI 3(c). CBP noted that the plastic anchors expand and grip the surface of a wall as the screw is tightened. The anchors provide strength and stability, which reinforce the set’s ability to support and mount heavy items. However, without the mounting capability of the screw, the anchor could not function. Although the effectiveness of the set would be greatly reduced without the anchor, standing alone, the screw has the independent ability to mount or fasten articles to a wall. CBP determined that both the screw and anchor were equally essential in performing the primary purpose of the set, and accordingly, neither imparted the essential character.

We find the rationale CBP employed in HQ H013681 to be persuasive in determining the instant case. (See also HQ 953095, dated April 15, 1993, NY I83699, dated June 25, 2002, and NY I84859, dated August 8, 2002; these rulings reflect CBP’s consistent classification of substantially similar screw/anchor kits under heading 7318, HTSUS.)

It is therefore our view that neither component of the instant wood fence post bracket assembly imparts the essential character of the subject merchandise. The plastic bobbin performs the role of holding and insulating the electrified wire, while the steel stud and locknut perform the role of securely mounting the bobbin to a fence or tree. Although the bobbin is the only component that comes in physical contact with the wire, it could not perform its intended function without the strength and support provided by the stud and locknut. Although the stud and locknut make up the greater weight, bulk, and value, without the bobbin, the stud alone cannot carry out the specific activity or function of supporting a live wire on an electrified fence.

<sup>3</sup> In NY L83439, dated March 25, 2005, the applicable subheading for the plastic bobbin was 3926.90.98, HTSUS; as of 2018, this subheading has been changed at the eight-digit level to 3926.90.99, HTSUS.

Thus, CBP regards the stud with locknut and the bobbin to be equally essential to the use of the article. Accordingly, GRI 3(b) is not applicable and we must turn to GRI 3(c).

GRI 3(c) provides that when goods cannot be classified by reference to GRI 3(a) or 3(b), they are to be classified in the heading that occurs last in numerical order among those which equally merit consideration. If imported separately, the stud and locknut would be classified together in heading 7318, HTSUS, while the plastic bobbin would be classified in heading 3926, HTSUS. Consequently, by application of GRI 3(c), we find that the correct classification of wood fence post bracket assembly is under heading 7318, HTSUS, as, “[s]crews, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter pins, washers (including spring washers) and similar articles of iron or steel.”

The comment received in response to this notice agrees that we reached the correct classification of the wood fence post bracket assembly but suggests that we include GRI 2(b) in our analysis due to the multiple materials under consideration. GRI 2(b) states in pertinent part that the classification of goods consisting of more than one material or substance shall be according to the principles of GRI 3. As described above, the two components of the wood fence post bracket assembly are the plastic bobbin and the steel stud and locknut. We therefore agree with the commenter that GRI 2(b) should be included in our analysis as it directs us to apply GRI 3.

#### **HOLDING:**

By application of GRIs 1, 2(b) and 3(c), the wood fence post bracket assembly is classified in heading 7318, HTSUS. Specifically, it is provided for in subheading 7318.15.5090, HTSUSA, which provides for: “Screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter pins, washers (including spring washers) and similar articles. Of iron or steel: Threaded articles: Other screws and bolts, whether or not with the nuts or washers: Studs: Other: Other.” The column one, general rate of duty is *Free*.

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


The merchandise in question may be subject to antidumping duties or countervailing duties (AD/CVD). We note that the International Trade Administration in the Department of Commerce is not necessarily bound by a country of origin or classification determination issued by CBP, with regard to the scope of antidumping or countervailing duty orders. Written decisions regarding the scope of AD/CVD orders are issued by the International Trade Administration and are separate from tariff classification and origin rulings issued by CBP. The International Trade Administration can be contacted at <http://www.trade.gov/ia/>. A list of current AD/CVD investigations at the United States International Trade Commission can be viewed on its website at <http://www.usitc.gov>. AD/CVD cash deposit and liquidation messages can be searched using ACE, the system of record for AD/CVD messages, or the AD/CVD Search tool at <http://adcevdt.cbp.gov/index.asp?ac=home>.

#### **EFFECT ON OTHER RULINGS:**

NY L83439, dated March 25, 2005, 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*



**ACCREDITATION AND APPROVAL OF AMSPEC LLC  
(CHRISTIANSTED, ST. CROIX, USVI) AS A COMMERCIAL  
GAUGER AND LABORATORY**

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

**ACTION:** Notice of accreditation and approval of AmSpec LLC (Christiansted, St. Croix, USVI), as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given, pursuant to CBP regulations, that AmSpec LLC (Christiansted, St. Croix, USVI), has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of June 5, 2019.

**DATES:** AmSpec LLC (Christiansted, St. Croix, USVI) was approved and accredited as a commercial gauger and laboratory as of June 5, 2019. The next triennial inspection date will be scheduled for June 2022.

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

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that AmSpec LLC, 9010 East Cottage, Suite 3, Christiansted, St. Croix, USVI 00820, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. AmSpec LLC (Christiansted, St. Croix, USVI) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

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

AmSpec LLC (Christiansted, St. Croix, USVI) is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. American Society for Testing and Customs and Border Protection Materials (ASTM):

CBPL No.	ASTM	Title
27-01 .....	D 287	Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method).
27-02 .....	D 1298	Standard Test Method for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method.
27-03 .....	D 4006	Standard Test Method for Water in Crude Oil by Distillation.
27-04 .....	D 95	Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation.
27-05 .....	D 4928	Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration.
27-06 .....	D 473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27-08 .....	D 86	Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure.
27-11 .....	D 445	Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and Calculation of Dynamic Viscosity).
27-13 .....	D 4294	Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry.
27-14 .....	D 2622	Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry.
27-48 .....	D 4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.
27-50 .....	D 93	Standard Test Methods for Flash-Point by Pensky-Martens Closed Cup Tester.
27-53 .....	D 2709	Standard Test Method for Water and Sediment in Middle Distillate Fuels by Centrifuge.



CBPL No.	ASTM	Title
27-57 .....	D 7039	Standard Test Method for Sulfur in Gasoline and Diesel Fuel by Monochromatic Wavelength Dispersive X-Ray Fluorescence Spectrometry.
27-58 .....	D 5191	Standard Test Method for Vapor Pressure of Petroleum Products (Mini Method).
N/A .....	D 97	Standard Test Method for Pour Point of Petroleum Products.
N/A .....	D 130	Standard Test Method for Corrosiveness to Copper from Petroleum Products by Copper Strip Test.
N/A .....	D 381	Standard Test Method for Gum Content in Fuels by Jet Evaporation.
N/A .....	D 525	Standard Test Method for Oxidation Stability of Gasoline (Induction Period Method).
N/A .....	D 1160	Standard Test Method for Distillation of Petroleum Products and Reduced Pressure.
N/A .....	D 1319	Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Adsorption.
N/A .....	D 2500	Standard Test Method for Cloud Point of Petroleum Products and Liquid Fuels.
N/A .....	D 3606	Standard Test Method for Determination of Benzene and Toluene in Finished Motor and Aviation Gasoline by Gas Chromatography.
N/A .....	D 5769	Determination of Benzene, Toluene, and Total Aromatics in Finished Gasolines by Gas Chromatography/ Mass Spectrometry.
N/A .....	D 7671	Standard Test Method for Corrosiveness to Silver by Automotive Spark-Ignition Engine Fuel-Silver Strip Method.

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

Dated: September 5, 2019.

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

**REQUIREMENT FOR CERTIFICATES OF EXPORT FOR  
IMPORTATIONS OF STEEL PRODUCTS OF THE  
REPUBLIC OF KOREA**

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

**ACTION:** General notice.

**SUMMARY:** This document provides notice that importations into the United States of steel products of the Republic of Korea subject to absolute quota limits must be presented with valid and properly executed certificates of exportation.

**DATES:** Certificates of exportation for importations into the United States of steel products of the Republic of Korea subject to absolute quota limits are required for such products entered, or withdrawn from warehouse, for consumption on or after October 18, 2019.

**FOR FURTHER INFORMATION CONTACT:** Julia Peterson, Quota and Agriculture Branch, Trade Policy and Programs, (202) 384-8905, [HQQQUOTA@cbp.dhs.gov](mailto:HQQQUOTA@cbp.dhs.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

Absolute quotas are established by Presidential proclamations, Executive orders, and legislative enactments. *See* section 132.2(a) of title 19 of the Code of Federal Regulations (19 CFR 132.2(a)). On April 30, 2018, President Donald J. Trump signed Proclamation 9740 (83 FR 20683) imposing, among other things, absolute quota limits on certain steel products of the Republic of Korea, pursuant to U.S. Note 16(e), subchapter III, Chapter 99, Harmonized Tariff Schedule of the United States (HTSUS), and subheadings 9903.80.05 through 9903.80.58, HTSUS. Subsequently, on September 4, 2019, President Trump signed Proclamation 9777 (83 FR 45025), wherein clause 7 provides that where a government of a country identified in the superior text to subheadings 9903.80.05 through 9903.80.58, HTSUS, notifies the United States that it has established a mechanism for the certification of exports to the products covered by the quantitative limitations applicable to those subheadings, U.S. Customs and Border Protection (CBP) may require that importers of these products furnish relevant certification of export information in order to qualify for the treatment set forth in those subheadings. If CBP adopts such a requirement, clause 7 to Proclamation 9777 requires that CBP shall

publish in the **Federal Register** notice of the requirement and procedures for the submission of relevant certification of export information. Moreover, clause 7 to Proclamation 9777 mandates that no article that is subject to the export certification requirement announced in such a notice may be entered for consumption, or withdrawn from warehouse for consumption, on or after the effective date specified in such a notice, except upon presentation of a valid and properly executed certification of export.

The Republic of Korea is a government of a country identified in the superior text to subheadings 9903.80.05 through 9903.80.58, HTSUS. Furthermore, the Republic of Korea has notified the United States that it has established a mechanism for the certification of exports to the products covered by the quantitative limitations applicable to these subheadings, specifically in the form of official certificates of exportation issued by the Korea Iron and Steel Association, as authorized by the Republic of Korea. This document provides notice that CBP will require valid and properly executed certificates of exportation for importations into the United States of steel products of the Republic of Korea covered by the quantitative limitations applicable to subheadings 9903.80.05 through 9903.80.58, HTSUS, that are entered, or withdrawn from warehouse, for consumption on or after October 18, 2019. The subject importations will not be released unless the entry summaries are accompanied by valid and properly executed certificates of exportation, as described in this notice.

Importers are advised that only exporters may obtain valid and properly executed certificates of exportation, which exporters may apply for online via the website for the Korea Iron and Steel Association (<http://sq.kosa.or.kr/>). Importers should obtain these certificates of exportation from exporters and submit them to CBP with the entry summaries filed for their importations. For entries filed through ACE, additional guidance on the submission of the certificates of export is available in a draft portion of the CBP and Trade Automated Interface Requirements (CATAIR) for entry summary filings (specifically, within the draft chapter designated as the AE CAT-AIR), regarding the record entitled Importer's Additional Declaration Detail (<https://www.cbp.gov/trade/ace/catair>).

Dated: September 11, 2019.

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

**AGENCY INFORMATION COLLECTION ACTIVITIES:****321 E-Commerce Data Pilot**

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

**ACTION:** 60-Day notice and request for comments; new collection of information.

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

**DATES:** Comments are encouraged and must be submitted (no later than November 12, 2019) to be assured of consideration.

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

*Email.* Submit comments to: [CBP\\_PRA@cbp.dhs.gov](mailto:CBP_PRA@cbp.dhs.gov).

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

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

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

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

### **Overview of This Information Collection**

**Title:** 321 E-Commerce Data Pilot.

**OMB Number:** 1651-NEW.

**Form Number:** N/A.

**Current Actions:** This submission is being made to obtain an OMB control number for this Information Collection Request and to expand the respondent group of the recent 321 Data Pilot test notice on July 23, 2019 (84 FR 35405) which was limited to nine respondents.

**Type of Review:** New.

**Affected Public:** Businesses.

**Abstract:** CBP faces significant challenges in targeting Section 321 shipments, while still maintaining the clearance speeds the private sector has come to expect. This is because CBP does not receive adequate advance information in order to effectively and efficiently assess the security risk of the approximately 1.8 million Section 321 shipments that arrive each day. This pilot is conducted pursuant to 19 CFR 101.9(a), which authorizes the Commissioner to impose requirements different from those specified in the CBP regulations for the purposes of conducting a test program or procedure designed to evaluate the effectiveness of new technology or operational procedures regarding the processing of passengers, vessels, or merchandise.

In the e-commerce environment, traditionally regulated parties, such as carriers, are unlikely to possess all of the information relating to a shipment's supply chain. While CBP receives some advance electronic data for Section 321 shipments from air, rail, and truck carriers (and certain other parties in limited circumstances) as man-

dated by current regulations, the transmitted data often does not adequately identify the entity causing the shipment to cross the border, the final recipient, or the contents of the package. Consequently, CBP may not receive any advance information on the entity actually causing the shipment to travel to the United States, such as the seller or manufacturer. Some carriers may not have this information because sellers on e-commerce platforms often contract with other entities to act as the seller. Similarly, for the consignee's name and address, a carrier might transmit information for the domestic deconsolidator, which will not allow CBP to identify in advance of arrival, the final recipient of the merchandise in the United States. With the growth of e-commerce, shipments are increasingly subject to these complex transactions, where information about the shipment is limited. As a result, CBP is less able to effectively target or identify high-risk shipments in the e-commerce environment and CBP Officers must use additional time and resources to inspect Section 321 shipments upon arrival.

CBP anticipates that Section 321 shipments will continue to grow quickly. Accordingly, CBP is initiating this voluntary Section 321 Data Pilot to test the feasibility of obtaining advance information from regulated and non-regulated entities, such as online marketplaces, as well as requiring additional advance data elements. This test will enable CBP to assess the ability of online marketplaces to transmit information to CBP that enables CBP to better use resources used in inspecting and processing these shipments and better understand the operation of online marketplaces. Additionally, CBP is testing whether the transmission of additional advance data, beyond the data elements currently required for shipments arriving by air, truck, or rail, will enable CBP to more accurately and efficiently target Section 321 shipments. Pursuant to this test, participants will provide information that identifies the entity causing the shipment to cross the border, the ultimate recipient, and the product in the shipment with greater specificity, in advance. CBP will test the feasibility of using the additional data elements, transmitted by multiple entities for a single shipment, to segment risk. In sum, the pilot will enable CBP to determine if requiring additional data and involving non-regulated entities will enable CBP to address the threats and complexities resulting from the vast increase in Section 321 shipments, while facilitating cross-border e-commerce.

Participants in the Section 321 Data Pilot must transmit certain information for any Section 321 shipments destined for the United States for which the participant has information. The required data

elements differ slightly depending on what entity is transmitting the data. In general, the required data relates to the entity initiating the shipment (*e.g.*, the entity causing the shipment to cross the border, such as the seller, manufacturer, or shipper), the product in the package, the listed marketplace price, and the final recipient (*e.g.*, the final entity to possess the shipment in the United States). The data elements are as follow.

1. All participants. All participants, regardless of filer type, must electronically transmit the following elements:

- Originator Code of the Participant (assigned by CBP)
- Participant Filer Type (*e.g.*, carrier or online marketplace)
  - One or more of the following:
    - Shipment Tracking Number
    - House Bill Number
- Master Bill Number
- Mode of Transportation (*e.g.*, air, truck, rail, or ocean)

2. Participating carriers. In addition to the data elements listed above in paragraph 1, participating carriers must also electronically transmit the following data elements:

- Shipment Initiator Name and Address (*e.g.*, the entity that causes the movement of a shipment, which may be a seller, shipper, or manufacturer, but not a foreign consolidator)
- Final Deliver to Party Name and Address (*e.g.*, the final entity to receive the shipment once it arrives in the United States, which may be a final purchaser or a warehouse, but not a domestic deconsolidator)
- Enhanced Product Description (*e.g.*, a description of a product shipped to the United States more detailed than the description on the manifest, which should, if applicable, reflect the advertised retail description of the product as listed on an online marketplace)
- Shipment Security Scan (air carriers only) (*e.g.*, verification that a foreign security scan for the shipment has been completed such as an x-ray image or other security screening report)
- Known Carrier Customer Flag (*e.g.*, an indicator that identifies a shipper as a repeat customer that has consistently paid all required fees and does not have any known trade violations)

3. Participating online marketplaces. In addition to the data elements listed above in paragraph 1, participating online marketplaces must electronically submit the following data elements:

- Seller Name and Address (*e.g.*, an international or domestic company that sells products on marketplaces and other websites), and, if applicable, Shipment Initiator Name and Address (as defined in Section II.A.2)
- Final Deliver to Party Name and Address (as defined in Section II.A.2)
- Known Marketplace Seller Flag (*e.g.*, an indicator provided by a marketplace that identifies a seller as an entity vetted by the marketplace and has no known trade violations)
- Marketplace Seller Account Number/Seller ID (*e.g.*, the unique identifier a marketplace assigns to sellers)
- Buyer Name and Address, if applicable (*e.g.*, the purchaser of a good from an online marketplace. This entity is not always the same as the final deliver to party.)
- Product Picture (*e.g.*, picture of the product presented on an online marketplace), Link to Product Listing (*e.g.*, an active and direct link to the listing of a specific product on an online marketplace), or Enhanced Product Description (as defined in Section II.A.2)
- Listed Price on Marketplace (*e.g.*, the retail price of a product that a seller lists while advertising on an online marketplace. For auction marketplaces, this price is the price of final sale.)

Different entities may transmit different data elements for the same shipment. In addition to the above required data elements, participants may voluntarily provide the following optional data elements:

- HTS Number;
- Retail Price in Export Country;
- Shipper Name;
- Shipper Address;
- Shipper Phone Number;
- Shipper Email Address;
- Shipment Initiator Phone Number;



- Consignee Name;
- Consignee Address;
- Consignee Phone Number;
- Consignee Email Address;
- Marketplace Name;
- Buyer Account Number;
- Buyer Address;
- Seller Phone Number;
- Buyer Phone Number;
- Marketplace Website;
- Buyer Name;
- Buyer Confirmation Number;
- Buyer Email Address;
- Carrier Name;
- Known Carrier Customer;
- Merchandise/Product Weight; and,
- Merchandise/Product Quantity.
- Listed Price on Marketplace

**Estimated Number of Respondents:** 20.

**Estimated Number of Annual Responses per Respondent:** 70,000.

**Estimated Number of Total Annual Responses:** 1,400,000.

**Estimated Time per Response:** 5 seconds.

**Estimated Total Annual Burden Hours:** 1,944.

Dated: September 9, 2019.

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*Economic Impact Analysis Branch,*  
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