

U.S. Customs and Border Protection



REVOCATION OF THREE RULING LETTERS, MODIFICATION OF ONE RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF CERTAIN STEP STOOLS

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

ACTION: Notice of revocation of three ruling letters, modification of one ruling letter and revocation of treatment relating to the tariff classification of one-step step stools.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking three ruling letters, and modifying one ruling letter concerning the tariff classification of certain one-step step stools 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. 56, No. 11, on March 23, 2022. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after December 18, 2022

FOR FURTHER INFORMATION CONTACT: Karen S. Greene, Chemicals, Petroleum, Metals & Miscellaneous Branch, Regulations and Rulings, Office of Trade, at Karen.S.Greene@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with information concerning the

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

Pursuant to 19 U.S.C. § 1625(c)(1), this notice advises interested parties that CBP is revoking three ruling letters and modifying one ruling letter pertaining to the tariff classification of one-step step stools. Although in this notice, CBP is specifically referring to New York Ruling Letters (NY) N294603, dated March 2, 2018, NY N196451, dated December 27, 2011, NY M84487, dated June 27, 2006, and NY N235681, dated December 5, 2012, 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. Pursuant to 19 U.S.C. § 1625(c)(1), a notice was published in the *Customs Bulletin*, Vol. 56, No. 11, on March 23, 2022, proposing to revoke three ruling letters and modify one ruling letter pertaining to the classification of one-step step stools. 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.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY N294603, dated March 2, 2018, NY N196451, dated December 27, 2011, NY M84487, dated June 27, 2006, and modifying NY N235681, dated December 5, 2012, and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in HQ H305377, 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.

Similarly, pursuant to 19 U.S.C. § 1625(c)(2), CBP proposed to revoke any treatment previously accorded by CBP to substantially identical transactions. 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 after the effective date of the final decision on this notice.

In NY N294603 and NY N196451, U.S. Customs & Border Protection (CBP) classified a plastic one-step step stool in subheading 9401.80, HTSUS, which provides for “Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof: Other seats: Of rubber or plastics.”

In NY N235681, CBP classified, amongst other items, a one-step step stool for children made of MDF in subheading 9401.69.80, HTSUS, which provides for “Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof: Other seats, with wooden frames: Other.”

In NY M84487, CBP classified a one-step step stool for children made of wood in subheading 9403.60.80, HTSUS, which provides for “Other furniture and parts thereof: Other wooden furniture: Other.”

We have reviewed NY N294603, NY N196451, NY M84487, and NY N235681, and determined that the rulings are in error.

It is now CBP’s position that a one-step step stool is classified according to its constituent material in heading 3924, if made of plastics or in heading 4421, if made of wood. Accordingly, pursuant to GRI’s 1 and 6, the plastic one-step step stools in NY N294603 and NY N196451 are classified in subheading 3924.90.56, which provides for “Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics: Other: Other”. The one-step step stool made of MDF in NY N235681 and the wooden step stool in NY M84487 are classified in subheading 4421.99.97, which provides for “Other articles of wood: Other: Other: Other: Other”.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY N294603, NY N196451, NY M84487, and modifying NY N235681, and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in HQ H305377, 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*.

ANDREW LANGREICH
for

YULIYA A. GULIS,
Director

Commercial and Trade Facilitation Division

HQ H305377

October 4, 2022

OT:RR:CTF:CPMMA H305377 KSG

CATEGORY: Classification

TARIFF NO.: 3924.90.56; 4421.99.97

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CANADA

AARON CULLEN
CVS IMPORT CLIENT LIAISON
BARTHCO INTERNATIONAL, DIVISION OF OHL
ONE CVS DRIVE
WOONSOCKET, RI 02895

RE: Revocation of NY N294603, NY N196451 and NY M84487 and modification of NY N235681; tariff classification of one-step step stools

DEAR Ms. ALDINGER, Mr. FLADAGER, Mr. FELDSTEIN AND Mr. CULLEN:

This letter is in reference to New York Ruling Letters (NY) N294603, dated March 2, 2018, NY N196451, dated December 27, 2011, NY M84487, dated June 27, 2006, and NY N235681, dated December 5, 2012, regarding the classification of one-step step stools in the Harmonized Tariff Schedule of the United States (HTSUS).

In NY N294603 and NY N196451, U.S. Customs & Border Protection (CBP) classified a plastic one-step step stool in subheading 9401.80, HTSUS, which provides for “Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof: Other seats: Of rubber or plastics.”

In NY N235681, CBP classified, amongst other items, a one-step step stool for children made of MDF in subheading 9401.69.80, HTSUS, which provides for “Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof: Other seats, with wooden frames: Other.”

In NY M84487, CBP classified a one-step step stool for children made of wood in subheading 9403.60.80, HTSUS, which provides for “Other furniture and parts thereof: Other wooden furniture: Other.”

We have reviewed NY N294603, NY N196451, NY M84487, and NY N235681, and determined that the rulings are in error. Accordingly, for the reasons set forth below, CBP is revoking NY N294603, NY N196451 and NY M84487 and modifying NY N235681.

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 N294603, NY N196451, NY M84487, and to modify NY N235681 was published on March 23, 2022, in Volume 56, Number 11 of the Customs Bulletin. No comments were received in response to the notice.

FACTS:

The one-step stool classified in NY N294603 is described as a step stool made of high-density plastic with slip resistant dots on the top of the stool to provide sure footing.

The one-step step stool classified in NY N196451 is described as a folding step stool made of plastic. It is collapsible and features a carrying handle.

The one-step step stool for children classified in NY M84487 is described as made of wood.

The one-step step stool classified in NY N235681 is described as a children's step stool made of MDF. The other articles classified in NY N235681 are not affected by this modification.

ISSUE:

Whether the one-step step stools are properly classified in heading 9401 as seats, in heading 9403 as other furniture or classified according to their constituent material in heading 3924 or in heading 4421.

LAW AND ANALYSIS:

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

GRI 6 provides that for legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related Subheading Notes and, *mutatis mutandis*, to the above Rules, on the understanding that only subheadings at the same level are comparable. For the purposes of this Rule the relative Section and Chapter Notes also apply, unless the context otherwise requires.

The HTSUS headings under consideration are the following:

- 3924 Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics:
- 4421 Other articles of wood:
- 9401 Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof:
- 9403 Other furniture and parts thereof:

Both Chapters 39 and 44 exclude by chapter note articles of furniture of chapter 94 (Chapter 39, Note 2(x), HTSUS, and Chapter 44, Note 1(o)), HTSUS. Therefore, the first issue to address is whether the one step stools

are classified in heading 9401, HTSUS, or heading 9403, HTSUS, and therefore excluded from Chapters 39 and 44, HTSUS.

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

The EN for Chapter 94 provides, in pertinent part:

For the purposes of this Chapter, the term “furniture” means:

(A) Any “movable” articles (**not included** under other more specific headings of the Nomenclature), which have the essential characteristic that they are constructed for placing on the floor or ground, and which are used, mainly with a utilitarian purpose, **to equip private dwellings**, hotels, theatres, cinemas, offices, churches, schools, cafés, restaurants, laboratories, hospitals, dentists’ surgeries, etc., or ships, aircraft, railway coaches, motor vehicles, caravan trailers- or similar means of transport. (It should be noted that, for the purposes of this Chapter, articles are considered to be “movable” furniture even if they are designed for bolting, etc., to the floor, e.g., chairs for use on ships). Similar articles (seats, chairs, etc.) for use in gardens, squares, promenades, etc., are also included in this category. (Emphasis added)

The EN for heading 9401 provides, in pertinent part:

Subject to the exclusions mentioned below, this heading covers all seats (including those for vehicles, provided that they comply with the conditions prescribed in Note 2 to this Chapter), for example :

Lounge chairs, arm-chairs, folding chairs, deck chairs, infants’ high chairs and children’s seats designed to be hung on the back of other seats (including vehicle seats), grandfather chairs, benches, couches (including those with electrical heating), settees, sofas, ottomans and the like, **stools (such as piano stools, draughtsman’s stools, typists’ stools, and dual purpose stool-steps)**, seats which incorporate a sound system and are suitable for use with video game consoles and machines, television or satellite receivers, as well as with DVD, music CD, MP3 or video cassette players. (Emphasis added)

The heading **does not**, however, **include**:

(f) Stools and foot-stools (whether or not rocking) designed to rest the feet, baby walkers, and linen and similar chests having a subsidiary use as seats (**heading 94.03**).

The EN for heading 9403 provides, in pertinent part:

The heading includes furniture for:

(1) Private dwellings, hotels, etc., such as: cabinets, linen chests, bread chests, log chests; chests of drawers, tallboys; pedestals, plant stands; dressing tables-; pedestal tables; wardrobes, linen presses; hall stands, umbrella stands; sideboards, dressers, cupboards; -food safes-; bedside tables; beds (including wardrobe beds, camp beds-, folding beds, cots,

etc.); needlework tables; **stools and foot-stools** (whether or not rocking) **designed to rest the feet**, fire screens; draught screens-; pedestal ash-trays; music cabinets, music stands or desks; play-pens; serving trolleys (whether or not fitted with a hot plate). (Emphasis added)

CBP addressed the classification of step stools with two or more steps in Headquarters Ruling Letter (HQ) H202595, dated March 19, 2018. In the HQ ruling, CBP revoked six ruling letters and classified multi-step step stools by their constituent material rather than as furniture in heading 9403, HTSUS. CBP determined in HQ H202595 that multi-step step stools are not used to equip private dwellings; they were determined to be more like ladders. CBP noted in HQ H202595 that “One might be able to sit on the step stools, but only for a short period of time and not comfortably.” CBP found that the step stools were not akin to any of the exemplars listed in EN 9403 and that a step was akin to a rung of a ladder. Similarly, the one-step stools are also not used to equip private dwellings, and are not a seat or foot stool.

Heading 9401 covers seats. The EN for Heading 9401, in describing types of seats included within the heading, describes stools that are used as a seat such as piano stools, draughtsman’s stools, typists’ stools, and dual-purpose stool-steps. The types of stools listed in the exemplar are all either round or shaped for use as seating. As discussed above, the one-step step stools are not shaped for use as seating or otherwise designed to be used as seats. The low height of the one-step stool alone renders it not very functional as a seat. The step stools are not similar to the exemplars listed in the EN for Heading 9401. Further, there is nothing about these step stools that would indicate a dual purpose. The stools would not be comfortable to sit on for more than a short period of time. Slip resistant dots or treads are a further indication that a one-step step stool is designed to solidly stand on rather than to be used as a seat.

Heading 9403 includes other furniture such as stools and foot stools. The instant step stools do not equip or furnish a private dwelling. The step stool does not share in the characteristics of furniture used to equip a private dwelling for rest, relaxation, storage or display. The step stools are not designed to rest the feet. The one-step step stools are not similar to any of the exemplars listed in the EN for Heading 9403. The one-step step stools are designed to elevate a standing person in order to reach something or perform a task at a greater height. After the task is accomplished, the step stool is designed to be carried (by its handle) and stored when not in use. The one-step step stool is more akin to a rung of a ladder in its utilitarian function. Therefore, we find that the one-step step stool is not properly classified in either Heading 9401, HTSUS or in Heading 9403, HTSUS.

In New York (NY) I89058, dated December 24, 2002, and in NY 803257, dated November 18, 1994, plastic one-step step stools were classified in subheading 3924.90.55, HTSUS (now subheading 3924.90.56, HTSUS). Consistent with those rulings, the one-step plastic step stools in NY N294603 and NY N196451 are classified according to GRI 1 in heading 3924 and in accordance with GRI 6, in subheading 3924.90.56 as other household articles, of plastics.

In NY I86724, dated October 25, 2002, a wooden one-step stool was classified in subheading 4421.90.97, HTSUS (now subheading 4421.99.97). In NY N310648, dated March 25, 2020, a wooden one-step stool designed for a child to stand and reach a countertop was classified in subheading 4421.99.97, HTSUS. Consistent with those rulings, the one-step step stool made of MDF

in NY N235681 and the wooden step stool in NY M84487 are classified in heading 4421 and in accordance with GRI 6, in subheading 4421.99.97 as other articles of wood.

HOLDING:

Pursuant to GRI's 1 and 6, the plastic one-step step stools in NY N294603 and NY N196451 are classified according to GRI 1 in heading 3924 and in accordance with GRI 6, in subheading 3924.90.56, which provides for "Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics: Other: Other". The column one, general rate of duty is 3.4% ad valorem. The one-step step stool made of MDF in NY N235681 and the wooden step stool in NY M84487 are classified in heading 4421 and in accordance with GRI 6, in subheading 4421.99.97, which provides for "Other articles of wood: Other: Other: Other: Other". The column one, general rate of duty is 3.3% ad valorem.

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

EFFECT ON OTHER RULINGS:

NY N294603, NY N196451 and NY M84487 are revoked and NY N235681 is modified in accordance with the above analysis.

Sincerely,

ANDREW LANGREICH

for

YULIYA A. GULIS,

Director

Commercial and Trade Facilitation Division

cc: NIS Dharmendra Lilia, NIS Sandra Carlson, NIS Kristopher Burton and NIS Seth Mazze, NCSD

**PROPOSED MODIFICATION OF ONE RULING LETTER
AND PROPOSED REVOCATION OF TREATMENT
RELATING TO THE TARIFF CLASSIFICATION OF PAPER
FACE MASKS**

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

ACTION: Notice of proposed modification of one ruling letter and proposed revocation of treatment relating to the tariff classification of paper face masks.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to modify one ruling letter concerning tariff classification of paper face masks 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 18, 2022.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Erin Frey, Commercial and Trade Facilitation Division, 90 K St., NE, 10th Floor, Washington, DC 20229–1177. Due to the COVID-19 pandemic, CBP is also allowing commenters to submit electronic comments to the following email address: 1625Comments@cbp.dhs.gov. All comments should reference the title of the proposed notice at issue and the *Customs Bulletin* volume, number and date of publication. Due to the relevant COVID-19-related restrictions, CBP has limited its on-site public inspection of public comments to 1625 notices. Arrangements to inspect submitted comments should be made in advance by calling Ms. Erin Frey at (202) 325–1757.

FOR FURTHER INFORMATION CONTACT: Ms. Arim J. Kim, Chemicals, Petroleum, Metals and Miscellaneous Articles Branch, Regulations and Rulings, Office of Trade, at (202) 325–0266.

SUPPLEMENTARY INFORMATION:**BACKGROUND**

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

Pursuant to 19 U.S.C. § 1625(c)(1), this notice advises interested parties that CBP is proposing to modify one ruling letter pertaining to the tariff classification of paper face masks. Although in this notice, CBP is specifically referring to Headquarters Ruling Letter (HQ) 088173, dated March 26, 1991 (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 088173, CBP classified paper face masks, if imported separately, in heading 4818, HTSUS, specifically in subheading 4818.50.00, HTSUS, which provides for "Toilet paper and similar paper, cellulose wadding or webs of cellulose fibers, of a kind used for household or sanitary purposes, in rolls of a width not exceeding 36 cm, or cut to size or shape; handkerchiefs, cleansing tissues, towels,

tablecloths, table napkins, bed sheets and similar household, sanitary or hospital articles, articles of apparel and clothing accessories, of paper pulp, paper, cellulose wadding or webs of cellulose fibers: Articles of apparel and clothing accessories”. CBP has reviewed HQ 088173 and has determined the ruling letter to be in error. It is now CBP’s position that if imported separately, paper face masks are properly classified in heading 4818, HTSUS, specifically in subheading 4818.90.00, HTSUS, which provides for “Toilet paper and similar paper, cellulose wadding or webs of cellulose fibers, of a kind used for household or sanitary purposes, in rolls of a width not exceeding 36 cm, or cut to size or shape; handkerchiefs, cleansing tissues, towels, tablecloths, table napkins, bed sheets and similar household, sanitary or hospital articles, articles of apparel and clothing accessories, of paper pulp, paper, cellulose wadding or webs of cellulose fibers: Other”.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to modify HQ 088173 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed HQ H311239, 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.

GREGORY CONNOR,
Acting Director
Commercial and Trade Facilitation Division

Attachments

HQ 088173

March 26, 1991

CLA-2 CO:R:C:T 088173 JS

CATEGORY: Classification

TARIFF NO.: 6210.10.4010

CAMERON MURPHY
IC SYSTEMS LTD.
P.O. BOX 3853
VANCOUVER, B.C.
CANADA V6B 3Z3

RE: Disposable Protection Kit; Classifiable Subheading 6210.10.4010

DEAR MR. MURPHY:

This is in response to your letter of November 6, 1990, requesting classification of a disposable protection kit under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA).

FACTS:

The sample provided for our inspection is contained in a cardboard box printed with the following:

DISPOSABLE PROTECTION KIT

A self-contained kit containing protective apparel for use by individuals who may be exposed to blood and bodily fluid spills.

The sides of the box list the various articles contained therein. These include a Tyvek protection suit, one pair of latex gloves, two Tecno masks and a large plastic bag for solid waste.

Literature which was enclosed with your request also identifies the Disposable Protection Kit as a "compact single-use unit which contains the necessary components to protect you...from potentially infectious blood and body fluids," and further explains that it is designed for personnel in correctional institutions, police departments, detox centers, nursing homes, public and occupational health facilities, and other workplaces where there is a risk of disease transmission.

The Tyvek suit is made of spunbonded olefin fibers manufactured by DuPont in the United States, and then imported into Canada where they are sewn into the completed garment. It has a coverall construction, with a zipper closure along the front length, a collar, and elastic tightening at the ends of the long sleeves and pants legs. There is also an elastic tightening in the waist at the back of the garment. You state that the Tyvek suit comprises 60 percent of the total cost of the kit.

The gloves are seamless and made in Malaysia of an opaque latex material.

A Tecno representative stated that the Tecno High Filtration Iso Mask is made of a lightweight paper pulp. It is specially folded to fan out over and cover the mouth, a construction which is also known as a "surgical mask pleat design." Two stretch loops which fit over the ears are sewn into either side of the mask. The top edge of the mask has a wire insert which can be bent to conform securely over the nose when worn. This product is manufactured in the United States, as is the following mask of the same brand.

The Tecno FluidShield™ surgical mask is said to be made of a wet lay non-woven paper pulp material, which is formed into an outerfacing, a filter media, Loncet™ Breathable Film and innerfacing. The top of this mask has an aluminum wire insert which allows a contour fit, and a plastic visor attachment, called a “splashguard visor,” which protects the eye area.

The red plastic bag measures 76.4 cm x 96.6 cm, and is manufactured in British Columbia, Canada.

ISSUE:

- 1) Is the disposable protection kit “goods put up in sets for retail sale” within the meaning of GRI 3, HTSUSA?
- 2) If considered a set, which item(s) provides the essential character for classification under the HTSUSA?
- 3) Are such products eligible for duty reduction under the United States-Canada Free-Trade Agreement Implementation Act of 1988 (FTA), or, in the alternative, for a duty exemption under subheading 9801.00.10 and/or 9802.00.80, HTSUSA?

LAW AND ANALYSIS:

Classification of merchandise under the HTSUSA is in accordance with the General Rules of Interpretation (GRI), taken in order. GRI 1 provides that the classification shall be determined according to the terms of the headings and any relevant section or chapter notes. Where goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may be applied, taken in order.

GRI 3 states, in pertinent part:

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

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

Since the protection kit at issue consists of, at least, both textile and rubber articles, which are separately provided for in the Nomenclature, GRI 3(b) applies as follows:

- (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.

Explanatory Note X to GRI 3(b) of the HTSUSA, which constitutes the official interpretation of the tariff at the international level, provides, in part:

(X) For the purposes of this Rule, the term “goods put up in sets for retail sale” shall be taken to mean goods which:

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

- (b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and
- (c) are put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or in cases or on boards).

In this case, the items qualify as a set within the meaning of GRI 3. The Tyvek suit, for instance, is classifiable within heading 6210, HTSUSA, as non-woven disposable apparel of textile, and the latex gloves are classified under heading 4015, HTSUSA, which provides for, inter alia, clothing accessories (including gloves) of rubber. The protection kit, therefore, consists of at least two different articles which are classifiable in different headings. Moreover, the kit contains articles which are intended for use during a surgical or emergency procedure to protect against splattering body fluids, and it is packaged in a box, ready to use.

Since the protection kit is a set, and classification of its component parts cannot be made pursuant to GRI 3(a), we must determine the essential character of the set in accordance with GRI 3(b).

Explanatory Note VIII 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 this case, the essential character of the disposable protection kit is not readily apparent. Each component plays a significant role in protecting the wearer from the possibility of contamination in a potentially infectious environment. No single item imparts a unique character to the function of the set as a whole; the exposure of any body part that the set is designed to protect may result in the contamination of the person. For instance, it is equally important that the main body area, protected by the Tyvek suit, as well as the face and hands, protected by the masks and gloves, are covered to prevent contamination. Moreover, none of the factors set out by EN VIII prove determinative when the purpose of the present set is considered.

When, as in the instant case, the component which gives the goods at issue their essential character cannot be determined, classification is ascertained by utilizing GRI 3(c). GRI 3(c) provides:

When 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.

Thus, the competing provisions are as follows:

The Tyvek suit is made of spunbonded olefin fibers, which is classified as a textile fabric. Classification is therefore appropriate under subheading 6210.10.4010, HTSUSA, which provides for garments, made up of fabrics of heading 5602, 5603, 5903, 5906 or 5907: of fabrics of heading 5602 or 5603: other, non-woven disposable apparel designed for use in hospitals, clinics, laboratories or contaminated areas. See, HRL 086972 issued July 12, 1990 (Tyvek is a non-woven fabric of heading 5603 thereby classifiable in heading 6210, HTSUSA).

The Tecno masks are made of paper pulp and as such are classified under subheading 4818.50.0000, HTSUSA, which provides for toilet paper, handkerchiefs, cleansing tissues, towels, tablecloths, table napkins, diapers, tampons, bed sheets and similar household, sanitary or hospital articles, articles

of apparel and clothing accessories, of paper pulp, paper, cellulose wadding or webs of cellulose fibers: articles of apparel and clothing accessories.

The latex gloves are provided for under subheading 4015.11.0000, as articles of apparel and clothing accessories (including gloves), for all purposes, of vulcanized rubber other than hard rubber: gloves: surgical and medical.

The red plastic bag is classified under subheading 3923.21.0090, which provides for articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics: sacks and bags (including cones): of polymers of ethylene, other.

Applying GRI 3(c), the disposable protection kit is classified under heading 6210, HTSUSA, which appears last in numerical order among the competing headings which equally merit consideration.

Certain articles from Canada are eligible for special tariff treatment under the United States-Canada Free Trade Agreement Implementation Act of 1988. Subdivision (vii)(A) provides that “[g]oods originating in...Canada” and imported into the United States may be subject to a different rate of duty set forth in the “Special” subcolumn of the Tariff Schedule. For the purpose of this subdivision, General Note 3(c)(vii)(B) allows consideration of goods as “goods originating in the territory of Canada” if:

(2) they have been transformed in the territory of Canada and/or the United States, so as to be subject—

- (I) to a change in tariff classification as described in the rules of subdivision (c)(vii)(R) of this note, or
- (II) to such other requirements subdivision (c)(vii)(R) of this note may provide when no change in tariff classification occurs, and they meet the other conditions set out in subdivisions (c)(vii)(F),(G),(H),(I),(J) and (R) of this note.

The term “goods,” as used in the provisions above, refers to, in this instance, the Disposable Protection Kits which are imported into the United States from Canada. However, General Note 3(c)(vii)(C) states, in relevant part, that

Goods shall not be considered to originate in the territory of Canada pursuant to subdivision (c)(vii)(B)(2) merely by virtue of having undergone—

- (1) simple packaging, or except as provided by the rules of subdivision (c)(vii)(R) of this note, combining operations

Therefore, since the entire kit, rather than the components individually, constitute the goods in question, and since the goods at issue are the product of simple combining and packaging operations, the Disposable Protection Kit is not eligible as goods originating in the territory of Canada. A duty reduction pursuant to the FTA is therefore inapplicable, and this merchandise will be subject to the “General” rate of duty at 17 percent ad valorem.

There may, however, be duty benefits derived from the applicability of subheading 9801.00.10 and 9802.0080, HTSUS, to certain of the component parts of the set at issue. HTSUS subheading 9801.00.10 provides for the free entry of U.S. products that are exported and returned without having been advanced in value or improved in condition by any means while abroad, provided the documentary requirements of section 10.1, Customs Regulations (19 C.F.R. 10.1), are met. In *Superscope, Inc. v. United States*, 13 CIT , 727 F.Supp. 629 (CIT 1989), the court found that glass panels of U.S. manufacture that were exported, packaged with other components to make unas-

sembled stereo cabinets, and then imported into the U.S. as an entirety were not advanced in value or improved in condition while abroad, but were merely repacked. Therefore, the court held that the glass panels were entitled to duty free entry under item 800.00, Tariff Schedules of the United States (TSUS) (the precursor provision to HTSUSA subheading 9801.00.10).

With regard to the Tecno masks, the operations performed in Canada consist merely of repackaging the U.S. products with the foreign components. Therefore, as the mere packaging of U.S. products with other products does not advance in value or improve in condition the U.S. products, the portion of the protection kit consisting of U.S. products, the Tecno masks, will be eligible for duty exemption under HTSUS subheading 9801.00.10. This assumes that the documentation requirements of 19 C.F.R. 10.1 are met and that the district director of Customs at the port of entry is satisfied of the U.S. origin of each product claimed to be entitled to this duty exemption.

Subheading 9802.00.80, HTSUS, provides a partial duty exemption for:

(a) articles assembled abroad in whole or in part of fabricated components, the product of the United States, which (a) were exported in condition ready for assembly without further fabrication, (b) have not lost their physical identity in such articles by change in form, shape, or otherwise, and (c) have not been advanced in value or improved in condition abroad except by being assembled and except by operations incidental to the assembly process, such as cleaning, lubricating, and painting.

All three requirements of HTSUS subheading 9802.00.80 must be satisfied before a component may receive a duty allowance. An article entered under this tariff provision is subject to duty upon the full cost or value of the imported assembled article, less the cost or value of the U.S. components assembled therein, upon compliance with the documentary requirements of section 10.24, Customs Regulations (19 CFR 10.24).

Section 10.16(a), Customs Regulations (19 CFR 10.16(a)), provides that 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, laminating, sewing, or the use of fasteners.

Operations incidental to the assembly process are not considered further fabrication operations, as they are of a minor nature and cannot always be provided for in advance of the assembly operations. However, any significant process, operation or treatment whose primary purpose is the fabrication, completion, physical or chemical improvement of a component precludes the application of the exemption under HTSUS subheading 9802.00.80 to that component.

With regard to the Tyvek suit, you state that the fabric is manufactured in the U.S. and sewn together in Canada to create the completed garment. Although we have insufficient information to determine definitively whether the suit is entitled to HTSUS subheading 9802.00.80 treatment, if the U.S.-made components are merely subjected to assembly operations and operations incidental to assembly in Canada, then allowances in duty may be under this tariff provision for the cost or value of the U.S.- made components. Eligibility for this partial duty exemption presumes compliance with the documentation requirements of 19 CFR 10.24. For your information, we have enclosed a booklet relating to subheading 9802.00.80, HTSUS.

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin imported into the U.S.

shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article.

The purpose of the marking statute is outlined in *United States v. Friedlander & Co.*, 27 CCPA 297 at 302, C.A.D. 104 I1940), where the court stated that: "Congress intended that the ultimate purchaser should be able to know by an inspection of the marking of the imported goods the country of which the goods is the product. The evident purpose is to mark the goods so that at the time of purchase the ultimate purchaser may, by knowing where the goods were produced, be able to buy or refuse to buy them, if such marking should influence his will."

In a telephone conversation with this office on February 21, 1991, you stated that the Disposable Protection Kit will be packaged and imported in a shrink wrapped cardboard box. A sample of the box is printed as previously noted in the facts; you add that a sticker will be affixed to the bottom of the box at the Canadian border which indicates both the Canadian and American addresses of IC Systems. We note that the present sample has IC Systems' Canadian address printed on the bottom of the box.

Since the present merchandise will be imported in a boxed kit sealed by shrink wrapping, the ultimate purchaser is unable to determine the country of origin of the individual articles contained in the kit. Therefore, marking of the container to indicate the origin of each of the component articles (e.g. gloves - Malaysia) is necessary to satisfy the requirements of Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304). If the box refers to a place name other than the country of origin, the requirements of 19 CFR 134.46 apply. In such case, the name of the country of origin must appear in close proximity to and in comparable size letters as the place name.

HOLDING:

The Disposable Protection Kit is a set, and as such is classified in accordance with GRI 3(c) under subheading 6210.10.4010, HTSUSA, which provides for garments, made up of fabrics of heading 5602, 5603, 5903, 5906 or 5907: of fabrics of heading 5602 or 5603: other, nonwoven disposable apparel designed for use in hospitals, clinics, laboratories or contaminated areas, dutiable at a rate of 17 percent ad valorem.

On the basis of the information and samples provided, it is our opinion that a duty exemption may be claimed under HTSUS subheading 9801.00.10 for the cost or value of the U.S.-made Tecno masks incorporated into the Disposable Protection Kit when the packaged kit is returned to the U.S., pending compliance with the documentary requirements of 19 C.F.R. 10.1. Allowance in duty also may be made under subheading 9802.00.80, HTSUS, for the cost or value of the U.S.-made components that are merely assembled in Canada to create the Tyvek suit, assuming the documentation requirements of 19 CFR 10.24 are met.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, you should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

The holding set forth above applies only to the specific factual situation and merchandise identified in the ruling request. This position is clearly set forth

in Customs Regulations 19 CFR 177.9 (b)(1), which states that a ruling letter is issued on the assumption that all information furnished in connection with the ruling request and incorporated therein, either directly, by reference, or by implication, is accurate and complete in every material respect. Should it be subsequently determined that the information furnished is not complete and does not comply with 19 CFR 177.9(b)(1), the ruling will be subject to modification or revocation. In the event that there is a change in the facts previously furnished, the country of origin determination may be affected. In such case, it is recommended that a new ruling request be submitted in accordance with section 177.2, Customs Regulations (19 CFR 177.2).

Sincerely,

JOHN DURANT,

Director

Commercial Rulings Division

Enclosure

6cc A.D.,N.Y. Seaport

2cc CIE

julie library/peh

HQ H311239
OT:RR:CTF:CPMMA H311239 AJK
CATEGORY: Classification
TARIFF NO.: 4818.90.00; 6210.10.50

MR. CAMERON MURPHY
IC SYSTEMS LTD.
P.O. BOX 3853
VANCOUVER, B.C.
CANADA V6B 3Z3

RE: Modification of HQ 088173; Classification of Paper Face Masks; Modification by Operation of Law

DEAR MR. MURPHY:

This letter is in reference to your Headquarters Ruling Letter (HQ) 088173, dated March 26, 1991, concerning the tariff classification of a disposable protection kit, which contained a Tyvek protection suit, one pair of latex gloves, two Tecnol paper face masks and a large plastic bag for solid waste, under the Harmonized Tariff Schedule of the United States (HTSUS). In HQ 088173, U.S. Customs and Border Protection (CBP) held that because all components of the disposable kit were equally important, the merchandise was classified, under GRI 3(c), based upon the component whose heading occurred last in numerical order, which was the Tyvek protection suit. Accordingly, CBP classified the entire disposable protection kit in the provision for the Tyvek protection suit, which was subheading 6210.10.4010, HTSUSA (Annotated) (1991), which provided for "Garments, made up of fabrics of heading 5602, 5603, 5903, 5906 or 5907: Of fabrics of heading 5602 or 5603: Other: Nonwoven disposable apparel designed for use in hospitals, clinics, laboratories or contaminated areas". In reaching this analysis, CBP classified the Tecnol paper face masks in subheading 4818.50.00, HTSUS, as clothing accessories of paper. We have reviewed the aforementioned ruling and find that the classification determination regarding the paper face masks was incorrect.

In addition to modifying the classification of the paper face masks, the classification of the Tyvek protection suit in HQ 088173 is modified by operation of law. This modification by operation of law is precipitated by the change to subheading 6210.10.40, HTSUS, subsequent to the publication of HQ 088173. In the 1995 Basic Edition of the HTSUS, subheading 6210.10.4010, HTSUSA (1994), was removed and replaced by subheading 6210.10.5000, HTSUSA (1995), which provided for "Garments, made up of fabrics of heading 5602, 5603, 5903, 5906 or 5907: Of fabrics of heading 5602 or 5603: Other: Nonwoven disposable apparel designed for use in hospitals, clinics, laboratories or contaminated areas".¹ In the current version of the HTSUSA, this provision is now found under subheading 6210.10.50, HTSUS. Accordingly, the classification of the Tyvek protection suit is modified by operation of law and is now classified in subheading 6210.10.50, HTSUS.

¹ Although subheading 6210.10.4010, HTSUSA, was removed and replaced by subheading 6210.10.5000, HTSUSA, the text in both numerical subheadings remained the same.

FACTS:

The paper face masks are described in HQ 088173 as follows:

[T]he Tecno High Filtration Iso Mask is made of a lightweight paper pulp. It is specially folded to fan out over and cover the mouth, a construction which is also known as a “surgical mask pleat design.” Two stretch loops which fit over the ears are sewn into either side of the mask. The top edge of the mask has a wire insert which can be bent to conform securely over the nose when worn.

ISSUE:

Whether the paper face masks are classified in subheading 4818.50.00, HTSUS, as clothing accessories of paper, or in subheading 4818.90.00, HTSUS, as other sanitary or hospital paper articles.

LAW AND ANALYSIS:

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

* * * * *

The HTSUS provisions at issue are as follows:

4818	Toilet paper and similar paper, cellulose wadding or webs of cellulose fibers, of a kind used for household or sanitary purposes, in rolls of a width not exceeding 36 cm, or cut to size or shape; handkerchiefs, cleansing tissues, towels, tablecloths, table napkins, bed sheets and similar household, sanitary or hospital articles, articles of apparel and clothing accessories, of paper pulp, paper, cellulose wadding or webs of cellulose fibers:
4818.50.00	Articles of apparel and clothing accessories
4818.90.00	Other

* * * * *

The Harmonized Commodity Description and Coding System (HS) Explanatory Notes (ENs) constitute the official interpretation of the HS. While not legally binding or dispositive, the ENs provide a commentary on the scope of each heading of the HS at the international level, and are generally indicative of the proper interpretation of these headings. See T.D. 89–80, 54 Fed. Reg. 35127 (Aug. 23, 1989).

EN 48.18 provides, in pertinent part, as follows:

This heading covers toilet paper and similar paper, cellulose wadding and webs of cellulose fibres, of a kind used for household or sanitary purposes:

- (1) in strips or rolls of a width not exceeding 36 cm;
- (2) in rectangular (including square) sheets of which no side exceeds 36 cm in the unfolded state;

(3) cut to shape other than rectangular (including square).

It also covers household, sanitary or hospital articles, as well as articles of apparel and clothing accessories, of paper pulp, paper, cellulose wadding or webs of cellulose fibres.

EN 63.07 provides, in pertinent part, as follows:

[This heading] includes, in particular:

...

(22) Textile face-masks of a kind worn by surgeons during operations.

(23) Face-masks for protection against dust, odours, etc., not equipped with a replaceable filter, but consisting of several layers of nonwovens, whether or not treated with activated carbon or having a central layer of synthetic fibres. ...

* * * * *

There is no dispute that paper face masks are classified in heading 4818, HTSUS. The issue herein is whether they are classified at the 6-digit level as clothing accessories of paper in subheading 4818.50.00, HTSUS, or as other sanitary or hospital paper articles in subheading 4818.90.00, HTSUS.

To determine whether the subject paper face masks constitute “clothing accessories of paper” within heading 4818, HTSUS, we must first analyze whether the merchandise is considered an accessory. The term “accessory,” however, is not defined in the HTSUS or ENs. In the absence of a definition of a term in the HTSUS or ENs, the term is construed in accordance with its common and commercial meaning. *See Toyota Motor Sales, Inc. v. United States*, 7 C.I.T. 178, 182 (1984), *aff'd*, 753 F.2d 1061 (Fed. Cir. 1985); *Nippon Kogaku (USA), Inc. v. United States*, 69 C.C.P.A. 89 (1982). Dictionaries and other lexicographic authorities may be utilized to determine a term’s common meaning. *See Mast Indus., Inc. v. United States*, 9 C.I.T. 549 (1985), *aff'd*, 786 F.2d 1144 (Fed. Cir. 1986). Merriam-Webster Dictionary defines “accessory” as “an object or device that is not essential in itself but adds to the beauty, convenience, or effectiveness of something else”. *Accessory*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/accessory> (last visited July 27, 2021). Moreover, CBP has historically defined “clothing accessory” as a non-essential item that is related to clothing, of secondary importance to clothing, and intended solely or principally as an accessory for use with clothing. *See e.g.*, HQ 088540, dated June 3, 1991; HQ 950470, dated Jan. 7, 1992; HQ 963734, dated Mar. 28, 2001; HQ 963874, dated Sept. 18, 2001; HQ H312436, dated Feb. 10, 2021.

The subject paper face masks do not constitute clothing accessories because they are not a class or kind of goods that are principally used to accessorize clothing or that add to the beauty, convenience, or effectiveness of clothing; instead, they are independently used for sanitary purposes. The subject merchandise is generally used to cover the user’s nose and mouth to reduce the user’s outward particle emission and to protect the user against any harmful airborne particulates. Therefore, if imported separately, the paper face masks would be precluded from subheading 4818.50.00, HTSUS, because they are not used for clothing purposes or to accessorize articles of clothing. In fact, whereas articles of apparel and clothing accessories are classified in headings of chapters 61 and 62 within section XI of the HTSUS, face masks that are composed of textile are classified separately in heading

6307, HTSUS, as other made up articles, in accordance with EN 63.07. *See e.g.*, NY 810977, dated June 2, 1995; NY J86722, dated July 22, 2003; NY J86741, dated July 22, 2003; NY N262565, dated Apr. 1, 2015; HQ H313043, dated Oct. 22, 2020. Accordingly, the fact that textile face masks are specifically enumerated as examples of “other made up articles” in EN 63.07 further supports our holding that the subject paper face masks are properly classified in subheading 4818.90.00, HTSUS, as other sanitary paper articles.

HOLDING:

By application of GRI 1, if imported separately, paper face masks, are classified in heading 4818, HTSUS, specifically in subheading 4818.90.00, HTSUS, which provides for “Toilet paper and similar paper, cellulose wadding or webs of cellulose fibers, of a kind used for household or sanitary purposes, in rolls of a width not exceeding 36 cm, or cut to size or shape; handkerchiefs, cleansing tissues, towels, tablecloths, table napkins, bed sheets and similar household, sanitary or hospital articles, articles of apparel and clothing accessories, of paper pulp, paper, cellulose wadding or webs of cellulose fibers: Other”. The 2022 column one, general rate of duty is free.

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

EFFECT ON OTHER RULINGS:

HQ 088173, dated March 26, 1991, is hereby modified to reflect the correct classification of the paper face masks in the disposable protection kit. In addition, the classification of the Tyvek protection suit in HQ 088173 is modified by operation of law.

Sincerely,

GREGORY CONNOR,
Acting Director

Commercial and Trade Facilitation Division

SHIP'S STORES DECLARATION

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

ACTION: 30-Day notice and request for comments; revision of an existing 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 October 31, 2022) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

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, or via email 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 proposed information collection was previously published in the **Federal Register** (87 FR 33179) on June 1, 2022, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. 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: Ship's Stores Declaration.

OMB Number: 1651-0018.

Form Number: CBP Form 1303.

Current Actions: Revision of an existing information collection.

Type of Review: Revision.

Affected Public: Businesses.

Abstract: CBP Form 1303, Ship's Stores Declaration, is used by the carriers to declare articles to be retained on board the vessel, such as sea stores, ship's stores (e.g., alcohol and tobacco products), controlled narcotic drugs or bunker fuel in a format that can be readily audited and checked by CBP. The form was developed as a single international standard ship's stores declaration form to replace the different forms used by various countries for the entrance and clearance of vessels. CBP Form 1303 collects information about the ship, the ports of arrival and departure, and the articles on the ship. This form is provided for by 19 CFR 4.7, 4.7a, 4.81, 4.85 and 4.87 and is accessible at: <https://www.cbp.gov/newsroom/publications/forms?title=1303&=Apply>.

Proposed Change: This form is anticipated to be submitted electronically as part of the maritime forms automation project through the Vessel Entrance and Clearance System (VECS), which will eliminate the need for any paper submission of any vessel entrance or clearance requirements under the above referenced statutes and regulations. VECS will still collect and maintain the same data but will automate the capture of data to reduce or eliminate redundancy with other data collected by CBP.

Type of Information Collection: CBP Form 1303.

Estimated Number of Respondents: 2,624.

Estimated Number of Annual Responses per Respondent: 72.

Estimated Number of Total Annual Responses: 188,928.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 26,000.

Dated: September 27, 2022.

SETH D. RENKEMA,
Branch Chief,
Economic Impact Analysis Branch,
U.S. Customs and Border Protection.

[Published in the Federal Register, September 30, 2022 (85 FR 59447)]

IMPORTERS OF MERCHANDISE SUBJECT TO ACTUAL USE PROVISIONS

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

ACTION: 30-Day notice and request for comments; extension of an existing 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 October 31, 2022) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

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, or via email 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 proposed information collection was previously published in the **Federal Register** (87 FR 29757) on May 16, 2022, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. 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: Importers of Merchandise Subject to Actual Use Provisions.

OMB Number: 1651-0032.

Form Number: N/A.

Current Actions: Extension without change.

Type of Review: Extension (without change).

Affected Public: Businesses.

Abstract: In accordance with 19 CFR 10.137, importers of goods subject to the actual use provisions of the Harmonized Tariff Schedule of the United States (HTSUS) are required to maintain detailed records to establish that these goods were actually used as contemplated by the law, and to support the importer's claim for a free or reduced rate of duty. The importer shall maintain records of use or disposition for a period of three years from the date of liquidation of the entry, and the records shall be available at all times for examination and inspection by CBP.

The collection of information is supplemental to importer information about goods subject to the actual use provisions of the Harmonized Tariff Schedule of the United States (HTSUS) and pursuant to section 10.137 of title 19 of the Code of Federal Regulations (CFR) (19 CFR 10.137).

Importers of goods subject to 19 CFR 10.137 Actual Use Provisions are required to show the imported item/merchandise:

1. Is not on an exclusion list;
2. Complies with provisions of the law; and
3. Meets the required actual use provisions laid out in law.

This information is collected from members of the trade community who are familiar with CBP regulations.

Type of Information Collection: Importers Subject to Actual Use Provision Recordkeeping.

Estimated Number of Respondents: 12,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 12,000.

Estimated Time per Response: 65 minutes.

Estimated Total Annual Burden Hours: 13,000 hours.

Dated: September 27, 2022.

SETH D. RENKEMA,
Branch Chief,
Economic Impact Analysis Branch,
U.S. Customs and Border Protection.

[Published in the Federal Register, September 30, 2022 (85 FR 59447)]

CUSTOMS-TRADE PARTNERSHIP AGAINST TERRORISM (CTPAT) AND CTPAT TRADE COMPLIANCE PROGRAM

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

ACTION: 30-Day notice and request for comments; revision of an existing 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 3, 2022 to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

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. 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 proposed information collection was previously published in the **Federal Register** (87 FR 12473) on March 04, 2022, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. 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: Customs-Trade Partnership Against Terrorism (CTPAT) and CTPAT Trade Compliance Program.

OMB Number: 1651-0077.

Form Number: N/A.

Current Actions: Revision of an existing information collection.

Type of Review: Revision.

Affected Public: Businesses.

Abstract: The CTPAT Program comprises of two different program divisions, CTPAT Security and CTPAT Trade Compliance. The CTPAT Security program is designed to safeguard the world's trade industry from terrorists and smugglers by prescreening its participants. The CTPAT Security program applies to United States and nonresident Canadian importers, United States exporters, customs brokers, consolidators, ports and terminal operators, carriers of cargo in air, sea and land, third party logistics providers, Mexican long haul highway carriers, and Canadian and Mexican manufacturers. The Trade Compliance program division is only available for U.S. and nonresident Canadian importers.

The CTPAT Program application requests an applicant's contact and business information, including the number of company employees, the number of years in business, and a list of company officers. CBP is adding the following data elements for all CTPAT partners to improve the screening of companies. This will ensure that CBP is confident that companies in the program are low risk:

- Date of Birth (DOB)
- Country of Birth
- Country of Citizenship

- Travel Document number (*e.g.*, visa or passport number)
- Immigration status information (*e.g.*, Alien Registration Number, Naturalization number)
- Driver's license information (*e.g.*, state and country of issuance, number, date of issuance/expiration)
- Social Security Number
- Trusted Traveler membership type and number (*e.g.*, FAST/NEXUS/ SENTRI/Global Entry ID)
- Registro Federal de Contribuyentes (RFC) Persona Fisica (needed for Mexican Foreign Manufacturers, Highway Carriers, and Long-Haul Carriers Only)

This collection of information is authorized by the SAFE Port Act (Pub. L. 109–347).

The CTPAT Trade Compliance program is an optional component of the CTPAT program and adds trade compliance aspects to the supply chain security aspects of the CTPAT Security program. The CTPAT Security program is a prerequisite to applying to the CTPAT Trade Compliance program. Current CTPAT importers are given the opportunity to receive additional benefits in exchange for a commitment to assume responsibility for monitoring their own compliance by applying to the CTPAT Trade Compliance program. After a company has completed the security aspects of the CTPAT Security program and is in good standing, it may opt to apply to the CTPAT Trade Compliance component. The CTPAT Trade Compliance program strengthens security by leveraging the CTPAT supply chain requirements, identifying low-risk trade entities for supply chain security, and increasing the overall efficiency of trade by segmenting risk and processing by account.

The CTPAT Trade Compliance program is open to U.S. and non-resident Canadian importers that have satisfied both the CTPAT supply chain security and trade compliance requirements.

The CTPAT Trade Compliance program application includes questions about the following:

- Primary Point of Contact including name, title, email address, and phone number
- Business information including Company Name, Company Address, Company phone number, Company website, Company type (private or public), CBP Bond information, Importer of Record Number, and number of employees
- Information about the applicant's Supply Chain Security Profile
- Trade Compliance Profile and Internal Control Operating Procedures of the applicant
- Broker information

- Training material for Supply Chain Security and Trade Compliance
- Risk Assessment documentation and results
- Period testing documentation and results
- Prior disclosure history
- Partner Government Agency affiliation information

After an importer obtains CTPAT Trade Compliance membership, the importer will be required to submit an Annual Notification Letter to CBP confirming that they are continuing to meet the requirements of the program. This letter should include: personnel changes that impact the CTPAT Trade Compliance program; organizational and procedural changes; a summary of risk assessment and self-testing results; a summary of post-entry amendments and/or disclosures made to CBP; and any importer activity changes within the last 12-month period.

Type of Information Collection: CTPAT Application.

Estimated Number of Respondents: 750.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 750.

Estimated Time per Response: 20 hours.

Estimated Total Annual Burden Hours: 15,000.

Type of Information Collection: CTPAT Trade Compliance Application.

Estimated Number of Respondents: 50.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 50.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 100.

Type of Information Collection: CTPAT Trade Compliance Program's Annual Notification Letter.

Estimated Number of Respondents: 50.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 50.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 100.

Dated: September 27, 2022.

SETH D. RENKEMA,
Branch Chief,
Economic Impact Analysis Branch,
U.S. Customs and Border Protection.

[Published in the Federal Register, October 4, 2022 (85 FR 60185)]

**COPYRIGHT, TRADEMARK, AND TRADE NAME
RECORDATIONS
(NO. 09 2022)**

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

SUMMARY: The following copyrights, trademarks, and trade names were recorded with U.S. Customs and Border Protection in September 2022. A total of 168 recordation applications were approved, consisting of 3 copyrights and 165 trademarks.

Corrections or updates may be sent to: Intellectual Property Enforcement Branch, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, 90 K Street, NE., 10th Floor, Washington, D.C. 20229-1177, or via email at iprrquestions@cbp.dhs.gov.

FOR FURTHER INFORMATION CONTACT: Zachary Ewing, Paralegal Specialist, Intellectual Property Enforcement Branch, Regulations and Rulings, Office of Trade at (202) 325-0295.

ALAINA VAN HORN

Chief,

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

CBP IPR RECORDATION — SEPTEMBER 2022

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tm	Owner Name	GM Restricted
COP 22-00041	1/26/2022	1/26/2042	ANIMAL CROSSING amiibo CARDS - SERIES 4.	Nintendo of America Inc.	No
COP 22-00042	9/19/2022	9/19/2042	Titania Fairy Wings.	Angela Maria Jarman	No
COP 22-00044	9/21/2022	9/21/2042	David Yurman 1993 Collection	Yurman Designs, Inc	No
TMK 16-00360	4/4/2016	3/7/2024	COVER GIRL	NOXELL CORPORATION	No
TMK 02-00879	4/4/2022	7/24/2032	WOLVERINE	WOLVERINE OUTDOORS, INC.	No
TMK 04-00228	4/4/2022	2/20/2032	BOTOX	Allergan, Inc. CORPORATION	No
TMK 17-00494	4/8/2022	6/13/2032	E TYPE	JAGUAR LAND ROVER LIMITED PRIVATE COMPANY UNITED KINGDOM	No
TMK 19-00080	5/24/2022	5/28/2032	POLYSTAR	ROBROY ENCLOSURES, INC.	No
TMK 19-00503	6/21/2022	8/1/2032	PENN COLOR	Penn Color Inc.	No
TMK 07-00774	6/23/2022	11/5/2022	ON and Design	Semiconductor Components Industries, L.L.C.	No
TMK 17-01014	7/7/2022	12/18/2032	LEE KUM KEE HONG KONG & DESIGN	LEE KUM KEE COMPANY LIMITED COMPANY HONG KONG	No
TMK 22-00575	7/25/2022	6/25/2032	SEAMASTER	Omega SA (Omega AG) (Omega Ltd.)	No
TMK 22-00821	7/27/2022	8/25/2032	BROTHER (Stylized)	Brother Industries, Ltd.	No
TMK 22-00829	7/28/2022	8/22/2032	BAO BAO ISSEY MIYAKE (Stylized)	Kabushiki Kaisha Miyake Design Jimusho dba Miyake Design Studio	No
TMK 12-01238	8/10/2022	11/28/2032	SCENE SETTERS	Party City Holdings, Inc.	No
TMK 22-00709	8/26/2022	9/29/2031	CORRALE	Dyson Technology Limited	No
TMK 22-00712	8/26/2022	9/6/2027	SUPERSONIC	Dyson Research Limited	No
TMK 16-00784	8/30/2022	6/6/2032	FUJIFILM	FUJIFILM Corporation	No
TMK 22-00711	8/30/2022	6/29/2032	VOXZOGO	Biomarin Pharmaceutical Inc.	No
TMK 16-00087	8/31/2022	1/6/2032	HINDS	HINDS PRODUCTS, LLC	No
TMK 22-00710	8/31/2022	3/21/2024	DUTCH BLITZ	Dutch Blitz Acquisition Corporation	No

CBP IPR RECORDATION — SEPTEMBER 2022

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tm/Tm	Owner Name	G/M Restricted
TMK 16-01503	9/1/2022	9/2/2032	SPOT SHOT & DESIGN	Heartland Corporation	No
TMK 22-00717	9/1/2022	11/17/2024	PURPLE NAIL FILING MACHINE	KUPA, INC.	No
TMK 22-00715	9/2/2022	12/29/2030	BODAQ	Grudnyskiy, Victor	No
TMK 20-00044	9/2/2022	9/11/2032	C IAPMO & DESIGN	International Association of Plumbing and Mechanical Officials	No
TMK 22-00716	9/2/2022	11/25/2030	BODAQ	Grudnyskiy, Victor	No
TMK 22-00714	9/5/2022	3/14/2032	IPONATIC (STYLIZED)	Sansure Biotech Inc., China	No
TMK 22-00718	9/6/2022	8/24/2032	HUMMER (STYLIZED)	General Motors LLC	No
TMK 11-01352	9/6/2022	9/9/2032	SCOPEMETER	Fluke Corporation	No
TMK 22-00719	9/6/2022	7/5/2032	HUMMER H EV (STYLIZED)	General Motors LLC	No
TMK 22-00720	9/6/2022	10/17/2022	HUMMER	General Motors LLC	No
TMK 22-00713	9/6/2022	12/6/2032	LINEMAN	Microtech Knives, Inc.	No
TMK 22-00721	9/7/2022	8/24/2032	HUMMER	General Motors LLC	No
TMK 16-00653	9/7/2022	11/28/2032	DESIGN OF PRED	FIFTH THIRD BANK, AS COLLATERAL AGENT	No
TMK 22-00723	9/7/2022	7/9/2031	VERSACE	GIANNI VERSACE S.P.A.	No
TMK 22-00725	9/7/2022	9/30/2030	VERSACE	GIANNI VERSACE S.R.L. ITALY	No
TMK 22-00724	9/7/2022	8/5/2032	NJ & DESIGN	NEW JERSEY DEVILS LLC	No
TMK 16-00656	9/7/2022	9/16/2032	Detroit Red Wings winged wheel logo	Detroit Red Wings, Inc.	No
TMK 22-00722	9/7/2022	7/1/2032	P & DESIGN	Philadelphia Flyers, L.P.	No
TMK 16-00654	9/7/2022	9/16/2032	NY ISLANDERS & DESIGN	NEW YORK ISLANDERS HOCKEY CLUB, LP	No
TMK 22-00726	9/7/2022	10/1/2023	LITTLE SWIMMERS	Kimberly-Clark Worldwide, Inc.	No
TMK 22-00727	9/7/2022	5/28/2025	GOODNITES	Kimberly-Clark Worldwide, Inc.	No
TMK 03-00934	9/7/2022	9/9/2032	MOTOR HARLEY-DAVIDSON CYCLES & DESIGN	H-D MICHIGAN INC.	No

CBP IPR RECORDATION — SEPTEMBER 2022

Recordation No.	Effective Date	Expiration Date	Name of Cop/TmK/TmM	Owner Name	G/M Restricted
TMK 22-00728	9/7/2022	11/3/2023	KOTEX	Kimberly-Clark Worldwide, Inc.	No
TMK 22-00729	9/8/2022	6/7/2027	NAVY VE/TERAN	The Department of the Navy	No
TMK 22-00732	9/8/2022	11/1/2027	UNITED STATES NAVY & DESIGN	The Department of the Navy	No
TMK 22-00730	9/8/2022	8/2/2027	UNITED STATES NAVY & DESIGN	The Department of the Navy	No
TMK 22-00731	9/8/2022	9/17/2027	UNITED STATES NAVY Emblem Design	The Department of the Navy FEDERAL AGENCY UNITED STATES	No
TMK 22-00733	9/8/2022	8/25/2030	Design of electrical connectors	KING TECHNOLOGY OF MISSOURI, LLC	No
TMK 22-00734	9/8/2022	4/30/2028	UNITED STATES NAVY Emblem Design	The Department of the Navy	No
TMK 22-00739	9/8/2022	11/30/2032	GLOCK	Glock, Inc.	No
TMK 22-00735	9/8/2022	6/3/2030	AMERICA'S NAVY	The Department of the Navy	No
TMK 22-00737	9/8/2022	12/9/2024	BLUE ANGELS	Office of Naval Research	No
TMK 22-00736	9/8/2022	1/19/2032	DESIGN OF EAGLE	The Department of the Navy	No
TMK 22-00738	9/8/2022	8/26/2025	NAVAL AIR TRAINING COMMAND BLUE ANGELS & DESIGN	Office of Naval Research	No
TMK 22-00740	9/8/2022	11/30/2032	GLOCK (STYLIZED)	Glock, Inc.	No
TMK 20-00882	9/8/2022	9/26/2032	BOWLUS	Open Think Inc.	No
TMK 20-00886	9/8/2022	9/26/2032	BOWLUS ROAD CHIEF	Open Think Inc.	No
TMK 22-00745	9/9/2022	8/15/2032	CLASSIC	SPECIALTY SURGICAL INSTRUMENTATION INC.	No
TMK 22-00744	9/9/2022	6/12/2031	BOSCH	ROBERT BOSCH GMBH	No
TMK 22-00771	9/9/2022	5/5/2023	MAKE YOUR MARK	Sellmark Corporation	No
TMK 22-00747	9/9/2022	5/1/2031	FIREFIELD and Design	Sellmark Corporation	No
TMK 22-00748	9/9/2022	9/18/2029	BATTLETEK	Sellmark Corporation	No
TMK 22-00751	9/9/2022	2/9/2032	BULLETSAFE	Sellmark Corporation	No
TMK 22-00757	9/9/2022	3/12/2027	BATTLE READY TOOLS	Emissive Energy Corporation	No

CBP IPR RECORDATION — SEPTEMBER 2022

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tm/Trm	Owner Name	G/M Restricted
TMK 22-00752	9/9/2022	8/24/2032	WRAITH	Sellmark Corporation	No
TMK 22-00743	9/9/2022	4/5/2031	Configuration of Travel Trailer	Open Think Inc.	No
TMK 22-00741	9/9/2022	11/30/2032	GLOCK	Glock, Inc.	No
TMK 22-00758	9/9/2022	9/16/2029	OWN THE NIGHT	Emissive Energy Corporation	No
TMK 22-00760	9/9/2022	9/9/2032	GLOCK	Glock, Inc.	No
TMK 22-00754	9/9/2022	6/2/2031	WILD2	Emissive Energy Corporation	No
TMK 22-00746	9/9/2022	8/24/2032	FIREFIELD	Sellmark Corporation	No
TMK 11-00988	9/9/2022	9/9/2032	BARBIE	MATEL, INC.	No
TMK 22-00183	9/9/2022	6/17/2032	SY40	MCCONWAY & TORLEY, LLC	No
TMK 04-00927	9/9/2022	6/26/2032	SHREK	DREAMWORKS ANIMATION L.L.C.	No
TMK 12-00341	9/9/2022	7/3/2032	LEAF	Nissan Jidosha Kabushiki Kaisha DBA Nissan Motor Co., Ltd. CORPORATION JAPAN	No
TMK 08-00519	9/9/2022	6/12/2032	TOSHIBA	Kabushiki Kaisha Toshiba, trading as Toshiba Corporation	No
TMK 22-00753	9/9/2022	12/8/2029	INFORCE	Emissive Energy Corporation 135	No
TMK 22-00749	9/9/2022	6/30/2030	REAPER	Sellmark Corporation	No
TMK 22-00756	9/9/2022	8/26/2029	INFORCE	Emissive Energy Corporation 135 Circuit Drive North Kingstown RHODE ISLAND	No
TMK 22-00755	9/9/2022	6/22/2032	WILD1	Emissive Energy Corporation	No
TMK 22-00750	9/9/2022	5/27/2028	REAPER GRIP	SELLMARK CORPORATION	No
TMK 22-00742	9/9/2022	7/12/2032	HELPFUL HOUSE PEOPLE	Irby Home Buyers, LLC	No
TMK 22-00764	9/12/2022	11/30/2032	M & DESIGN	Eli Lilly and Company Lilly	No
TMK 22-00759	9/12/2022	5/8/2023	LILLY	Eli Lilly and Company	No
TMK 22-00768	9/12/2022	7/30/2031	BOSCH	Robert Bosch GERMANY	No
TMK 22-00767	9/12/2022	11/19/2027	BOSCH	ROBERT BOSCH GERMANY	No

CBP IPR RECORDATION — SEPTEMBER 2022

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tm/Trm	Owner Name	GM Restricted
TMK 22-00765	9/12/2022	7/10/2028	BOSCH	Robert Bosch GERMANY	No
TMK 22-00763	9/12/2022	11/2/2032	MOUNJARO	Eli Lilly and Company Lilly	No
TMK 22-00766	9/12/2022	10/4/2030	BOSCH	ROBERT BOSCH GERMANY	No
TMK 22-00770	9/12/2022	2/5/2029	DESIGN OF FUEL-INJECTION DEVICE	ROBERT BOSCH GMBH CORPORATION	No
TMK 22-00761	9/12/2022	2/16/2030	LIGHTSHEER	LUMENIS BE ISRAEL	No
TMK 22-00769	9/12/2022	7/23/2031	BOSCH	Robert Bosch GERMANY	No
TMK 22-00762	9/12/2022	6/17/2030	LIGHTSHEER QUATTRO	LUMENIS BE LTD ISRAEL	No
TMK 22-00776	9/13/2022	12/11/2026	Ignition Device in Circle Design	ROBERT BOSCH GMBH GERMANY	No
TMK 22-00778	9/13/2022	1/8/2024	Ignition Device in Circle Design	Robert Bosch GmbH GERMANY	No
TMK 22-00775	9/13/2022	10/31/2026	Ignition Device in Circle Design	ROBERT BOSCH GMBH GERMANY	No
TMK 22-00777	9/13/2022	7/15/2027	Ignition Device in Circle Design	ROBERT BOSCH GMBH GERMANY	No
TMK 22-00774	9/13/2022	8/29/2028	FIRE	AMAZON TECHNOLOGIES, INC.	No
TMK 22-00780	9/13/2022	11/23/2032	BRABAR	Innerwear Basics	No
TMK 03-00653	9/13/2022	9/29/2032	PADRES	PADRES L.P.	No
TMK 22-00773	9/13/2022	9/5/2028	ELF	vpr brands lp	No
TMK 22-00772	9/13/2022	9/11/2029	DESIGN OF AMAZON SWOOSH	Amazon Technologies, Inc.	No
TMK 20-00139	9/13/2022	12/15/2032	MEDTRONIC	Medtronic, Inc.	No
TMK 22-00779	9/14/2022	1/18/2026	ESCADA	Zadato Verwaltungsgesellschaft mbH GERMANY	No
TMK 22-00782	9/14/2022	11/2/2026	KEEN UTILITY	KEEN, Inc.	No
TMK 22-00781	9/14/2022	7/11/2026	AURACELL	Rotuba Extruders, Inc.	No
TMK 22-00785	9/15/2022	9/20/2027	BOSS HUGO BOSS & Design	HUGO BOSS Trade Mark Management GmbH & Co. GERMANY	No
TMK 22-00786	9/15/2022	1/3/2028	Configuration of HUGO BOSS Perfume Bottle	HUGO BOSS Trade Mark Management GmbH & Co.; GERMANY	No

CBP IPR RECORDATION — SEPTEMBER 2022

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tm/Tm	Owner Name	G/M Restricted
TMK 22-00783	9/15/2022	1/31/2031	BOSS HUGO BOSS (Stylized)	Hugo Boss Trade Mark Management GmbH & Co. KG	No
TMK 22-00784	9/15/2022	1/4/2027	BOSS HUGO BOSS & Design	HUGO BOSS Trade Mark Management GmbH & Co. GERMANY	No
TMK 22-00788	9/16/2022	1/9/2030	BEND OVER	LEVI STRAUSS & CO.	No
TMK 22-00801	9/16/2022	5/3/2025	JOOP! HOMME WILD	Coty B.V. NETHERLANDS	No
TMK 22-00799	9/16/2022	2/19/2024	Perfume Flask Bottle with Rectangle Design	HUGO BOSS; Trade Mark Management GmbH & Co GERMANY	No
TMK 22-00806	9/16/2022	7/13/2031	HUGO BOSS	ORIGINAL APPLICANT: HUGO BOSS Trade Mark Management GmbH & Co. GERMANY	No
TMK 22-00800	9/16/2022	7/29/2024	JOOP!	Coty B.V. Oudeweg NETHERLANDS	No
TMK 22-00807	9/16/2022	11/10/2031	S (STYLIZED)	SEATTLE HOCKEY PARTNERS LLC	No
TMK 22-00804	9/16/2022	3/3/2030	P PICHARDO & DESIGN	ACE PRIME LLC	No
TMK 22-00808	9/16/2022	8/17/2026	NARCAN	ENDO LABORATORIES INC.	No
TMK 22-00790	9/16/2022	4/14/2032	Indian Head Logo Design	CHICAGO BLACKHAWK HOCKEY TEAM, INC.	No
TMK 22-00798	9/16/2022	3/27/2032	Tampa Bay Lightning Design	Lightning Hockey LP	No
TMK 22-00794	9/16/2022	3/25/2032	Penguin Hockey Design	PITTSBURGH PENGUINS LP	No
TMK 22-00791	9/16/2022	5/11/2032	Winged Musical Note Design	St. Louis Blues Hockey Club, L.P.	No
TMK 22-00792	9/16/2022	5/11/2032	BUFFALO WITH CROSSED SWORDS DESIGN	HOCKEY WESTERN NEW YORK, LLC	No
TMK 22-00789	9/16/2022	4/2/2030	ESCADA	Zadafo Verwaltungsgesellschaft mbH	No
TMK 22-00787	9/16/2022	2/10/2030	SALLY HANSEN	COTY US LLC	No
TMK 22-00793	9/16/2022	2/12/2027	PHILOSOPHY	COTY BRANDS MANAGEMENT INC.	No
TMK 22-00802	9/16/2022	6/20/2028	LANCASTER	COTY BEAUTY GERMANY	No

CBP IPR RECORDATION — SEPTEMBER 2022

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tm	Owner Name	G/M Restricted
TMK 22-00795	9/16/2022	11/12/2023	BOURJOIS	BOURJOIS 12-14FRANCE	No
TMK 22-00797	9/19/2022	10/26/2031	RED-TIP TECHNOLOGY	North American Rescue, LLC	No
TMK 22-00814	9/19/2022	3/26/2026	U.S.A. & DESIGN	United States Soccer Federation, Inc.	No
TMK 22-00816	9/19/2022	10/9/2029	USA & DESIGN	United States Soccer Federation, Inc.	No
TMK 13-00030	9/19/2022	9/26/2032	PRADA MILANO DAL 1913 & DESIGN	PRADA S.A.	No
TMK 22-00805	9/19/2022	5/18/2030	NORTH AMERICAN RESCUE	NORTH AMERICAN RESCUE, LLC	No
TMK 22-00817	9/19/2022	3/29/2031	USA & DESIGN	United States Soccer Federation, Inc.	No
TMK 22-00803	9/19/2022	11/27/2029	EAGLE AND CROSS DESIGN	NORTH AMERICAN RESCUE, LLC	No
TMK 22-00811	9/19/2022	7/29/2027	U S & DESIGN	United States Soccer Federation, Inc.	No
TMK 22-00796	9/19/2022	3/4/2028	EAGLE AND CROSS DESIGN	NORTH AMERICAN RESCUE, LLC	No
TMK 22-00815	9/20/2022	9/2/2029	EYE OF THE STORM (STYLIZED)	Work Force, Inc.	No
TMK 22-00813	9/20/2022	4/30/2026	US Soccer Shield Design	United States Soccer Federation, Inc.	No
TMK 22-00812	9/20/2022	9/18/2032	Del Monte Quality and Shield Design	DEL MONTE FOODS, INC.	No
TMK 22-00809	9/20/2022	7/10/2032	Configuration of a floor lamp	Fios S.p.a. JOINT STOCK COMPANY ITALY	No
TMK 22-00818	9/20/2022	12/14/2031	GARDENA	HUSQVARNA AB SWEDEN	No
TMK 22-00810	9/20/2022	5/12/2025	GARDENA	HUSQVARNA AB SWEDEN	No
TMK 12-00955	9/21/2022	10/9/2032	BOSS HUGO BOSS (STYLIZED)	HUGO BOSS TRADE MARKS MANAGEMENT GMBH & CO. KG	No
TMK 20-00769	9/21/2022	5/28/2032	GREENCHIP (AND DESIGN)	NXP B.V.	No
TMK 22-00819	9/22/2022	9/13/2032	LANEBLADE	Betts Platinum Group, LLC	No
TMK 22-00820	9/22/2022	2/11/2027	FOLEX	FOLEXPOR, INC.	No
TMK 22-00826	9/23/2022	1/15/2023	THE SOLUTION TO YOUR STAIN	FOLEXPOR, INC.	No
TMK 22-00825	9/23/2022	3/21/2032	HILL HOUSE	Hill House Home, Inc.	No
TMK 22-00823	9/23/2022	3/8/2026	HILL HOUSE HOME	HILL HOUSE HOME, INC.	No

CBP IPR RECORDATION — SEPTEMBER 2022

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tm	Owner Name	G/M Restricted
TMK 17-00679	9/23/2022	11/20/2032	B & Design	BRABUS GmbH	No
TMK 17-00678	9/23/2022	1/1/2033	BRABUS	BRABUS GmbH	No
TMK 22-00824	9/23/2022	9/14/2031	NAP DRESS	Hill House Home INC.	No
TMK 22-00827	9/23/2022	4/2/2028	FOLEX	Folexport, Inc.	No
TMK 08-00847	9/23/2022	10/31/2027	Configuration of Bellini Chair	HELLER LLC	No
TMK 22-00822	9/23/2022	3/16/2025	FOLEX	Folexport, Inc.	No
TMK 22-00828	9/23/2022	11/18/2025	FOLEX	Folexport, Inc.	No
TMK 22-00835	9/25/2022	4/8/2032	EUPEC (STYLIZED)	Infineon Technologies AG	No
TMK 22-00836	9/25/2022	3/11/2032	INFINEON	Infineon Technologies AG	No
TMK 22-00831	9/26/2022	9/18/2029	DIRTY HOOKER	Atomix Advertising LLC	No
TMK 22-00832	9/26/2022	2/27/2033	DIRTY HOOKER FISHING GEAR	Atomix Advertising LLC	No
TMK 22-00826	9/26/2022	1/15/2033	THE SOLUTION TO YOUR STAIN	FOLEXPOR, INC.	No
TMK 22-00830	9/26/2022	10/9/2029	DESIGN OF WOMEN ON HOOK	Atomix Advertising LLC	No
TMK 22-00837	9/26/2022	4/25/2030	DIAMOND DOSSIER	Gemological Institute of America, Inc.	No
TMK 22-00834	9/27/2022	7/4/2026	DIAMOND DOCK	Gemological Institute of America, Inc.	No
TMK 22-00833	9/27/2022	7/3/2027	FACE/TWARE	Gemological Institute of America, Inc.	No
TMK 22-00838	9/27/2022	2/28/2030	DOSSIER	Gemological Institute of America, Inc.	No

U.S. Court of International Trade

Slip Op. 22–115

RKW KLERKS INC., Plaintiff, v. UNITED STATES, Defendant.

Before: Mark A. Barnett, Chief Judge
Court No. 20–00001

[The court finds that U.S. Customs and Border Protection correctly classified the subject imports. Accordingly, the court denies Plaintiff’s motion for summary judgment and grants Defendant’s cross-motion for summary judgment.]

Dated: October 4, 2022

Philip Yale Simons and *Jerry P. Wiskin*, Simons & Wiskin, of Manalapan, NJ, for Plaintiff RKW Klerks Inc.

Aimee Lee, Assistant Director, and *Elisa S. Solomon*, Trial Attorney, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of New York, NY, for Defendant United States. With them on the briefs were *Brian M. Boynton*, Principal Deputy Assistant Attorney General, *Patricia M. McCarthy*, Director, and *Justin R. Miller*, Attorney-In-Charge, International Trade Field Office. Of counsel on the briefs was *Fariha Kabir*, Office of the Assistant Chief Counsel, International Trade Litigation, U.S. Customs and Border Protection.

OPINION

Barnett, Chief Judge:

This case involves the classification of two particular types of net wrap, both of which are synthetic fabrics used to wrap round bales of harvested crops (such as hay, straw, or silage), so that when the bales are released from the baling machine they maintain their compressed, round structure and are easier to transport. Specifically, this action addresses whether Plaintiff’s net wraps, TopNet and Rondotex (together, the “Netwraps”), constitute synthetic “warp knit fabrics” and U.S. Customs and Border Protection (“CBP” or “the agency”) properly classified the Netwraps under subheading 6005.39.00 of the Harmonized Tariff Schedule of the United States (“HTSUS”).¹ Before the court are cross-motions for summary judgment. Pl.’s Mot. for Summ. J., ECF No. 27; Pl.’s Br. in Supp. of its Mot. for Summ. J. (“Pl.’s Mem.”), ECF No. 27–2; Def.’s Cross-Mot. for Summ. J. and Resp. in Opp’n to Pl.’s Mot. for Summ. J. and Def.’s Mem. of Law in Opp’n to

¹ All citations to the HTSUS are to the 2018 version, as determined by the date of importation of the merchandise. See *LeMans Corp. v. United States*, 660 F.3d 1311, 1314 n.2 (Fed. Cir. 2011). The subject merchandise was entered on August 15, 2018. See Def.’s Rule 56.3 Statement of Undisputed Material Facts (“Def.’s SOF”) ¶ 1, ECF No. 32; Pl.’s Resp. to Def.’s SOF ¶ 1, ECF No. 35–1.

Pl.'s Mot. for Summ. J. and in Supp. of Def.'s Cross-Mot. for Summ. J. ("Def.'s Cross-Mem."), ECF No. 32; Pl.'s Reply Br. to Def.'s Opp'n to Pl.'s Mot. for Summ. J. and in Opp'n to Def.'s Cross-Mot. for Summ. J. ("Pl.'s Resp. & Reply"), ECF No. 35-2; Def.'s Reply Br. in Further Supp. of its Cross-Mot. for Summ. J. ("Def.'s Reply"), ECF No. 38. RKW Klerks Inc. ("Plaintiff" or "RKW") contends that the Netwraps are properly classified under HTSUS subheading 8433.90.50 because the Netwraps qualify as "parts" of harvesting machinery, *see* Pl.'s Mem. at 3-4, or, alternatively, under subheading 8436.99.00² as "parts" of agricultural machinery, *see* Pl.'s Mem. at 4. The United States ("Defendant" or "the Government") maintains that the Netwraps are not "parts" of harvesting or agricultural machinery classifiable under HTSUS subheadings 8433.90.50 or 8436.99.00, respectively. *See, e.g.*, Def.'s Cross-Mem. at 8. The Government contends that CBP correctly classified the Netwraps under HTSUS subheading 6005.39.00. *Id.* at 12-14. For the reasons discussed below, the court denies Plaintiff's motion for summary judgment and grants Defendant's cross-motion for summary judgment.

BACKGROUND

I. Material Facts Not in Dispute

The party moving for summary judgment must show "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." United States Court of International Trade ("USCIT") Rule 56(a). Parties filed cross-motions for summary judgment and submitted separate statements of undisputed material facts with their respective motions and responses to the opposing party's statements. *See* Pl.'s Statement of Material Facts Not in Dispute ("Pl.'s SOF"), ECF No. 27-1; Def.'s Resp. to Pl.'s SOF; Def.'s SOF; Pl.'s Resp. to Def.'s SOF. Upon review of the parties' statements of facts and supporting exhibits, the court finds the following undisputed and material facts.³

RKW is an importer of two types of net wrap, TopNet and Rondotex. *See* Def.'s SOF ¶ 11; Pl.'s Resp. to Def.'s SOF ¶ 11. RKW is a subsidiary of RKW SE, a film producer that manufactures nonwoven fabrics and nettings, including shrink bottle wrap, pallet stretch hoods, gardening and greenhouse films, trash bags, and other packaging solu-

² In various places in its briefs, Plaintiff refers to two non-existent subheadings: 8436.90.00, *see* Pl.'s Mem. at 1, 4-5, 24-25, and 8536.99.00, *see* Pl.'s Resp. & Reply at 14. In each instance, the court understands Plaintiff to refer to subheading 8436.99.00 which covers parts of "other" agricultural machinery.

³ Citations are provided to the relevant paragraph number of the undisputed facts and response; internal citations have generally been omitted.

tions, as well as raw materials. Def.'s SOF ¶ 9; Pl.'s Resp. to Def.'s SOF ¶ 9. The Netwraps are manufactured in Germany by several entities and plants owned by RKW SE. Def.'s SOF ¶ 10; Pl.'s Resp. to Def.'s SOF ¶ 10. Neither RKW SE nor any of its subsidiaries sell or produce machinery, including round balers or other harvesting machinery. Def.'s SOF ¶ 10; Pl.'s Resp. to Def.'s SOF ¶ 10.

Both TopNet and Rondotex are comprised of the same materials, are manufactured in the same manner, and serve the same function—to bind and secure crops in round bales. Def.'s SOF ¶¶ 5, 8; Pl.'s Resp. to Def.'s SOF ¶¶ 5, 8. Manufacture of the Netwraps involves a two-step process. Def.'s SOF ¶ 15; Pl.'s Resp. to Def.'s SOF ¶ 15. First, film layers are produced—one for chains and one for connecting threads. Def.'s SOF ¶ 15; Pl.'s Resp. to Def.'s SOF ¶ 15. The film layers are then cut into strips, stretched, heated, elongated, and knitted in Raschel machines, a type of knitting machine designed for making net wraps, but which could also be used to make pallet nets, another warp knit. Def.'s SOF ¶¶ 15, 17; Pl.'s Resp. to Def.'s SOF ¶¶ 15, 17. These layers of film are made up of high-density polyethylene (“HDPE”), a resin that is exclusively used for net wrap. Def.'s SOF ¶ 16; Pl.'s Resp. to Def.'s SOF ¶ 16. HDPE is a synthetic material. Def.'s SOF ¶ 16; Pl.'s Resp. to Def.'s SOF ¶ 16.

RKW developed the Netwraps as a substitute for baler twine for use in round baling machines. Def.'s SOF ¶ 23; Pl.'s Resp. to Def.'s SOF ¶ 23. Round baling machines collect harvested crops, such as grass, hay, or straw, then cut the crops into pieces, compact the pieces, and form the pieces into bale form. Def.'s SOF ¶ 21; Pl.'s Resp. to Def.'s SOF ¶ 21. After compressing the crops into bale form, round baling machines can wrap the bales with net wrap. *See* Def.'s SOF ¶ 22; Pl.'s Resp. to Def.'s SOF ¶ 22. Some round baling machines can use either net wrap or twine to wrap round bales. *See* Def.'s SOF ¶ 24; Pl.'s Resp. to Def.'s SOF ¶ 24.

II. Procedural History

RKW entered the Netwraps in question as a single entry, Entry No. 322–1912652–5, at the Port of Charleston, South Carolina on August 15, 2018. Def.'s SOF ¶ 1; Pl.'s Resp. to Def.'s SOF ¶ 1. CBP classified the merchandise under HTSUS subheading 6005.39.00, dutiable at ten percent *ad valorem*, and liquidated the entry on July 12, 2019. Def.'s SOF ¶ 1–2; Pl.'s Resp. to Def.'s SOF ¶ 1–2.

RKW protested the liquidation on November 12, 2019, requesting accelerated disposition. Def.'s SOF ¶ 3; Pl.'s Resp. to Def.'s SOF ¶ 3; Pl.'s SOF ¶ 2; Def.'s Resp. to Pl.'s SOF ¶ 2. CBP did not respond to the

protest and, on December 12, 2019, the protest was denied by operation of law. Def.'s SOF ¶ 3; Pl.'s Resp. to Def.'s SOF ¶ 3.

JURISDICTION AND STANDARD OF REVIEW

The court has subject matter jurisdiction pursuant to 28 U.S.C. § 1581(a).

The court may grant summary judgment when “there is no genuine issue as to any material fact,” and “the moving party is entitled to judgment as a matter of law.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986). The court’s review of a classification decision involves two steps. First, it must determine the meaning of the relevant tariff provisions, which is a question of law. *See Bausch & Lomb, Inc. v. United States*, 148 F.3d 1363, 1365 (Fed. Cir. 1998) (citation omitted). Second, it must determine whether the merchandise at issue falls within a particular tariff provision, as construed, which is a question of fact. *Id.* (citation omitted). When no factual dispute exists regarding the merchandise, resolution of the classification turns solely on the first step. *See id.* at 1365–66; *see also Sigma-Tau HealthScience, Inc. v. United States*, 838 F.3d 1272, 1276 (Fed. Cir. 2016) (citations omitted).

The court reviews classification cases *de novo*. *See* 28 U.S.C. § 2640(a). While the court affords deference to CBP’s classification rulings relative to their “power to persuade,” *United States v. Mead Corp.*, 533 U.S. 218, 235 (2001) (quoting *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944)), it has “an independent responsibility to decide the legal issue of the proper meaning and scope of HTSUS terms,” *Warner-Lambert Co. v. United States*, 407 F.3d 1207, 1209 (Fed. Cir. 2005). It is “the court’s duty to find the *correct* result, by whatever procedure is best suited to the case at hand.” *Jarvis Clark Co. v. United States*, 733 F.2d 873, 878 (Fed. Cir. 1984).

DISCUSSION

I. Legal Framework

The General Rules of Interpretation (“GRI(s)”) provide the analytical framework for the court’s classification of goods. *See N. Am. Processing Co. v. United States*, 236 F.3d 695, 698 (Fed. Cir. 2001). “The HTSUS is designed so that most classification questions can be answered by GRI 1.” *Telebrands Corp. v. United States*, 36 CIT 1231, 1235, 865 F. Supp. 2d 1277, 1280 (2012), *aff’d* 522 Fed. Appx. 915 (Fed. Cir. 2013). GRI 1 states that, “for legal purposes, classification shall be determined according to the terms of the headings and any [relevant] section or chapter notes.” GRI 1, HTSUS; *Degussa Corp. v. United States*, 508 F.3d 1044, 1047 (Fed. Cir. 2007) (“The section and

chapter notes are integral parts of the HTSUS, and have the same legal force as the text of the headings.”) “The first four digits of an HTSUS provision constitute the heading, whereas the remaining digits reflect subheadings.” *Schlumberger Tech. Corp. v. United States*, 845 F.3d 1158, 1163 n.4 (Fed. Cir. 2017). Relevant here, “the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, mutatis mutandis, to the above [GRIs] on the understanding that only subheadings at the same level are comparable.” GRI 6, HTSUS; *see also WWRD US, LLC v. United States*, 886 F.3d 1228, 1232 (2018).

The court considers chapter and section notes of the HTSUS in resolving classification disputes because they are statutory law, not interpretive rules. *See Arko Foods Int’l, Inc. v. United States*, 654 F.3d 1361, 1364 (Fed. Cir. 2011) (citations omitted); *see also Park B. Smith, Ltd. v. United States*, 347 F.3d 922, 929 n.3 (Fed. Cir. 2003) (chapter and section notes are binding on the court). “Absent contrary legislative intent, HTSUS terms are to be ‘construed [according] to their common and popular meaning.’” *Baxter Healthcare Corp. of Puerto Rico v. United States*, 182 F.3d 1333, 1337 (Fed. Cir. 1999) (quoting *Marubeni Am. Corp. v. United States*, 35 F.3d 530, 533 (Fed. Cir. 1994)). Courts may rely upon their own understanding of terms or consult dictionaries, encyclopedias, scientific authorities, and other reliable information. *Brookside Veneers, Ltd. v. United States*, 847 F.2d 786, 789 (Fed. Cir. 1988); *BASF Corp. v. United States*, 35 CIT 1478, 1481, 798 F. Supp. 2d 1353, 1357 (2011). The court also may consider the Explanatory Notes to the Harmonized Commodity Description and Coding System (the “Explanatory Notes”), developed by the World Customs Organization. *See Deckers Outdoor Corp. v. United States*, 714 F.3d 1363, 1367 n.1 (Fed. Cir. 2013). Although the Explanatory Notes do not bind the court’s analysis, they are “indicative of proper interpretation” of the tariff schedule. *Lynteq, Inc. v. United States*, 976 F.2d 693, 699 (Fed. Cir. 1992) (quoting H.R. Rep. No. 100–576, at (1988) (Conf. Rep.), reprinted in 1988 U.S.C.C.A.N. 1547, 1582).

II. Competing Tariff Provisions

Plaintiff contends that the Netwraps are properly classified under HTSUS subheading 8433.90.50 or, alternatively, 8436.99.00.⁴ Pl.’s Mem. at 5. Chapter 84 covers “Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.” The relevant portions of Chapter 84 of the HTSUS read:

8433: Harvesting or threshing machinery, including straw or fodder balers; grass or hay mowers; machines for cleaning, sorting or grading eggs, fruit or other agricultural produce, other than machinery of heading 8437; parts thereof:

8433.90 Parts

8433.90.50 Other

8436: Other agricultural, horticultural, forestry, poultry-keeping or bee-keeping machinery, including germination plant fitted with mechanical or thermal equipment; poultry incubators and brooders; parts thereof:

8436.99 Parts:

8436.99.00 Other

Defendant contends that the Netwraps are properly classified under HTSUS subheading 6005.39.00. Def.’s Resp. at 8–9. Chapter 60 covers “knitted or crocheted fabrics.” The relevant portion of Chapter 60 of the HTSUS reads:

6005: Warp knit fabrics (including those made on galloon knitting machines), other than those of headings 6001 to 6004:

6005.39 Of synthetic fibers:

6005.39.00 Other, printed

III. Classification of the Netwraps

The GRIs govern the proper classification of merchandise and are applied in numerical order. *N. Am. Processing Co.*, 236 F.3d at 698. Pursuant to GRI 1, the court first “must determine the appropriate classification ‘according to the terms of the headings and any relative section or chapter notes’ . . . [with] terms of the HTSUS . . . construed according to their common commercial meaning.” *Millennium Lumber Dist. Ltd. v. United States*, 558 F.3d 1326, 1328–29 (Fed. Cir. 2009) (citations omitted).

⁴ Plaintiff also identified HTSUS subheading 5911.90.00 as a potential subheading under which the Netwraps could be classified, see Compl. ¶¶ 18–22, ECF No. 6, but did not make any arguments in support of this claim in either its opening or reply brief. HTSUS subheading 5911.90.00 covers “[t]extile products and articles, for technical uses, specified in note 7 to this chapter . . . Other.” The court reviewed this subheading and finds that it does not describe the Netwraps. See *Jarvis Clark*, 733 F.2d at 874 (holding that the court has an independent obligation to determine the proper tariff classification).

The issue in this case is whether the Netwraps are properly classified under HTSUS heading 6005 as a “warp knit fabric” or under HTSUS heading 8433 as “parts” of “harvesting or threshing machinery, including straw or fodder balers,” or, alternatively, under HTSUS heading 8436 as “parts” of “other agricultural . . . machinery.”⁵

A. Whether the Netwraps are Classifiable as “Warp Knit Fabrics” Under HTSUS Subheading 6005.39.00

As an initial matter, the parties do not dispute that the Netwraps are covered by the plain language of HTSUS subheading 6005.39.00, *see* Def.’s Cross-Mem. at 8; Pl.’s Resp. & Reply at 2.⁶ However, because the court reviews classification decisions *de novo*, the court will ascertain the scope of this subheading and whether the Netwraps are covered by this subheading. *See Bausch*, 148 F.3d at 1365.

HTSUS subheading 6005.39.00 covers, by its express terms, “warp knit fabrics (including those made on galloon knitting machines) . . . of synthetic fibers . . . other, printed.” A “warp knit” is a “knit fabric produced by machine with the yarns running in a lengthwise direction.”⁷ *Warp Knit*, MERRIAM-WEBSTER.COM, <https://www.merriamwebster.com/dictionary/warp%20knit> (last visited October 4, 2022). While not controlling, the Explanatory Notes to HTSUS heading 6005 provide that the heading covers fabrics “made on warp knitting machines (especially Raschel machines).” Explanatory Note 60.05 at XI-6005–1.

Plaintiff’s USCIT Rule 30(b)(6) witness’s statements confirm that the Netwraps possess the characteristics needed to be properly classified as “warp knit fabrics.” This witness confirmed that the Netwraps were knitted on Raschel machines, *see* Confid. Dep. of Stefan Kwiatkista (“Kwiatkista Dep.”) 28:9–25, 29:2–4, ECF No. 32–1, and are made of chains of knit fabric running in a lengthwise direction, *see id.* 46:3–20. It is also uncontested that the Netwraps are made of synthetic fibers. Def.’s SOF ¶ 16 (stating that the Netwraps are

⁵ The court’s own review found no other possible candidate headings. *See Jarvis Clark*, 733 F.2d at 874 (holding that the court has an independent obligation to determine the proper tariff classification).

⁶ Although Plaintiff does not explicitly concede that the Netwraps are covered by the plain language of subheading 6005.39.00, it has raised no arguments challenging this contention and, instead, focuses its arguments on why HTSUS heading 8433 should be selected over HTSUS heading 6005.

⁷ Warp knit fabrics are created through a type of knitting in which the yarns generally run lengthwise in the fabric and include “Raschel knitting.” *Warp Knitting*, ILLUSTRATED DICTIONARY OF FIBER AND TEXTILE TECHNOLOGY (1st ed. 2001).

comprised of HDPE, a synthetic material); Pl.'s Resp. to Def.'s SOF ¶ 16. Thus, the court finds that the Netwraps may be classified under HTSUS subheading 6005.39.00.⁸

B. Whether the Netwraps are Classifiable as “Parts” of “Harvesting or Threshing Machinery” Under HTSUS Subheading 8433.90.50

1. Legal Test for Parts

The U.S. Court of Appeals for the Federal Circuit (“Federal Circuit”) has adopted two tests for determining whether merchandise may be classified as “part” of another article. The first test is used when the merchandise in question is claimed to be a part of another article that “could not function as such article” without the claimed part. *United States v. Willoughby Camera Stores, Inc.*, 21 C.C.P.A. 322, 324 (1933); *see also Bauerhin Techs. Ltd. v. United States*, 110 F.3d 774, 778 (Fed. Cir. 1997) (explaining that an “integral, constituent, or component part, without which the article to which it is to be joined, could not function as such article is surely a part for classification purposes”).

The second test by which merchandise may qualify as a part of another article is used when the claimed part, at the time of importation, is “dedicated solely for use” in such article. *United States v. Pompeo*, 43 C.C.P.A. 9, 14 (1955). In such cases, the court must determine whether the claimed part, when applied to its intended use with that article, meets the definition of a “part” established in *Willoughby*.⁹ *Id.* at 14; *see also Pomeroy Collection, Ltd. v. United States*, 35 CIT 761, 764, 783 F. Supp. 2d 1257, 1260–61 (2011) (explaining the legal framework for determining whether merchandise may be classified as a part of an article).

⁸ While HTSUS subheading 6005.39.00 also includes the term “[o]ther, printed,” no discovery was conducted with respect to this issue and neither party identifies evidence that calls into question CBP’s selection of the “[o]ther, printed” subheading. The marketing materials supplied with Plaintiff’s motion contain various references to both roll-end markings and edge markings on the merchandise in question. *See* Ex. A to [Pl.’s Mem.] at 4, 8, 12, 14, 16, ECF No. 27–3. In the absence of any argument specific to this issue, the court considers these references sufficient to support CBP’s selection of the “[o]ther, printed” subheading over the four other subheadings covering warp knit fabrics made of synthetic fibers: HTSUS 6005.35.00 (covering certain fabrics of polyethylene monofilament or of polyester multifilament); 6005.36.00 (Other, unbleached or bleached); 6005.37 (Other, dyed); and 6005.38 (Other, of yarns of different colors).

⁹ *See also Bauerhin*, 110 F.3d at 779 (“[*Willoughby* and *Pompeo*] must be read together. . . . *Willoughby* . . . does not address the situation where an imported item is dedicated solely for use with an article. *Pompeo* addresses that scenario and states that such an item can also be classified as a part.”).

2. Parties' Contentions

Plaintiff contends that the Netwraps meet the Federal Circuit's definition of parts and are thus properly classified as "parts" of harvesting machines. *See* Pl.'s Mem. at 11–17; Pl.'s Resp. & Reply at 3–9. First, Plaintiff argues that the Netwraps are dedicated to a single commercial use—baling hay. Pl.'s Mem. at 17; Pl.'s Resp. & Reply at 3. Plaintiff also argues that the Netwraps are integral to the function of a hay baler because, without the Netwraps, a hay baler could not make usable round bales, Pl.'s Mem. at 17. Furthermore, Plaintiff avers that if hay balers were "designed to make bales without the need for wrapping," it would be nonsensical that hay balers include equipment providing for the use of the Netwraps. Pl.'s Resp. & Reply at 5.

Defendant contends that the Netwraps are not integral to round baling machines because round baling machines can interchangeably use net wrap *or* twine to wrap the bales. Def.'s Cross-Mem. at 16–17. Defendant also contends that the Netwraps "cannot be an integral part of round baler machines because the mechanical function of [the balers] is to compress and roll the hay and/or silage together, and the [Netwraps] do not contribute to that function." *Id.* at 17. Instead, Defendant contends, the Netwraps "are a consumable input" akin to a spool of thread used in a sewing machine. *Id.* at 18. Defendant contends that the Netwraps are only in the round baling machines temporarily, and that the Netwraps have a primary function distinct from the round balers—to bind crop bales *after* the bales have been removed from the round baling machine. *Id.* at 17, 21.

3. Analysis

Although the parties do not contest the issue, *see* Pl.'s SOF ¶ 10; Def.'s Resp. to Pl.'s SOF ¶ 10, the court must first determine whether the Netwraps are "dedicated solely for use" with the round baling machines, *see Pompeo*, 43 C.C.P.A. at 14. The record before the court indicates that the Netwraps are designed specifically for use in the balers. *See Kwiatkista Dep. 77:4–11* (confirming that RKW does not market the Netwraps for any use other than wrapping round bales); *Schmeckpeper Aff. ¶ 21, ECF No. 27–4* ("Net wrap has only one commercial use and that is to wrap hay or silage bales.").

Next, the court must determine whether the Netwraps are an "integral, constituent, or component part, without which" round hay balers "could not function." *See Pompeo*, 43 C.C.P.A. at 14; *see also Bauerhin*, 110 F.3d at 778. Prior court decisions have previously addressed whether merchandise used to bind bales of hay was con-

sidered “part” of a hay baler for the purposes of tariff classification, albeit pursuant to distinct versions of the tariff schedule.

In *Wilbur-Ellis Co. v. United States*, 26 C.C.P.A. 403 (1939), the Federal Circuit’s predecessor court, the United States Court of Customs and Patents Appeals, held that bale ties were not “part” of a hay baler, finding that “the function of a hay baler is to compress hay into the form of bales and to retain it in its compressed form until the bales have been securely tied . . . and that the only function of bale ties [was] to hold the hay in its compressed form for storage and transportation purposes.”¹⁰ *Id.* at 406. Thus, the bale ties were not “integral, constituent, or component parts of hay balers.” *Id.* Similarly, in *Geo. Wm. Rueff, Inc. v. United States* (“GWR”), 28 Cust. Ct. 84 (1952), *aff’d United States v. Geo. Wm. Rueff, Inc.*, 41 C.C.P.A. 95 (1953), the U.S. Customs Court, the USCIT’s predecessor, held that baler twine was not part of an agricultural implement because the function of the hay baler was to compress the bales, not to bind them. *Id.* at 89–90. The baler twine in question in *GWR* was inserted into the hay baler, mechanically wound lengthwise around the bale, and mechanically bound. *Id.* at 87. While both cases involved different products and earlier versions of the tariff classification system, the court finds the reasoning behind the decisions instructive.

The court finds that the Netwraps are not integral to the functioning of round hay balers. Plaintiff’s designated agent confirmed that the Netwraps have their own distinct function—to maintain the shape of the bale after it has been compressed and released from the baler. Kwiatkista Dep. 98:25–99:3. Furthermore, the Netwraps are not integral to the function of the round hay balers because these machines generally are designed to use both twine and net wrap. *See* Def.’s SOF ¶ 24; Pl.’s Resp. to Def.’s SOF ¶ 24. Thus, even without the Netwraps, round hay balers could compress crops into bale form *and* secure the bales with alternative materials. The fact that a net wrap may be the preferred method of wrapping bales is of no consequence; they are simply one of the potential inputs that round balers can use to wrap round bales.

Plaintiff also seeks to rely on *Ludvig Svensson (U.S.) Inc. v. United States*, 25 CIT 573, 62 F. Supp. 2d 1171 (1999), to argue that the Netwraps are properly classified as “parts.” *See* Pl.’s Mem. at 14–17; Pl.’s Reply at 4. In *Ludvig Svensson*, the court determined that screens used in the construction of greenhouses were “parts” of a greenhouse because they “were in an advanced state of manufacture,

¹⁰ However, the *Wilbur-Ellis* court ultimately ruled that the bale ties were an agricultural implement themselves. *Wilbur-Ellis*, 26 C.C.P.A. at 409–10.

and ha[d] no other commercial uses” and the screens were an integral part of the greenhouses. 25 CIT at 581, 62 F. Supp. 2d at 1178.

The facts of *Ludvig Svensson* are readily distinguished because the Netwraps are not integral to the function of hay balers. As the *Ludvig Svensson* court noted, without the screens, the greenhouse to which they were affixed would not function for what it was designed to do—better grow crops. *See id.* at 584, 62 F. Supp. 2d at 1181 (concluding that “screens are an integral part of shade and heat retention systems because” they “permit greenhouse operators to better regulate the environment of a greenhouse, to regulate the application of chemicals and pesticides as well as irrigation, and to permit plants . . . to benefit from favorable outside weather conditions”). Round hay balers, on the other hand, are able to compact hay into round bales without the use of the Netwraps. *See Kwiatkista Dep.* 98:19–24.

Furthermore, while the screens in *Ludvig Svensson* remained affixed to the greenhouse, the Netwraps are disposable and do not remain with the hay balers after they are wrapped around the bales of hay. *See Kwiatkista Dep.* 95:21–25, 96:14–25, 97:2–14. Plaintiff’s argument that the true function of a hay baler is “to produce commercially useable and saleable round hay bales,” Pl.’s Resp. & Reply at 3–8; *see also* Schmeckpeper Aff. ¶¶ 22–23, does not alter the court’s analysis. Even accepting, *arguendo*, Plaintiff’s contention that the function of a round hay baler is to “produce commercially useable and saleable round hay bales” by both compacting and wrapping the bales, the Netwraps would still not be integral to this function. Plaintiff’s argument ignores the fact that, even without the Netwraps, round hay balers can produce commercially usable and saleable round bales by binding the compacted bales with twine.

Plaintiff further argues that even if round hay balers do not require Netwraps to make round bales, the Netwraps contribute to the performance of the function for which the hay baler was designed. Pl.’s Resp. & Reply at 8. In addition to *Ludvig Svensson*, Plaintiff relies on *Trans Atlantic Co. v. United States*, 48 C.C.P.A. 30 (1960), *Gallagher & Ascher Co. v. United States*, 52 C.C.P.A. 11 (1964), and *Pompeo*, 43 C.C.P.A. 14, all of which are distinguishable. Unlike the hydraulic door closers in *Trans Atlantic*, the heaters in *Gallagher*, the superchargers in *Pompeo*, or the screens in *Ludvig Svensson*, all of which were permanently affixed to the machines of which they were a part, the Netwraps do not remain affixed to round hay balers after the baling process. The Netwraps are inserted into a chamber in the baler, fed through the baler, and wrapped around the compressed crops, and then remain with the bale once it has been released from

the baler—they do not remain affixed to the balers. See *Kwiatkista* Dep. 90:1–91:14, 96:14–97:11. The Netwraps are thus a disposable input and not a part of round baling machines.¹¹

The court also rejects Plaintiff’s argument that the Netwraps are similar to the toner cartridges for photocopiers in *Mita Copystar Am. v. United States*, or the printing cartridges used in MFC machines in *Brother Int’l Corp. v. United States*, both of which were determined to be “parts” of the respective machines in which they were used. In *Mita Copystar*, the court reasoned that “the cartridges are sold with toner inside; they remain with the toner throughout its use by the photocopier; they are the standard device for providing toner to the photocopier.” 160 F.3d at 712–13. Similarly, in *Brother*, the court reasoned that although the cartridges contained rolls of PET film, the cartridge was the standard device for providing the MFC machines with the PET film required to be able to print images on paper. 26 CIT at 872–73, 248 F. Supp. 2d at 1229–30.

The products in *Mita Copystar* and *Brother* were classified in accordance with the functionality of the containers—delivery systems for the toner and PET film, respectively—and not by the substances contained within. Here, however, the Netwraps are simply on rolls, placed inside a compartment located within the baler and held in place by claws or a metal bar which is otherwise attached to the machine. Def.’s SOF ¶ 14; Pl.’s Resp. to Def.’s SOF ¶ 14. Furthermore, while the toner and printing cartridges were necessary to the operation of the machines they were used in—without them the machines could not print—as discussed above, without the Netwraps, a hay baler can compress the crops and wrap the compressed bales with twine.

For these reasons, the court concludes that the Netwraps are not classifiable under HTSUS subheading 8433.90.50 as parts of harvesting machinery.

C. Whether the Netwraps are Classifiable as “Parts” of Agricultural Machinery Under HTSUS Subheading 8436.99.00

For the same reasons the court finds that the Netwraps are not classifiable as “parts” of harvesting machinery, the court also finds that Netwraps are not classifiable under HTSUS subheading

¹¹ Although, as discussed below, the toner cartridges in *Mita Copystar Am. v. United States*, 160 F.3d 710 (Fed. Cir. 1998), and printing cartridges in *Brother Int’l Corp. v. United States*, 26 CIT 867, 248 F. Supp. 2d 1224 (2002), were also disposable, they stayed with the photocopiers and multifunction center (“MFC”) machines for the entirety of their usable life—the cartridges were only disposed of once they became useless. The Netwraps, on the other hand, perform their intended function—to hold the form of the bales—after the bales have left the baling machines.

8436.99.00, as parts of other agricultural machinery. The Netwraps are not integral to the primary function of agricultural machinery, they do not remain affixed to such machinery, and they have their own distinct function separate from that of the machinery in which they are used.

CONCLUSION

For the foregoing reasons, the court holds that CBP properly classified the Netwraps under HTSUS subheading 6005.39.00. The court denies Plaintiff's motion for summary judgment and grants Defendant's cross-motion for summary judgment. Judgment will be entered accordingly.

Dated: October 4, 2022
New York, New York

/s/ Mark A. Barnett
MARK A. BARNETT, CHIEF JUDGE

Index

Customs Bulletin and Decisions
Vol. 56, No. 41, October 19, 2022

U.S. Customs and Border Protection

General Notices

	<i>Page</i>
Revocation of Three Ruling Letters, Modification of One Ruling Letter and Revocation of Treatment Relating to the Tariff Classification of Certain Step Stools	1
Proposed Modification of One Ruling Letter and Proposed Revocation of Treatment Relating to the Tariff Classification of Paper Face Masks	9
Ship's Stores Declaration	23
Importers of Merchandise Subject to Actual Use Provisions	26
Customs-Trade Partnership Against Terrorism (CTPAT) and CTPAT Trade Compliance Program	29
Copyright, Trademark, and Trade Name Recordations (No. 09 2022)	34

U.S. Court of International Trade

Slip Opinions

	Slip Op. No.	Page
RKW Klerks Inc., Plaintiff, v. United States, Defendant.	22-115	45