

# U.S. Customs and Border Protection



## **PROPOSED REVOCATION OF A RULING LETTER AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF CERTAIN FOOTWEAR**

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

**ACTION:** Notice of proposed revocation of a ruling letter and proposed revocation of treatment relating to tariff classification of certain footwear.

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

**DATES:** Comments must be received on or before (30 DAYS FROM PUBLICATION DATE).

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

**FOR FURTHER INFORMATION CONTACT:** Tatiana Salnik Matherne, Tariff Classification and Marking Branch: (202) 325–0351.

## SUPPLEMENTARY INFORMATION:

### BACKGROUND

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

Pursuant to section 625 (c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625 (c)(1)), this notice advises interested parties that CBP proposes to revoke a ruling letter pertaining to the tariff classification of certain footwear. Although in this notice CBP is specifically referring to the revocation of New York Ruling Letter (NY) N161242, dated May 16, 2011, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

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

on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

In NY N161242, set forth as Attachment A to this document, CBP determined that the subject merchandise was classified under subheading 6402.99.27, HTSUS, which provides for “Other footwear with outer soles and uppers of rubber or plastics: Other footwear: Other: Other: Having uppers of which over 90 percent of the external surface area (including any accessories or reinforcements such as those mentioned in note 4(a) to this chapter) is rubber or plastics (except footwear having a foxing or a foxing-like band applied or molded at the sole and overlapping the upper and except footwear designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather): Other: Sandals and similar footwear of plastics, produced in one piece by molding.” It is now CBP’s position that the subject merchandise is properly classified under subheading 6402.99.31, HTSUS, which provides for: “Other footwear with outer soles and uppers of rubber or plastics: Other footwear: Other: Other: Having uppers of which over 90 percent of the external surface area (including any accessories or reinforcements such as those mentioned in note 4(a) to this chapter) is rubber or plastics (except footwear having a foxing or a foxing-like band applied or molded at the sole and overlapping the upper and except footwear designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather): Other: Other.”

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to revoke NY N161242 and revoke or modify any other ruling not specifically identified, in order to reflect the proper tariff classification of the subject footwear according to the classification analysis contained in proposed HQ H 185722, set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP proposes to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: March 16, 2015

MYLES B. HARMON

*Director*

*Commercial and Trade Facilitation Division*

Attachments

N161242

May 16, 2011

CLA-2-64:0T:RR:NC:N4:447

CATEGORY: Classification

TARIFF NO.: 6402.99.2790

MR. JOEL SCHWARTZ  
GREAT CHINA EMPIRE, LTD.  
1385 BROADWAY  
NEW YORK, NY 10018

RE: The tariff classification of sandals from China

DEAR MR. SCHWARTZ:

In your letter dated April 14, 2011, you requested a tariff classification ruling.

The sample identified as style YX5117 is a child's open toe/open heel sandal. The flat outer sole is a single piece of foamed rubber/plastic, approximately uniform in thickness, and cut in the shape of a footprint. The molded PVC upper is a single piece that is secured by plugs to the rubber/plastic outer sole on either side of the foot and between the first and second toes. Portions of the upper form an adjustable heel strap and a side closure that secures the shoe to the foot. You suggest classification in subheading 6402.20.0000, Harmonized Tariff Schedule of the United States (HTSUS), the provision for Zori footwear. As style YX5117 does not possess the typical characteristics of a Zori described in T.D. 93-88, specifically a "V", "X", or "Y" shaped upper, and with a plug that secures the upper to the outer sole at the end of each strap, it will be classified elsewhere.

The applicable subheading for style YX5117 will be 6402.99.2790, HTSUS, which provides for other footwear with outer soles and uppers of rubber or plastics: other footwear: other: other: having uppers of which over 90 percent of the external surface area (including any accessories or reinforcements such as those mentioned in note 4(a) to this chapter) is rubber or plastics (except footwear having a foxing or a foxing-like band applied or molded at the sole and overlapping the upper and except footwear designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather): other: sandals and similar footwear of plastics, produced in one piece by molding: other. The rate of duty will be 3 percent ad valorem.

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

The sample you have submitted does not appear to be properly marked with the country of origin. Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides, in general, that all articles of foreign origin imported into the United States must be legibly, conspicuously, and permanently marked to indicate the English name of the country of origin to an ultimate purchaser in the United States. The implementing regulations to 19 U.S.C. 1304 are set forth in Part 134, Customs Regulations (CFR Part 134). You may wish to discuss the matter of country of origin marking with the Customs import specialist at the proposed port of entry.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Stacey Kalkines at (646) 733-3042.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director*

*National Commodity Specialist Division*

HQ H185722  
CLA-2 OT:RR:CTF:TCM H185722 TSM  
CATEGORY: Classification  
TARIFF NO.: 6402.99.31

MR. JOEL SCHWARTZ  
GREAT CHINA EMPIRE, LTD.  
1385 BROADWAY  
NEW YORK, NY 10018

**RE:** Revocation of NY N161242; Classification of sandals from China

DEAR MR. SCHWARTZ:

This is in reference to New York Ruling Letter (NY) N161242, issued to Great China Empire, Ltd. on May 16, 2011, concerning the tariff classification of a child's open toe heel sandals from China. In that ruling, U.S. Customs and Border Protection ("CBP") classified the subject merchandise under subheading 6402.99.27, Harmonized Tariff Schedule of the United States ("HTSUS"), which provides for "Other footwear with outer soles and uppers of rubber or plastics: Other footwear: Other: Other: Having uppers of which over 90 percent of the external surface area (including any accessories or reinforcements such as those mentioned in note 4(a) to this chapter) is rubber or plastics (except footwear having a foxing or a foxing-like band applied or molded at the sole and overlapping the upper and except footwear designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather): Other: Sandals and similar footwear of plastics, produced in one piece by molding." Upon additional review, we have found this classification to be incorrect. For the reasons set forth below we hereby revoke NY N161242.

**FACTS:**

NY N161242, issued to Great China Empire, Ltd. on May 16, 2011, describes the subject merchandise as follows:

The sample identified as style YX5117 is a child's open toe/open heel sandal. The flat outer sole is a single piece of foamed rubber/plastic, approximately uniform in thickness, and cut in the shape of a footprint. The molded PVC upper is a single piece that is secured by plugs to the rubber/plastic outer sole on either side of the foot and between the first and second toes. Portions of the upper form an adjustable heel strap and a side closure that secures the shoe to the foot.

**ISSUE:**

Whether the sandals at issue should be classified under subheading 6402.99.27, HTSUS, as "... Sandals and similar footwear of plastics, produced in one piece by molding," or subheading 6402.99.31, HTSUS, as "... Other."

**LAW AND ANALYSIS:**

Classification under the Harmonized Tariff Schedule of the United States (HTSUS) is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified

solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. In addition, in interpreting the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. *See* T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

6402	Other footwear with outer soles and uppers of rubber or plastics:	
	Other footwear	
6402.99	Other	
	Other	
		Having uppers of which over 90 percent of the external surface area (including any accessories or reinforcements such as those mentioned in note 4(a) to this chapter) is rubber or plastics (except footwear having a foxing or a foxing-like band applied or molded at the sole and overlapping the upper and except footwear designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather):
		Other
6402.99.27		Sandals and similar footwear of plastics, produced in one piece by molding
6402.99.31		Other

Subheading 6402.99.27, HTSUS, provides for “... Sandals and similar footwear of plastics, produced in one piece by molding.” This subheading does not allow for footwear with separately attached rubber and plastic components. Manufacturing or assembling of an upper to an outer sole by such process as stitching, riveting, nailing, screwing, plugging, gluing, plugging, etc., would preclude classification as “produced in one piece by molding.” Since the uppers of the subject sandals, style YX5117, were attached to the outer soles by means of plugs, the sandals were not “produced in one piece by molding” within the meaning of subheading 6402.99.27, HTSUS. Therefore, they cannot be classified in this subheading.

Subheading 6402.99.31, HTSUS, provides for footwear “... Other (than sandals and similar footwear of plastics, produced in one piece by molding).” Sandals with uppers and outer soles of rubber or plastics not produced in one piece by molding are classified in this subheading. The uppers of the subject sandals, style YX5117, are attached to the outer soles by means of plugs. Therefore, the subject sandals cannot be considered to be produced in one piece by molding and are classified in subheading 6402.99.31, HTSUS.

Based on the foregoing, we conclude that the subject sandals are classified in subheading 6402.99.31, HTSUS.

**HOLDING:**

By application of GRI 1, the subject sandals are classified under subheading 6402.99.31, HTSUS, as “Other footwear with outer soles and uppers of rubber or plastics: Other footwear: Other: Other: Having uppers of which over 90 percent of the external surface area (including any accessories or reinforcements such as those mentioned in note 4(a) to this chapter) is rubber or plastics (except footwear having a foxing or a foxing-like band applied or molded at the sole and overlapping the upper and except footwear designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather): Other: Other.” The general, column one rate of duty is 6 percent ad valorem.

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

**EFFECT ON OTHER RULINGS:**

NYN161242, dated May 16, 2011, is REVOKED.

*Sincerely,*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

  
**GENERAL NOTICE**  
**19 CFR PART 177****PROPOSED REVOCATION OF ONE RULING LETTER AND  
TREATMENT RELATING TO THE TARIFF  
CLASSIFICATION OF A HOBBY KNIFE SET WITH LED  
LIGHT**

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

**ACTION:** Notice of proposed revocation of a ruling letter and treatment concerning the tariff classification of the LumiKNIFE™ hobby knife set with LED light.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP intends to revoke one ruling letter pertaining to the tariff classification of the LumiKNIFE™ hobby knife set with attachable LED light, under the Harmonized Tariff Schedule of the United States (HTSUS). CBP also proposes to revoke any treatment previously accorded by it to substantially identical transactions. Comments are invited on the correctness of the proposed action.



**DATES:** Comments must be received on or before (30 days from the date of publication of notice in the Customs Bulletin).

**ADDRESSES:** Written comments are to be addressed to U.S. Customs and Border Protection, Office of Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K Street NE, 10th Floor, Washington, DC 20229-1177. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

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

### **SUPPLEMENTARY INFORMATION:**

#### **Background**

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

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), this notice advises interested parties that CBP intends to revoke one ruling letter pertaining to the tariff classification of a LumiKNIFE™ hobby knife set with LED light. Although in this notice CBP is specifically referring to New York Ruling Letter (NY) R04558, dated August 22, 2006 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ones identi-

fied. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, CBP personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or CBP's previous interpretation of the HTSUS. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

In NY R04558, CBP classified the LumiKNIFE™ hobby knife set with LED light m subheading 8211.92.90, HTSUS, which provides for, "Knives with cutting blades, serrated or not (including pruning knives), other than knives of heading 8208, and blades and other base metal parts thereof: Other: Other knives having fixed blades: Other."

It is now CBP's position that the LumiKNIFE™ hobby knife set with LED light is properly classified under subheading 8211.93.00, HTSUS, which provides for, "Knives with cutting blades, serrated or not (including pruning knives), other than knives of heading 8208, and blades and other base metal parts thereof: Other: Knives having other than fixed blades."

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke NY R04558 and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling (HQ) H257274, (Attachment B). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

Dated:

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

Attachments

NY R04558

August 22, 2006

CLA-2-82:RR:E:NC:N1:118 R04558

CATEGORY: Classification

TARIFF NO.: 8211.92.9060

MS. CYNTHIA GIBBS  
GIBBS GROUP  
779 SHASTA STREET  
YUBA CITY, CA 95991

RE: The tariff classification of a LumiKNIFE™ from China.

DEAR MS. GIBBS:

In your letter dated August 4, 2006, you requested a tariff classification ruling for a LumiKNIFE™.

You have described the LumiKNIFE™ as a professional hobby knife with LED light. The knife handle is made of zinc alloy and has a plastic lever for releasing the interchangeable xacto razor blade. The blade is a fixed blade.

The applicable subheading for the LumiKNIFE™ will be 8211.92.9060, Harmonized Tariff Schedule of the United States (HTSUS), which provides for knives with cutting blades, serrated or not (including pruning knives), other than knives of heading 8208, and blades and other base metal parts thereof: other: other knives having fixed blades: other: other: other. The rate of duty will be 0.4¢ each + 6.1%.

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

Consideration was given to classifying this item under 8212.20.0000, HTSUS, as you have suggested. Subheading 8212.20.00, HTSUS, provides for safety razor blades and razor blade blanks, for hair removal, and your item is a hobby knife. Accordingly, your suggested classification is deemed inappropriate.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Kathy Campanelli at 646-733-3021.

*Sincerely*

ROBERT B. SWIERUPSKI

*Director,*

*National Commodity Specialist Division*

HQ H257274  
CLA-2 OT: RR: CTF: TCM: H257274 ERB  
CATEGORY: Classification  
TARIFF NO.: 8211.93.00

Ms. CYNTHIA GIBBS  
GIBBS GROUP  
779 *SHASTA STREET*  
YUBA CITY, CA 95991

RE: Revocation of NY R04558; Tariff Classification of a LumiKNIFE™

DEAR Ms. GIBBS:

U.S. Customs and Border Protection (CBP) issued Gibbs Group New York Ruling Letter (NY) R04558 on August 22, 2006. NY R04558 pertains to the tariff classification under the Harmonized Tariff Schedule of the United States, (HTSUS) of a product called LumiKNIFE™, a professional hobby knife with an attachable Light Emitting Diode (LED). We have since reviewed NY R04558 and find it to be in error with respect to the classification of the knife, which is described in detail herein.

**FACTS:**

In NY R04558, CBP found the following:

You have described the LumiKNIFE™ as a professional hobby knife with LED light. The knife handle is made of zinc alloy and has a plastic level for releasing the interchangeable xacto razor blade. The blade is a fixed blade.

The applicable subheading for the LumiKNIFE™ will be 8211.92.9060, Harmonized Tariff Schedule of the United States (HTSUS), which provides for knives with cutting blades, serrated or not (including pruning knives), other than knives of heading 8208, and blades and other base metal parts thereof: other: other knives having fixed blades: other: other: other. The rate of duty will be 0.4¢ each + 6.1 %.

The product is packaged together with a small LED light that attaches to the plastic handle to provide precision lighting to the spot the user is cutting. Online advertisement of the product also state that the product features a quick change design to release interchangeable blades.

**ISSUE:**

What is the proper classification of a hobby knife with interchangeable blades under the HTSUS?

**LAW AND ANALYSIS:**

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

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

8211	Knives with cutting blades, serrated or not (including pruning knives), other than knives of heading 8208, and blades and other base metal parts thereof: Other:
8211.92	Other knives having fixed blades:
8211.92.90	Other
8211.93	Knives having other than fixed blades

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

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

Additional U.S. Note 3 to Chapter 82, which covers cutlery provides the following:

For the purposes of determining the rate of duty applicable to sets provided for in heading 8205, 8206, 8211 or 8215, a specific rate of duty or a compound rate of duty for any article in the set shall be converted to its ad valorem equivalent rate, i.e., the ad valorem rate which, when applied to the full value of the article determined in accordance with section 402 of the Tariff act of 1930, as amended, would provide the same amount of duties as the specific or compound rate.

Statistical Note 1 to Chapter 82 provides the following:

For the purposes of statistical reporting of sets in heading 8205, 8206, 8211 or 8215, the number of pieces reported shall be the total number of separate pieces in the set(s).

In understanding the language of the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System, which constitute the official interpretation of the HTSUS at the international level, may be utilized. The ENs, although not dispositive or legally binding, provides a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The EN (4) to heading 8211, states the following:

This heading covers:

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(4) Knives with several interchangeable blades, whether or not these are contained in the handles.

The EN (X) to GRI 3(b) provides that the term “goods put up in sets for retail sale” refer to goods that:

- (a) Consist of at least two different articles which are *prima facie* classifiable in different headings;
- (b) Consist of products or articles put 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 cases or on boards).

Initially, we note the subject merchandise is imported in its condition ready for retail sale. In each package is included the plastic handle, blades, and the LED light. Considered separately, the subject merchandise consists of multiple components which are *prima facie* classifiable in different headings. They are packaged, marketed, and meant to be used together to meet a specific need; that is, precision cutting in crafting or hobbying. Lastly, the merchandise does not require repacking or additional components upon importation. As such, the subject merchandise satisfies the above requirements in the EN (X) to GRI 3(b) for “goods put up in sets for retail sale.”

GRI 3(b) continues, in relevant part, “... goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.” Although the GRI’s do not provide a definition of “essential character,” the EN (VIII) of GRI 3 (b) provides guidance. Essential character may “... be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.” This is known as the “essential character test,” *see Home Depot USA, Inc., v. United States*, 491 F.3d 1334, 1337 (Fed. Cir. 2007) quoting *Better Homes Plastics Corp. v. United States*, 119 F.3d 969, 971 (Fed. Cir. 1997), and the application of this test requires a fact-intensive analysis. *See Rollerblade, Inc. v. United States*, 112 F.3d 481 (Fed. Cir. 1997).

Upon examination, the knife itself clearly provides the bulk and weight of the product. The LED is incidental to the product’s overall weight. No breakdown of the individual components’ cost was provided. Lastly, the product is marketed and advertised as a knife set. It is the expectation of the consumer that s/he is purchasing a knife with blades for the specific use of crafting or hobbying. The LED provides extra illumination to the targeted spot. But the knife will work regardless as to whether the LED is attached or not. Accordingly, for tariff classification purposes, the essential character of the set is imparted by the knife.

The term “interchangeable” is not defined in the HTSUS or the ENs. Thus, to assist in ascertaining the common meaning of the tariff term, CBP may consult lexicographic and scientific authorities, dictionaries, and other reliable sources. *See Brookside Veneers, Ltd. v. United States*, 847 F.2d 786, 789, 6 Fed Cir. 121, 125 (Fed. Cir.) cert. denied, 488 U.S. 943 (1988).

CBP has had previous occasion to consider this term, as well as products substantially similar to the LumiKNIFE™ product. In Headquarters Ruling (HQ) H952988, dated February 4, 1993, CBP cited *Webster’s II New Riverside University Dictionary* (1988) which defined “interchangeable” as: Capable of mutual exchange, 1. To switch each of (two things) into the place of the other. 2. To give mutually: to exchange ... to change places with each other. *Webster’s Third New International Dictionary* (Unabridged) (1966) defined it as: 1. Capable of being interchanged. 2. Mutual, reciprocal... 5. Permitting mutual substitution without loss of function or suitability. [] Thus, CBP concluded that based on cited lexicographic authorities that, “the term “interchangeable blades” refers to the subject spare blades, whether they are contained in the

handle of the cutters or packed separately in the blister pack.” See HQ 952988, *supra*.

Similarly, the term “fixed blade” is also not defined in the HTSUS or the ENs. But this term is understood to be a knife, whereby the blade itself does not fold, or slide, and is not one which is interchangeable with another, separate, blade. It is typically stronger due to the tang, the extension of the blade into the handle and lack of moving parts.<sup>1</sup> Thus, by definition, a fixed blade knife cannot also be a knife with an interchangeable blade. Furthermore, this differentiation is evidenced by the subheadings in the Tariff which provide *eo nomine* for “knives having fixed blades” and “knives other than fixed blades.”

The LumiKNIFE™ has interchangeable blades. When a user releases the blade to exchange it for a replacement blade, and locks the new blade into place, this does not transform the product into a fixed blade product. It remains a knife with interchangeable blades. It is provided for *eo nomine* in the tariff, and is fully described by subheading 8211.93.00, as “Knives having other than fixed blades.” This is consistent with previous CBP rulings on similar products. See HQ 952988, dated February 4, 1993 (classifying various models of utility knives which contain spare blades either packaged with the knife, or within the handle of the knife in subheading 8211.93.00, HTSUS); HQ 968129, dated May 15, 2006 (classifying a hobby knife set which included 35 blades and 4 scribers in subheading 8211.93.00, HTSUS); NY I86743, dated September 25, 2002 (classifying a hobby knife set with 42 interchangeable blades in subheading 8211.93.00, HTSUS); NY H80238, dated May 1, 2001 (classifying a hobby knife set with 28 fine interchangeable blades suitable for arts and crafts work in subheading 8211.93.00, HTSUS); and see NY F88518, dated June 26, 2000 (classifying a set including 5 retractable-blade knives in subheading 8211.93.00, HTSUS); N07313 8, dated September 10, 2009 (classifying a knife blade holder with five metal replacement blades. The knife handle had a retractable slide mechanism that is activated by depressing a button on the top of the handle. When the mechanism is extended, one of the replacement blades can be inserted and locked into the holder. The product was classified in subheading 8211.93.00, HTSUS); N007899, dated March 14, 2007 (classifying a heavy duty utility knife with a retractable blade. One steel blade is installed in the knife ready for use, and it was packaged with five extra blades stored within a compartment in the handle. The product was classified in subheading 8211.93.00, HTSUS).

Articles classified in subheading 8211.93.00 are measured and reported in individual units and assessed a compound rate of duty (currently 3¢ each+5.4%). As we have previously ruled, where the appropriate provision in Chapter 82, HTSUS, carries a specific or compound rate of duty in addition to the ad valorem rate, as it does here, the specific or compound rate is applied to each of the items in the set. See HQ 967376, HQ 967377, and HQ 966981, all regarding the classification of pumpkin carving knife sets and dated March 7, 2005. See generally, CBP’s Informed Compliance Publication, Classification of Sets Under HTSUS, updated March 2004, page 19 (section

<sup>1</sup> See *American Knife & Tool Institute*, available at <http://www.akti.org/resources/akti-approved-knife-definitions/>

titled, “Sets Classified in Specific or Compound Rate of Duty Provisions” provides useful background on this topic).

**HOLDING:**

By application of GRI 1 and GRI 3(b), the subject LumiKNIFE™ set is provided for in heading 8211, HTSUS. It is specifically provided for under subheading 8211.93.00, HTSUS, which provides for, “Knives with cutting blades, serrated or not (including pruning knives), other than knives of heading 8208, and blades and other base metal parts thereof: Other: Knives having other than fixed blades.” The column one, general rate of duty is 3¢ + 5.4% ad valorem.

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

**EFFECT ON OTHER RULINGS:**

NY R04558, dated August 22, 2006, is hereby REVOKED.

MYLES B. HARMON

*Director*

*Commercial and Trade Facilitation Division*



**PROPOSED MODIFICATION OF RULING LETTERS AND  
PROPOSED REVOCATION OF TREATMENT RELATING TO  
THE TARIFF CLASSIFICATION OF CERTAIN PATIENT  
LIFTS**

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

**ACTION:** Notice of modification of ruling letters and proposed revocation of treatment relating to the tariff classification of certain patient lifts

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

**DATES:** Comments must be received on or before [30 thirty days from the date of publication in Customs Bulletin.]



**ADDRESSES:** Written comments are to be addressed to Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K St. NE, Washington, D.C. 20229. Submitted comments may be inspected at Customs and Border Protection, 90 K St. NE, Washington, D.C. 20229 during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

**FOR FURTHER INFORMATION CONTACT:** Aaron Marx, Tariff Classification and Marking Branch: (202) 325-0195

**SUPPLEMENTARY INFORMATION:**

**Background**

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

Pursuant to section 625 (c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625 (c)(1)), this notice advises interested parties that CBP intends to modify six ruling letters pertaining to the tariff classification of certain patient lifts. Although in this notice, CBP is specifically referring to the modification of New York Ruling Letter (NY) 871935, dated March 25, 1992 (Attachment A), NY 865148, dated August 8, 1991 (Attachment B), NY D83377, dated November 6, 1998 (Attachment C), NY C81648, dated November 24, 1997 (Attachment D) NY B87708, dated July 30, 1997 (Attachment E), and NY 868691, dated

December 10, 1991 (Attachment F), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

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

In NY 871935, CBP determined that the "Liko Masterlift System" and the lift for the Model A-2000 "Kramer Bathing System" at issue was classified under heading 9402, HTSUS, specifically under subheading 9402.90.00, HTSUS, which provides for "Medical, surgical, dental or veterinary furniture (for example, operating tables, examination tables, hospital beds with mechanical fittings, dentists' chairs); barbers' chairs and similar chairs, having rotating as well as both reclining and elevating movements; parts of the foregoing articles: Other". It is now CBP's position that the subject merchandise is properly classified under heading 8428, HTSUS, specifically under 8428.90.02, HTSUS, which provides for "Other lifting, handling, loading or unloading machinery (for example, elevators, escalators, conveyors, teleferics): Other machinery" by application of GRI 1.

In NY 865148, CBP determined that the "Water Powered Bath Lift Chair" at issue was classified under heading 9402, HTSUS, specifically under subheading 9402.90.00, HTSUS.<sup>1</sup> It is now CBP's position that the subject merchandise is properly classified under heading 8428, HTSUS, specifically under 8428.90.02, HTSUS, by application of GRI 1.

In NY 083377, CBP determined that the bath lifts at issue were classified under heading 9402, HTSUS, specifically under subheading

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<sup>1</sup> There is a typographical error in the text of NY 865148. The ruling states that the "Water Powered Bath Lift Chair" is classified under subheading 9402.10.00, HTSUS, while at the same time expressing the text and duty rate associated with subheading 9402.90.00, HTSUS. As such, CBP treats NY 865148 as if it classified the above-identified good in subheading 9402.90.00, HTSUS.

9402.90.00, HTSUS, and that they were eligible for secondary classification under subheading 9817.00.96, HTSUS, which provides for “Articles specially designed or adapted for the use or benefit of the blind or other physically or mentally handicapped persons; parts and accessories (except parts and accessories of braces and artificial limb prosthetics) that are specially designed or adapted for use in the foregoing articles: Other”. It is now CBP’s position that the subject merchandise is properly classified under heading 8428, HTSUS, specifically under 8428.90.02, HTSUS, rather than heading 9402, HTSUS, by application of GRI 1. Furthermore, it is CBP’s position that the instant articles remain eligible for secondary classification under subheading 9817.00.96, HTSUS.

In NY C81648, CBP determined that the “Pro-Med Patient Lifting System” at issue was classified under heading 9402, HTSUS, specifically under subheading 9402.90.00, HTSUS, and that it was eligible for secondary classification under subheading 9817.00.96, HTSUS. It is now CBP’s position that the subject merchandise is properly classified under heading 8428, HTSUS, specifically under 8428.90.02, HTSUS, rather than heading 9402, HTSUS, by application of GRI 1. Furthermore, it is CBP’s position that the instant articles remain eligible for secondary classification under subheading 9817.00.96, HTSUS.

In NY 887708, CBP determined that the patient lifts at issue were classified under heading 9402, HTSUS, specifically under subheading 9402.90.00, HTSUS, and that they were eligible for secondary classification under subheading 9817.00.96, HTSUS. It is now CBP’s position that the subject merchandise is properly classified under heading 8428, HTSUS, specifically under 8428.90.02, HTSUS, rather than heading 9402, HTSUS, by application of GRI 1. Furthermore, it is CBP’s position that the instant articles remain eligible for secondary classification under subheading 9817.00.96, HTSUS.

In NY 868691, CBP determined that the patient lifts at issue were classified under heading 9402, HTSUS, specifically under subheading 9402.90.00, HTSUS, and that they were eligible for secondary classification under subheading 9817.00.96, HTSUS. It is now CBP’s position that the subject merchandise is properly classified under heading 8428, HTSUS, specifically under 8428.90.02, HTSUS, rather than heading 9402, HTSUS, by application of GRI 1. Furthermore, it is CBP’s position that the instant articles remain eligible for secondary classification under subheading 9817.00.96, HTSUS.

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to modify NY 871935, NY 865148, NY 083377, NY C81648, NY B87708, and NY 868691 and to revoke or modify any other ruling not specifically

identified, in order to reflect the proper classification of the patient lifts according to the analysis contained in proposed Headquarters Ruling Letters (HQ) H235507 (Attachment G). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke or modify any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: March 9, 2015

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

Attachments

NY 871935

MARCH 25, 1992

CLA-2-94:S:N:N1:233 871935

CATEGORY: Classification

TARIFF NO.: 9019.10.2000; 8419.20.0000 &  
9402.90.0020

Ms. SANDRA L. MARSHANKE  
C. J. TOWER, INC., CUSTOMS BROKERS  
128 DEARBORN STREET  
BUFFALO, NEW YORK 14207-3198

RE: The tariff classification of medical equipment from Canada.

DEAR Ms. MARSHANKE:

In your letter dated February 10, 1992, on behalf of Amada Medical, Inc., Mississauga, Ontario, Canada L4Z 1T5, you requested a tariff classification ruling.

The merchandise consists of four Models of medical equipment. The first, Model A-2000, is a Whirlpool Bathing System (Kramer Bathing Systems). It is a therapeutic bathing and whirlpool hydromassage for geriatric/disabled patients including a lift for transport in and out of the tub. The "Smart Tub" is adjustable and automatically fills with the push of a button then shuts off once the fill is completed. It has an electronically controlled hydromassage and easy to read digital display. Convenient hand held shower with adjustable spray controls and non-skid tub and grip bars. The lift base is fully interchangeable with the stretcher and/or chair and has a hydraulic foot pedal control. It is constructed of rust proof stainless steel with acid resistant metal parts.

The second, Model S-206, is a Getinge Flusher/Disinfector. It is designed for efficient cleaning and disinfection of the utensils mainly used in the management of patients' hygiene, such as bedpans, urinals, kidney basins and suction bottles. Its principal function is sterilizing based on the fact that the greatest part of the time cycle is consumed by that process. The disinfector has space for, e.g., one bedpan or three urine bottles at a time and is started with a button. The entire process only takes three minutes and comprises flushing, cleaning and disinfection. Disinfection is accomplished with steam at temperature of at least 85 degrees C (185 degrees F). The lid remains locked until disinfection is completed. It is at home in a medical department, obstetrical unit, intensive care unit, surgical department or quarantine unit. The dimensions vary according to models.

The third is a Liko MasterLift System. It consists of three different styles. The first is the Regular. It is a one-piece sling with individual leg supports and the maximum load is 170 kg (380 lbs.), which is used to transport a patient. Liko's patented "wrap-around" design means that MasterSling automatically adapts itself to any patient and is available in different sizes, including, Model #35320-1P, a "high-back" for added support. MasterSling uses no metal and comes in a variety of strong, pliable fabrics, i.e., nylon, cotton, polyester net, and plastic-coated fiberglass. Weight-bearing straps are made of strong, durable synthetic fiber. A MasterSling with reinforced leg supports distributes pressure evenly and prevents the fabric from twisting or wrinkling. A MasterSling with synthetic sheepskin padding is available for pressure-sensitive patients.

The second is the Liko MasterLift System Overhead. It has two basic designs, a StraightRail and a TraverseRail. It has three installation alternatives which are ceiling mounted, wall mounted and an upright support, and includes a selection of options for lifting patient upright, reclined or from horizontal positions. It comes in a variety of different sizes. The lifting capacity is 170 kg (380 lbs.). The third style, the Golva, is available with either a fixed or an adjustable chassis. An optional electronic scale mounts conveniently between the slingbar and the lifting strap. Any of the high-quality, easy-to-use MasterLift accessories may be used with Golva. It is designed to stand on the floor.

The fourth model is a Merivaara's Rose Geriatric Chair. It is a comfortable, versatile nursing aid and has been designed for use in the nursing of the elderly and for patients requiring long term care. It features a contoured seat which provides sturdy support and optimum seating comfort during extended use. The dining table provides a solid support during meals and conveniently doubles as a surface for such activities as craftwork, writing and reading. It is supplied either attached to the chair, so that it can be turned to the side, or as a separate item. In either case, the tray can be locked securely in place. The distance between the table and the user is also adjustable. The overall dimensions are width maximum 650 mm and the height maximum 1250 mm.

The applicable subheading for the therapeutic bathing and whirlpool hydromassage for the Kramer Bathing Systems will be 9019.10.2000, Harmonized Schedule of the United States, HTSUS, which provides for mechanotherapy appliance and massage apparatus. The duty rate will be 4.2 percent ad valorem. The applicable subheading for the lift for the Kramer Bathing Systems will be 9402.90.0020, HTSUS, which provides for medical, surgical, dental or veterinary furniture (for example, operating tables, examination tables, hospital beds with mechanical fittings, dentists' chairs) i barbers' chairs and similar chairs, having rotating as well as both reclining and elevating movements i parts of the foregoing articles: other, other. The duty rate will be 5.3 per cent ad valorem. The applicable subheading for the Getinge Flusher Disinfectant will be 8419.20.0000, HTSUS, which provides for machinery, plant or laboratory equipment, for the treatment of materials by a process involving a change of temperature such as heating, sterilizing: Medical, surgical or laboratory sterilizers. The duty rate will be 4.2 percent ad valorem. The applicable subheading for the Liko Lifting System and Marivaara's Rose Geriatric Chair will be 9402.90.0020, HTSUS, which provides for medical, surgical, dental or veterinary furniture; parts of the foregoing articles The duty rate will be 5.3 percent ad valorem.

Goods classifiable under subheadings 9019.10.200; 8419.20.00020 and 9402.90.0020, HTSUS, which have originated in the territory of Canada, will be entitled to a 2.5 percent, a 0.8 percent ad valorem and a 1 percent ad valorem rate of duty, respectively, under the United States-Canada Free Trade Agreement (CFTA) upon compliance with all applicable regulations.

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

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed

without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

*Sincerely,*

JEAN F. MAGUIRE  
*Area Director*  
*New York Seaport*

NY 865148

AUG 08 1991

CLA-2-94:S:N:N1:233 865148

CATEGORY: Classification

TARIFF NO.: 9402.10.0020

MS. PEARL SZEWCZYK  
AMERI-CAN CUSTOMHOUSE BROKERS, INC.  
PEACE BRIDGE PLAZA  
BUFFALO, NEW YORK 14213-2488

RE: The tariff classification of a Water-Powered Bath Lift Chair and Valette from Canada.

DEAR MS. SZEWCZYK:

In your letter dated July 12, 1991, on behalf of Clark Medical Products, you requested a tariff classification ruling.

The Water Powered Bath Lift Chair is used by medically handicapped people not only to get into and out of the tub, but to sit in the tub and wash themselves. The Bath Chair is made in five different models: 90, 100, 150, 200 and 250. It is designed for people with conditions such as muscular dystrophy, cerebral palsy, multiple sclerosis and arthritis. The Bath Chair is made of heavy duty metal and plastic construction with an epoxy painted aluminum base.

The Valette is a free standing seat designed to fit over an existing toilet seat to enable a person who cannot sit or stand without assistance to have independent use of the toilet. A simple hand movement is all that is required to operate the control. The base is attached to the floor with double-sided tape (no holes in the floor). It is powered by water with no electricity required. The Valette is ideal for people who have arthritis, muscular dystrophy, multiple sclerosis, post polio, muscle loss in their legs, hip and knee flexion restrictions, hemiplegia, stroke and other disabling conditions.

The applicable subheading for the Watered-Powered Bath Lift Chair and Valette will be 9402.10.0020, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Medical, surgical, dental or veterinary furniture, other, other. The duty rate will be 5.3 percent ad valorem.

Goods classifiable under subheading 9402.10.0020, HTSUS, which have originated in the territory of Canada, will be entitled to a 2.1 percent ad valorem rate of duty under the United States-Canada Free Trade Agreement (CFTA) upon compliance with all applicable regulations.

Based on the information you have furnished the Valette and the Water-Powered Bath Lift Chair are designed for and would be used principally by persons suffering from a permanent or chronic impairment which substantially limits their ability to use regular toilet or bathing facilities. Therefore, those two articles are eligible for a free rate of duty as articles specially designed or adapted for the use or benefit of physically or mentally handicapped persons in subheading 9817.00.9600, HTSUS. All applicable entry requirements must be met, including the filing of Form ITA-362P.

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

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed



without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

*Sincerely,*

JEAN F. MAGUIRE  
*Area Director*  
*New York Seaport*

NY D83377

November 6, 1998

CLA-2-94:RR:NC:SP:233 D83377

CATEGORY: Classification

TARIFF NO.: 9402.90.0020; 9817.00.96

Ms. CONNIE FREEMAN  
THE A. W. FENTON COMPANY INC.  
P.O. BOX 81179  
CLEVELAND, OH 44181-0179

RE: The tariff classification of bath lifts from Taiwan.

DEAR Ms. FREEMAN:

In your letter dated October 23, 1998, on behalf of Invacare Corporation, you requested a tariff classification ruling.

You have submitted a brochure which illustrates a battery operated bath lift. The bath lifts are designed to allow a patient to transfer from a wheelchair to the lift with minimal effort. The patient then uses the attached handset to lower the bath lift into the water. After bathing, the handset is again used to raise the patient back to the bath lift's highest position to allow the patient to transfer back onto the wheelchair safely. The lifts are battery powered, and are equipped with a removable battery behind the backrest.

The applicable subheading for the bath lifts will be 94102.90.0020, Harmonized Tariff Schedule of the United States (HTS), which provides for medical, surgical, dental or veterinary furniture ... ; parts of the foregoing articles: other: other. The rate of duty will be 1.1% ad valorem.

The bath lifts are eligible for a free rate of duty as articles specially designed or adapted for the use or benefit of physically or mentally handicapped persons in subheading 9817.00.96, HTS. All applicable entry requirements must be met including the filing of form ITA-362P.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Lawrence Mushinske at 212-466-5739.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director,*

*National Commodity Specialist Division*

NY C81648

November 24, 1997

CLA-2-94:RR:NC:SP:233 C81648

CATEGORY: Classification

TARIFF NO.: 9402.90.0020; 9817.00.9600

MS. LIZZIE MCLEISH  
PRO-MED AUSTRALIA PTY LTD  
P.O. BOX 440  
MOORABBIN 3189  
VICTORIA AUSTRALIA

RE: The tariff classification of patient lifting devices from Australia.

DEAR MS. MCLEISH:

In your letter dated November 5, 1997, you requested a tariff classification ruling.

You have submitted descriptive literature for the Pro-Med Patient Lifting System, a comprehensive range of patient lifting products for home or hospital. The system includes general purpose lifters, twin-boom high capacity lifters, a lifting frame, stand-up lifters, slings and supports. The lifters each feature an advanced electronic control and power system with two-speed raise and lower controls, a wall mount recharging station with removable battery pack, knee pad release, base width adjustment, kick-stop castors, pixel sling adjustment, sling size and type identification and a hydraulic pump option. The lifters are available in the Alpha 180, Delta, Elf, and Alpha 230 Alpha 180 Twin-Boom models.

The Pro-Med lifting frame is a development of an Australian emergency stretcher concept. The lifting frame can be assembled around an injured or immobilized patient who is then supported by a series of semi-rigid cross support straps individually inserted beneath the patient's limbs and body. The existing prone position is therefore not disturbed during manual or lifter transfer from ambulance to operating room to ward. For general ward use the frame and lifter combination allows simple, one carer changing of bed linen and pressure care. The lifting frame has easy-to-use plastic locking clips at each end for assembly around the patient.

The stand-up lifters are designed for lifting of the patient off a bed or chair and raised to a fully-standing position. They are available in the Elf Stand-Up, Pixel and Tempo models.

The applicable subheading for the patient lifting devices will be 9402.90.0020, Harmonized Tariff Schedule of the United States (HTS), which provides for medical, surgical, dental or veterinary furniture: ...parts of the foregoing articles: other, other. The rate of duty will be 2.1% ad valorem.

Based on the information you have furnished, the Pro-Med patient lifting devices are designed for the use of individuals with severe muscular or similar disabilities that substantially limit their ability to stand, walk or move freely. These articles are therefore eligible for a free rate of duty as articles specially designed or adapted for the use or benefit of physically or mentally handicapped persons in subheading 9817.00.9600, HTS. All applicable entry requirements must be met including the filing of form ITA-362 P.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is

imported. If you have any questions regarding the ruling, contact National Import Specialist Lawrence Mushinske at 212-466-5739.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director,*

*National Commodity Specialist Division*

NY B87708

July 30, 1997

CLA-2-94:RR:NC:SP:233 B87708

CATEGORY: Classification

TARIFF NO.: 9402.90.0020; 9817.00.9600

MR. DAN BEAUREGARD

A.N. DERINGER, INC.

P.O. BOX 284

HIGHGATE SPRINGS, VT 05460

RE: The tariff classification of the Albatros and Ergotracs Ceiling Lift Systems, the Ergolift Floor Lift and Ergofit Slings from Canada.

DEAR MR. BEAUREGARD:

In your letter dated July 21, 1997, you requested a tariff classification ruling.

You have submitted descriptive literature for the following items:

- (1) The Albatros Ceiling Lift System is a patient-lifting system which operates on two motorized axes. It features an automatic return-to-charge function, a lifting capacity of 250 kgs (550 lbs), a battery supply unit, an emergency stop pull cord and an emergency lowering device.
- (2) The Ergotracs Ceiling Lift System is a patient-transfer system on a fixed rail with two axes, permitting easy manual lateral displacement. It is electrically powered and features a lifting capacity of 190 kgs (418 lbs), a padded universal carry bar which accepts all types of slings, an automatic backup battery supply unit and emergency Up/Down buttons.
- (3) The Ergolift is an ergonomic floor lift. It features multi-positioned handles near the care giver, motorized opening of the legs, an easily accessible emergency stop button, patient rotation capability of 360 degrees, a directional blockage system, luminous dials for battery and charging function, and a padded swivel carry bar adaptable to all types of slings. The patient can be hoisted from the floor without lifting the shoulders. The standardized motorized opening of the legs of the Ergolift and the optimal distribution of the patient's weight, allows the care-giver to easily maneuver the unit without risk.
- (4) Ergolift Slings are a range of four slings to be used with the Ergolift. They are designed for use by patients with different needs. Each sling features 100% polyester soft mesh net, a lined seat made from polyester and foam, a lifting capacity of 250 kgs (550 lbs) and a nylon strap with choice of positioning. The slings are water-resistant and machine washable.

The applicable subheading for the Albatros and Ergotracs Ceiling Lift Systems, the Ergolift Floor Lift and Ergofit Slings will be 9402.90.0020, Harmonized Tariff Schedule of the United States (HTS), which provides for Medical,

surgical, dental or veterinary furniture: ...parts of the foregoing articles: Other, other. The rate of duty will be 2.1% ad valorem.

The Albatros and Ergotrak Ceiling Lift Systems, the Ergolift Floor Lift and Ergofit Slings appear to be intended for the use of individuals with a chronic ailment which substantially limits their ability to care for themselves. The devices are therefore eligible for a free rate of duty as articles specially designed or adapted for the use or benefit of physically or mentally handicapped persons in subheading 9817.00.9600, HTS. All applicable entry requirements must be met including the filing of form ITA-362P.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Lawrence Mushinske at 212-466-5739.

*Sincerely,*

GWENN KLEIN KIRSCHNER  
*Chief, Special Products Branch*  
*National Commodity Specialist Division*

NY 868691

December 10, 1991

CLA-2-94:S:N:N1:119 868691

CATEGORY: Classification

TARIFF NO.: 9402.90.0020; 9817.00.9600

MR. THOMAS F. HERCEG  
T.F. HERCEG, INC.  
98 RIDGE ROAD  
CHESTER, NY 10918

RE: The tariff classification of patient lifters from Belgium

DEAR MR. HERCEG:

In your letter dated November 4, 1991, you requested a tariff classification ruling.

Based on the literature furnished, three types of patient lifters are to be imported: a Hydraulic Mobile Machine, an Electric Mobile Machine and a Ceiling Mounted System. The Mobile Machines have a lifting mast mounted on a "U" shaped base on casters. The Ceiling Mounted System consists of a motor and steel rails. A total support lifting frame or special Polyester woven nylon slings can be used with all three mechanisms.

The patient lifters are designed to move people with motor disabilities from bed to wheelchair, and from wheelchair to toilet or bath. The lifting frame (Handi-Move frame) can hold the patient firmly in place without depending on the patient's muscles.

The applicable subheading for the patient lifters will be 9402.90.0020, Harmonized Tariff Schedule of the United States (HTS), which provides for medical, surgical, dental or veterinary furniture. The rate of duty will be 5.3 percent

Based on the information you have furnished, the patient lifters described above will be eligible for a free rate of duty as articles specially designed or adapted for the use or benefit of physically or mentally handicapped persons in subheading 9817.00.9600, HTS. All applicable entry requirements must be met including the filing of form ITA-362P. Please note that this free provision does not apply to parts.

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

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

*Sincerely,*

JEAN F. MAGUIRE  
*Area Director*  
*New York Seaport*

HQ H235507  
CLA-2 OT:RR:CTF:TCM H235507 AMM  
CATEGORY: Classification  
TARIFF NO.: 8428.90.02

MS. SANDRA L. MARSHANKE  
C. J. TOWER, INC., CUSTOMS BROKERS  
128 DEARBORN STREET  
BUFFALO, NEW YORK 14207-3198

RE: Modification of New York Ruling Letter 871935; Tariff Classification of the Liko Masterlift System and the Lift for the Kramer Bathing System; NY D83377; NY C81648; NY B87708; NY 868691; NY 865148

DEAR MS. MARSHANKE,

This is in reference to New York Ruling Letter (NY) 871935, dated March 25, 1992, regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of the product identified as a Bath Lift. In that ruling, U.S. Customs and Border Protection (CBP) classified the instant patient lift under heading 9402, HTSUS, which provides for medical furniture. We have reviewed NY 871935 and found it to be incorrect. For the reasons set forth below, we intend to modify that ruling.

For the reasons set forth below, we also intend to modify the following rulings which classify substantially similar products under heading 9402, HTSUS: NY D83377, dated November 6, 1998 (bed lifts); NY C81648, dated November 24, 1997 (patient lifts); NY B87708, dated July 30, 1997 (patient lifts); NY 868691, dated December 10, 1991 (patient lifts); and NY 865148, dated August 8, 1991 (bath lifts).

#### **FACTS:**

In NY 871935, CBP described the instant Liko Masterlift System and the Lift for the Kramer Bathing System in the following manner:

The first, Model A-2000, is a Whirlpool Bathing System (Kramer Bathing Systems). It is a therapeutic bathing and whirlpool hydromassage for geriatric/disabled patients including a lift for transport in and out of the tub. The "Smart Tub" is adjustable and automatically fills with the push of a button then shuts off once the fill is completed. It has an electronically controlled hydromassage and easy to read digital display. Convenient hand held shower with adjustable spray controls and non-skid tub and grip bars. The lift base is fully interchangeable with the stretcher and/or chair and has a hydraulic foot pedal control. It is constructed of rust proof stainless steel with acid resistant metal parts.

\* \* \*

The third is a Liko MasterLift System. It consists of three different styles. The first is the Regular. It is a one-piece sling with individual leg supports and the maximum load is 170 kg (380 lbs. ), which is used to transport a patient. Liko's patented "wraparound" design means that MasterSiing automatically adapts itself to any patient and is available in different sizes, including, Model #35320-1 P, a "high-back" for added support. MasterSiing uses no metal and comes in a variety of strong, pliable fabrics, i.e., nylon, cotton, polyester net, and plastic-coated fiberglass. Weight-bearing straps are made of strong, durable synthetic fiber. A MasterSiing with reinforced leg supports distributes pressure evenly and



prevents the fabric from twisting or wrinkling. A MasterSiing with synthetic sheepskin padding is available for pressure-sensitive patients. The second is the Liko MasterLift System Overhead. It has two basic designs, a StraightRail and a TraverseRail. It has three installation alternatives which are ceiling mounted, wall mounted and an upright support, and includes a selection of options for lifting patient upright, reclined or from horizontal positions. It comes in a variety of different sizes. The lifting capacity is 170 kg (380 lbs.). The third style, the Golva, is available with either a fixed or an adjustable chassis. An optional electronic scale mounts conveniently between the slingbar and the lifting strap. Any of the high-quality, easy-to-use MasterLift accessories may be used with Golva. It is designed to stand on the floor.

\* \* \*

See NY 871935. CBP classified the instant products under heading 9402, HTSUS, specifically under subheading 9402.90.00, HTSUS, which provides for “Medical, surgical, dental or veterinary furniture (for example, operating tables, examination tables, hospital beds with mechanical fittings, dentists’ chairs); ... : Other”.

#### ISSUE:

Whether the instant products are properly classified under heading 8428, HTSUS, which provides for “Other lifting ... machinery”, or under heading 9402, HTSUS, which provides for “Medical ... furniture”.

#### LAW AND ANALYSIS:

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

The 2014 HTSUS provisions under consideration are:

8428	Other lifting, handling, loading or unloading machinery (for example, elevators, escalators, conveyors, teleferics):
8428.90.02	Other machinery
-----	
9402	Medical, surgical, dental or veterinary furniture (for example, operating tables, examination tables, hospital beds with mechanical fittings, dentists’ chairs); barbers’ chairs and similar chairs, having rotating as well as both reclining and elevating movements; parts of the foregoing articles:
9402.90.00	Other
* * *	

Note 2 to Chapter 94, HTSUS, states, in pertinent part:

The articles (other than parts) referred to in headings 9401 to 9403 are to be classified in those headings only if they are designed for placing on the floor or ground.

\* \* \*

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs), constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of the headings. It is CBP's practice to consult, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

EN 84.28 states, in pertinent part:<sup>1</sup>

[T]his heading covers a wide range of machinery for the mechanical handling of materials, goods, etc. (lifting, conveying, loading, unloading, etc.). They remain here even if specialised for a particular industry, for agriculture, metallurgy, etc.

\* \* \*

The heading covers lifting or handling machines usually based on pulley, winch or jacking systems, and often including large proportions of static structural steelwork, etc. These static structural elements (e.g., pylons specialised for teleferics, etc.) are classified in this heading when they are presented as parts of a more or less complete handling machine.

\* \* \*

These more complex machines include:

\* \* \*

(III) OTHER SPECIAL LIFTING OR HANDLING MACHINERY

\* \* \*

(L) Patient lifts. These are devices with a supporting structure and a seat for the raising and lowering of seated persons, e.g., in a bathroom or onto a bed. The mobile seat is fixed to the supporting structure by means of ropes or chains.

\* \* \*

The General EN to Chapter 94 states, 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.

\* \* \*

EN 94.02 states, in pertinent part:

(A) MEDICAL, SURGICAL, DENTAL OR VETERINARY FURNITURE

\* \* \*

It should be noted that this group is restricted to furniture of a type specially designed for medical, surgical, dental or veterinary use; furniture for general use not having such characteristics is therefore excluded.

\* \* \*

<sup>1</sup> EN(III)(L) to 84.28 was added to the ENs by corrigendum in November 2003. *See* Annex D/1 to Doc. NC079682 (HSC/32/Nov. 2003), para. 100; Annex L/14 to Doc. NC0796B2.

CBP has previously classified patient lifts and bath lifts under heading 9402, HTSUS, as medical furniture. *See* NY 083377; NY C81648; NY 887708; NY 871935; NY 868691; and NY 865148. However, CBP classified patient lifts under heading 8428, HTSUS, as other lifting machinery. *See* NY N092699, dated February 25, 2010.

Heading 8428, HTSUS, provides, in pertinent part, for other lifting machinery. The heading covers specialized lifting machines based on pulley, winch or jacking systems, that often including large proportions of static structural elements. *See* EN 84.28. In particular, the heading covers “patient lifts.” These are machines that include both a supporting structure and a seat, and are used for the raising and lowering of seated persons in a bathroom or onto a bed. *See* EN(III)(L) to 84.28.

The instant lifts are comprised of moveable metal structures that stand on the floor. A fabric sling hangs down from the arm of the structure by ropes. The sling is designed such that a patient may be seated<sup>2</sup> in it, and be transferred to and from a bed or a bath. Therefore, as they meet the terms of EN(III)(L) to 84.28, the instant lifts are classifiable under heading 8428, HTSUS. Specifically, the instant lifts are classified under subheading 8428.90.02, HTSUS, which provides for “Other lifting, handling, loading or unloading machinery (for example, elevators, escalators, conveyors, teleferics): Other machinery”. *See, e.g.* NY N092699.

Heading 9402, HTSUS, provides in pertinent part for medical furniture. The General EN(A) to Chapter 94 defines furniture as: “[a]ny ‘movable’ articles ... 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 and other places.” While the instant lifts are constructed for placing on the ground, they are not used to equip private dwellings or other places.

CBP has previously considered the meaning of the phrase “to equip”: “Furniture articles are intended ‘to equip’ something. The *Random House Dictionary of the English Language*, (1973) defines the word ‘equip’ as meaning: “To furnish or provide with whatever is needed for service or for any undertaking.” *See* HQ 964352, dated September 11, 2000; HQ 964053, dated July 27, 2000; and HQ 962658, dated July 18, 2000. The instant lifts are not used for the utilitarian purpose of equipping a room. Rather, they are used to transfer a patient to and from a bath or bed. As such, the instant lifts are not “furniture,” and are not properly classified under heading 9402, HTSUS.

<sup>2</sup> The term “seat” is not defined in the tariff or in the ENs. When a tariff term is not defined by the HTSUS or its legislative history, “the term’s correct meaning is its common meaning.” *Mita Copystar Am. v. United States*, 21 F.3d 1079, 1082 (Fed. Cir. 1994). The common meaning of a term used in commerce is presumed to be the same as its commercial meaning. *Simod Am. Corp. v. United States*, 872 F.2d 1572, 1576 (Fed. Cir. 1989). To ascertain the common meaning of a term, CBP may consult “dictionaries, scientific authorities, and other reliable information sources” and “lexicographic and other materials.” *C.J. Tower & Sons v. United States*, 673 F.2d 1268, 1271 (C.C.P.A. 1982); *Simod*, 872 F.2d at 1576. *The Oxford English Dictionary* defines “seat” as “7.a. Something adapted or used for sitting upon, as a chair, stool, sofa, etc .... b. In narrower sense: That part (of a chair, saddle, etc.) upon which its occupant sits.” *See* <www.oed.com> (last checked January 16, 2013). *See also Various Underwriters at Interest, Lloyd’s London v. Cascade Helicopters, Inc.*, 1993 U.S. Dist. LEXIS 13227, \*7 (N.D. IL 1993) (quoting *The American Heritage Dictionary* 1107 (2d ed. 1982)).

**HOLDING:**

By application of GRI 1, the instant Liko Masterlift System and the Lift for the Kramer Bathing System are classified under heading 8428, HTSUS, specifically under subheading 8428.90.02, HTSUS, which provides for “Other lifting, handling, loading or unloading machinery (for example, elevators, escalators, conveyors, teleferics): Other machinery”. The column one, general rate of duty is free.

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

**EFFECT ON OTHER RULINGS:**

NY D83377, dated November 6, 1998, NY C81648, dated November 24, 1997, NY 887708, dated July 30, 1997, NY 871935, dated March 25, 1992, NY 868691, dated December 10, 1991, and NY 865148, dated August 8, 1991, are hereby MODIFIED in accordance with the above analysis.

*Sincerely,*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

  
**GENERAL NOTICE****19 CFR PART 177****PROPOSED REVOCATION OF RULING LETTER,  
PROPOSED MODIFICATION OF RULING LETTER, AND  
PROPOSED REVOCATION OF TREATMENT RELATING TO  
PRINTED STICKERS FROM CHINA**

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

**ACTION:** Notice of proposed revocation of one ruling letter, proposed modification of one ruling letter, and revocation of treatment relating to the classification of printed stickers from China.

**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 CPS proposes to revoke one ruling letter and modify one ruling letter concerning the classification of printed stickers from China under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

**DATES:** Comments must be received on or before [30 thirty days from the date of publication in Customs Bulletin.]

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

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

### **SUPPLEMENTARY INFORMATION:**

#### **Background**

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP proposes to revoke one ruling letter and modify one ruling letter pertaining to the classification of printed stickers. Although in this notice CBP is specifically referring to New York Ruling Letters (NY) N056183, dated April 28, 2009 (Attachment A), and NY N056197, dated April 23, 2009 (Attachment B), this notice covers any

rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise CBP during this notice period.

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

In NY N056183, lithographically printed stickers made of paper were classified in subheading 4821.10.20, Harmonized Tariff Schedule of the United States (HTSUS), as "paper and paperboard labels of all kinds, printed in whole or in part by a lithographic process." However, NY N056183 classified printed stickers that are not akin the printed labels of heading 4821, HTSUS, because they do not provide identification or information. As a result, CBP now believes that one package of stickers at issue in NY N056183 is classified in subheading 4823.90.86, HTSUS, which provides for "Other paper, paperboard, cellulose wadding and webs of cellulose fibers, cut to size or shape; other articles of paper pulp, paper, paperboard, cellulose wadding or webs of cellulose fibers: Other: Other: Other: Other: Other." The other package of stickers at issue is classified in subheading 4911.99.60, HTSUS, which provides for "Other printed matter, including printed pictures and photographs: Other: Other: Other: Printed on paper in whole or in part by a lithographic process."

In NY N056197, CBP classified four different packages of scrapbooking stickers from China in subheading 4821.90.20, HTSUS, as paper and paperboard labels of all kinds, whether or not printed: printed: printed in whole or in part by a lithographic process. We now believe that they are classified in subheading 4823.90.86, HTSUS, which provides for "Other paper, paperboard, cellulose wadding and webs of cellulose fibers, cut to size or shape; other articles of paper

pulp, paper, paperboard, cellulose wadding or webs of cellulose fibers: Other: Other: Other: Other: Other” for the same reasons expressed above.

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to revoke NY N056183, and modify NY N056197, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed Headquarters Ruling Letters (HQ) H072717 and H072718. (see Attachments “C” and “D”) to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: March 18, 2015

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

N056183

April 28, 2009

CLA-2-48:OT:RR:NC:2:234

CATEGORY: Classification

TARIFF NO.: 4821.10.2000

MR. DAVID STRONG  
EVANS AND WOOD & CO.  
612 E. DALLAS ROAD, STE. 200  
GRAPEVINE, TX 76051

RE: The tariff classification of printed stickers from China

DEAR MR. STRONG:

In your letter dated March 26, 2009 you requested a tariff classification ruling on behalf of your client, Hobby Lobby Stores.

You submitted samples of item #509109, Chipboard Monogram "O" and Item #143073, Chipboard Wedding. Item #509109 is a set of six lithographically, design printed, die-cut stickers made of paper or paperboard that depicts the letter "O". The monogram stickers are decorated with tiny, die-cut floral shapes and have a square adhesive foam backing. The lithographically printed stickers are embellished with glitter, brads and imitation pearls. The stickers range in sizes from approximately 1 1/4" in diameter to 3" in diameter. Item #143073 is a set of nine lithographically printed stickers depicting a wedding theme. Six of the stickers are made of paper or paperboard and one (three piece design) is constructed of textile material. The wedding theme stickers convey words and phrases such as "FOREVER", "PROMISE", "Wedding DAY", "LOVE OF MY Life love you forever..." and "TO HAVE and to HOLD". They have adhesive foam backing and are decorated with embellishments of glitter, brads, sequins, and gemstones. The lithographically printed stickers range in size from approximately 2" (w) to 4 1/2" (w). For tariff classification purposes, both products will be regarded as "goods put up in sets for retail sale" whose essential character is imparted by the printed paperboard stickers.

The applicable subheading for the printed stickers will be 4821.10.2000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for paper and paperboard labels of all kinds, printed in whole or in part by a lithographic process. The rate of duty will be Free.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Patricia Wilson at (646) 733-3037.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director*

*National Commodity Specialist Division*



N056197

April 23, 2009

CLA-2-63 :OT:RR:NC:T A:351

CATEGORY: Classification

TARIFF NO.: 6307.90.9889, 4821.90.2000,  
3926.40.0000

MR. DAVID STRONG  
EVANS AND WOOD & Co., INC.  
612 E. DALLAS RD.  
STE. 200 GRAPEVINE, TX 76051

RE: The tariff classification of 3-D scrapbooking stickers from China

DEAR MR. STRONG:

In your letter dated March 20, 2009, on behalf of your client Hobby Lobby Stores, of Oklahoma City, Oklahoma, you requested a tariff classification ruling.

The submitted samples are four packages of three-dimensional scrapbooking stickers. Each package contains a number of scrapbook embellishments with a piece of adhesive on the back. Each package is considered a set for tariff purposes. General Rule of Interpretation (GRI) 2, 3(b), Harmonized Tariff Schedule of the United States (HTSUS), noted.

Item# 124461 is called "Travel Female." It features die-cut representations of a woman's coat, hat, boots, travel bag, and eyeglasses. The listed components are textile felt, paper, and EVA. Item# 124990 (also labeled HSA7207B) is called "Pink Ballerina" and contains representations of a gown, ballet slippers, a tiara, and musical notes, composed of woven textile fabrics and paper. The essential character of each of these sets is imparted by the textile fabrics. GRI 3 (b), HTSUS, noted.

The applicable subheading for Item# 124461 and Item# 124990 will be 6307.90.9889, HTSUS, which provides for other made up textile articles, other. The rate of duty will be 7% ad valorem.

Item# 876516, "Fall Icons," contains die-cut representations of a squirrel, acorns, leaves, and a rake in a basket full of leaves. The listed components are made of layers of paper or paperboard, textile fabric, and plastic gems. The essential character of this set is imparted by the paper.

The applicable subheading for Item# 876516 will be 4821.90.2000, HTSUS, which provides for paper and paperboard labels of all kinds, whether or not printed: Other (than printed): Self-adhesive. The rate of duty will be Free.

In your letter you suggest that Item# 876516 is classifiable in subheading 4823.90.8600, HTSUS, which provides for Other paper. . . cut to size or shape: Other (than certain named kinds). They are self-adhesive stickers. However, they are not printed and therefore better provided for in subheading 4821.90.2000/free.

Item# 154708 (EVA3509 B) is an assortment of three-dimensional stickers with adhesive backings. The principal three stickers are made from layers of foam plastic that have been cut, shaped and glued together to form dinosaurs. The dinosaurs are decorated with colored and printed paper designs and protruding plastic eyes. The sticker assortment includes two smaller stickers made of stacked paper shapes and two dinosaur footprint stickers made of foam plastic sheeting. The essential character of this sticker assortment is imparted by the three-dimensional foam plastic stickers.

The applicable subheading for Item# 154708 will be 3926.40.0000, HTSUS, which provides for other articles of plastics... statuettes and other ornamental articles. The rate of duty will be 5.3% ad valorem.

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

The samples will be returned as requested.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Mitchel Bayer at (646) 733-3102.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director*

*National Commodity Specialist Division*

HQ H072717  
CLA-2 OT:RR:CTF:TCM H072717 TNA  
CATEGORY: Classification  
TARIFF NO.: 4823.90.86, 4911.99.60

NANCY QUIRK  
EVANS AND WOOD & Co.  
612 E. DALLAS RD., STE. 200  
GRAPEVINE, TX 76051

**RE:** Revocation of NY N056183; Classification of printed stickers from China

DEAR MS. QUIRK:

This letter is in reference to New York Ruling Letter (“NY”) N056183, issued to Evans and Wood & Company on April 28, 2009, concerning the tariff classification of chipboard letters, numbers, and punctuation from China. In that ruling, U.S. Customs and Border Protection (“CBP”) classified the merchandise under subheading 4821.10.20, Harmonized Tariff Schedule of the United States (“HTSUS”), as “Paper and paperboard labels of all kinds, whether or not printed: Printed: Printed in whole or in part by a lithographic process.” We have reviewed NY N056183 and found it to be incorrect. For the reasons set forth below, we hereby revoke NY N056183. Your sample is being returned in accordance with your instructions.

**FACTS:**

The subject merchandise consists of two different packages of three-dimensional stickers. Item #509109, entitled “Chipboard Monogram O,” consists of six lithographically, design-printed, die-cut stickers made of paper or paperboard and depicting various forms of the letter “O.” Most are cut to shape the letter itself. The lithographic printing provides only the color and geometric design elements within the shape. Only two are printed with the letter onto rectangular paperboard. The stickers are decorated with small die-cut floral shapes and are embellished with glitter, brads and imitation pearls. The backs contain a square adhesive. The stickers range in size from approximately 1 1/4 inch to 3 inches in diameter.

Item #143073, entitled “Chipboard Wedding,” consists of nine lithographically printed stickers with a wedding theme. Six of them are made of paper or paperboard, and one, which consists of three pieces, is made of textiles. Some have words printed on them, including such words and phrases as “Forever,” “Promise,” “Wedding Day,” “Love of my Life, Love You Forever, and “To Have and to Hold.” The fronts of the merchandise are decorated with embellishments of glitter, braids, sequins and gemstones. Adhesive foam squares are attached to the back. The stickers range in size from approximately 2 inches wide to approximately 4 1/2 inches wide.

In NY N056183, dated April 28, 2009, CBP classified both Item #509109 and Item #143073 under subheading 4821.10.2000, HTSUS, which provides for “paper and paperboard labels of all kinds, whether or not printed: printed: printed in whole or in part by a lithographic process.”

**ISSUE:**

Where are the subject stickers classified?

**LAW AND ANALYSIS:**

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

The HTSUS provisions under consideration are as follows:

4821	Paper and paperboard labels of all kinds, whether or not printed:
4821.10	Printed
4821.10.20	Printed in whole or in part by a lithographic process
*	* *
4823	Other paper, paperboard, cellulose wadding and webs of cellulose fibers, cut to size or shape; other articles of paper pulp, paper, paperboard, cellulose wadding or webs of cellulose fibers:
4823.90	Other:
	Other:
	Other:
4823.90.86	Other:
*	* *
4911	Other printed matter, including printed pictures and photographs: Other: Pictures, designs and photographs:
	Other:
4911.91	Pictures, designs and photographs:
	Other:
4911.91.30	Over 0.51 mm in thickness
*	* *
4911.99	Other
	Other
4911.99.60	Printed on paper in whole or in part by a lithographic process

Note 12 to Chapter 48, HTSUS, states, in pertinent part, the following:

Except for the articles of heading 4814 or 4821, paper, paperboard, cellulose wadding and articles thereof, printed with motifs, characters or pictorial representations, which are not merely incidental to the primary use of the goods, fall in chapter 49.

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

The EN for heading 4821, HTSUS, states, in pertinent part:

This heading covers all varieties of paper and paperboard labels of a kind used for attachment to any type of article for the purpose of indicating its nature, identity, ownership, destination, price, etc. They may be of the stick-on type (gummed or self-adhesive) or designed to be affixed by other means, e.g., string.

These labels may be plain, printed to any extent with characters or pictures, gummed, fitted with ties, clasps, hooks or other fasteners or reinforced with metal or other materials. They may be perforated or put up in sheets or booklets.

Self-adhesive printed stickers designed to be used, for example, for publicity, advertising or mere decoration, e.g., “comic stickers” and “window stickers,” are excluded (heading 49.11). The heading does not cover “labels” consisting of a relatively strong sheet of base metal covered on one or both sides with a thin sheet of paper, whether or not printed (headings 73.26, 76.16, 79.07, etc., or heading 83.10).

The EN to subheading 4821.10, HTSUS, states, in pertinent part:

This subheading covers all printed labels regardless of the significance or extent of the printing thereon. Labels printed, for example, with lines or other simple borders or merely incorporating small motifs or other symbols are therefore regarded as “printed” for the purposes of this subheading.

The EN to heading 4823, HTSUS, states, in pertinent part:

This heading includes:

(A) Paper and paperboard, cellulose wadding and webs of cellulose fibres, not covered by any of the previous headings of this Chapter:

- in strips or rolls of a width not exceeding 36 cm;
- in rectangular (including square) sheets of which no side exceeds 36 cm in the unfolded state;
- cut to shape other than rectangular (including square).

It is to be noted, however, that paper and paperboard in strips or rolls, or in rectangular (including square) sheets, of any size, of **headings 48.02, 48.10 and 48.11** remain classified in these headings.

(B) Articles of paper pulp, paper, paperboard, cellulose wadding or webs of cellulose fibres, not covered by any of the previous headings of this Chapter nor excluded by Note 2 to this Chapter.

The General EN to Chapter 49, HTSUS, states, in pertinent part:

With the few **exceptions** referred to below, this Chapter covers all printed matter of which the essential nature and use is determined by the fact of its being printed with motifs, characters or pictorial representations.

The EN to heading 4911, HTSUS, states, in pertinent part:

This heading covers all printed matter (including photographs and printed pictures) of this Chapter (see the General Explanatory Note above) but not more particularly covered by any of the preceding headings of the Chapter ...

The heading includes the following in addition to the more obvious products: ...

[C]ertain articles of stationery with printing which is merely incidental to their primary use for writing or typing are classified in **Chapter 48** (see Note 12 to Chapter 48 and in particular the Explanatory Notes to **headings 48.17 and 48.20**).

(10) Self-adhesive printed stickers designed to be used, for example, for publicity, advertising or mere decoration, e.g., “comic stickers” and “window stickers.”

The subject merchandise consists of two different types of three-dimensional stickers. The stickers of Item #5091 09 are all made of similar paperboard and contain similar designs. Thus, the package of these stickers can be classified under GRI1. In NY N056183, CBP classified Item #509109 in heading 4821, HTSUS, as paperboard labels. However, while paper labels of heading 4821, HTSUS, are printed, they are used to give information about the merchandise to which they are affixed. Such labels tend to indicate the nature, identity, ownership, destination, price, etc. of this merchandise. See Note 12 to Chapter 48, HTSUS; EN 48.21. In fact, the types of labels that CBP has typically classified in heading 4821, HTSUS, have identified merchandise as gifts or have provided other information about the merchandise such as the country of origin. See, e.g., NY N081716, dated November 4, 2009; NY N081718, dated November 4, 2009; NY N058601, dated May 15, 2009. In other words, the nature and use of the printed matter of heading 4821, HTSUS, is determined by the printing. A label, by definition, is a way of identifying that which it labels. Hence, the printing on a label is not merely incidental to the use of the good. To the contrary, the printing is a label of heading 4821, HTSUS, if the entire reason for existence of a label is to be at all useful as such.

By contrast, Item #509109, consists of colorful, embellished stickers that are intended to decorate objects rather than to give information about them. In addition, paper labels tend to be flat and the subject merchandise is three dimensional. As such, the subject merchandise is not described by the terms of heading 4821, HTSUS, and must be classified elsewhere.

Heading 4823, HTSUS, provides for articles of paper that have been cut to a shape other than rectangular. Merchandise of this heading can be in the shape of a square, and are cut to a width and length that does not exceed 36 em. See heading 4823, HTSUS; EN 48.23. Item #509109 meets the terms of this heading and is not excluded by the terms of Note 12 to Chapter 48, HTSUS. See Note 12 to Chapter 48, HTSUS; EN 48.23. Lastly, we note that although the stickers of Item #509109 contain glitter and some contain fake pearls, both are for decoration and form only a minimal amount of the total material. As a result, we find the glitter and fake pearls to be de minimis components that do not affect the classification of the subject chipboard

letters. Classification in heading 4823, HTSUS, is also consistent with prior CBP rulings, which have classified self-adhesive, lithographically printed stickers of the kind used for scrapbook embellishments in that heading. *See, e.g.*, NY N040239, dated October 30, 2008; NY L83150, dated March 17, 2005.

In its request for reconsideration, Evans and Woods suggests classification in heading 4911, HTSUS, as “Other printed matter, including printed pictures and photographs.” It is not disputed that the subject stickers are self-adhesive and are made of lithographically printed paper. However, in order to be classified in heading 4911, HTSUS, the printed motifs, characters or pictorial representations must determine the nature of the merchandise rather than being merely incidental to the primary use of the goods. *See* Note 12 to Chapter 48, HTSUS; EN 49.11.

Citing CBP’s Informed Compliance Publication entitled “Decals, Decorative Stickers and Window Clings,” dated January 2007, Evan and Wood argues that the difference between printed paper labels of heading 4821, HTSUS, and the printed paper stickers of heading 4911, HTSUS, is a matter of principal use. The company argues that because its merchandise is decorative rather than utilitarian, it should be classified under heading 4911, HTSUS.

Indeed, the products of heading 4821, HTSUS, are utilitarian and those of 4911, HTSUS, are generally decorative. However, this is not the determining factor for classification in either heading. Note 12 to Chapter 48, HTSUS, states that the printing, characters or motifs on products of Chapter 48, HTSUS, is “merely incidental” to those products. This is in contrast to the printing, characters, or motifs on products of heading 4911, HTSUS, which define the nature and use of the product. Therefore, products of headings 4821 and 4911, HTSUS, must have printing that determines that use and nature of the good as a whole.

By contrast, the printing on Item #509109 is merely incidental to the use of the good. These stickers are purely decorative. The printing on these letters consists of circles, squares, and other shapes in different colors. This printing does not convey the letter “O” that the whole shape of the stickers conveys. This printing does not change the fact that the stickers are “Os.” Thus, the printing is merely incidental to the primary use of the goods, and Item #509109 cannot be classified in heading 4911, HTSUS.

The other item at issue here, Item #143073, is a package of nine stickers, some of which are made of textile, and others of which are made of paper. As such, the package as a whole cannot be classified in accordance with GRI 1, as there is no single heading which covers both the textile and the paper stickers. Furthermore, none of the headings at issue provide a more specific description of the merchandise; as a result, GRI 3(a) does not resolve the matter, and the analysis proceeds to GRI 3(b). GRI 3(b) states, in pertinent part, that:

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

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

Explanatory Note VIII to GRI 3(b) states, in pertinent part, 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, weight, quantity, weight or value, or by the role of the constituent material in relation to the use of the goods.

Explanatory Note (X) to GRI 3(b) states, impertinent part, that:

For the purposes of this Rule, the term “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 needs 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 cases or on boards).

Item #143073 contains components that are made of textile and components that are made of paper. They are put up together in a single package to be sold as such to the consumer. Furthermore, the merchandise consists of stickers that are put up together as materials for scrapbooking, which is a specific activity. As a result, the merchandise constitutes a set under GRI 3(b) and must be classified according to its essential character. Six of the nine stickers are made of paper or paperboard. One item, consisting of three pieces, is made of textile. Paper clearly constitutes the greatest number and surface area of these items. As a result, we find that the paper constitutes this set's essential character of the good.

In NY N056183, CBP classified Item #143073 in heading 4821, HTSUS, as “Paper and paperboard labels of all kinds, whether or not printed.” Much like Item #509109 discussed above, Item #143073 does not meet the terms of heading 4821, HTSUS, because it does not consist of flat, printed labels designed to be affixed to merchandise for the purpose of providing information etc. As such, Item #143073 is precluded from heading 4821, HTSUS, and we examine alternate headings.

The stickers of Item #143073 are gummed, die-cut, lithographically printed stickers on paperboard that are designed to have a three-dimensional appearance and be affixed to the surface of another object. They have been embellished with glitter, grommets, beads, and beaded chains, and most are printed with words and phrases such as “love of my life, love you forever,” “to have and to hold,” etc. These words form a significant part of the merchandise's design; it is these letters, rather than the rest of the sticker, that make the product a wedding product as its title denotes. As such, the printed words on these stickers are more than merely incidental. As a result, Item #143073 is not described by the terms of heading 4823, HTSUS.

Because this merchandise is made of paper and printed with motifs and words that are more than merely incidental to the primary use of the goods, it is described by the terms of heading 4911, HTSUS, in accordance with Note 12 to Chapter 48, HTSUS; EN 49.11. Specifically, Item #143073 is described by the terms of subheading 4911.99.60, HTSUS, which provides for: “other printed matter, including printed pictures and photographs: other: other: Printed on paper in whole or in part by a lithographic process.”



We note that Evans and Wood argues for classification of Item #143073 in subheading 4911.91.30, HTSUS. CBP has classified merchandise in this subheading when the merchandise consists of photographs, reproductions thereof, or framed prints of paintings. *See, e.g.*, HQ W968295, dated January 19, 2007; HQ 963858, dated August 13, 2001. This is in contrast to the subject merchandise, which contains none of these. Furthermore, CBP has stated that at the six digit subheading level, subheading 4911.91, HTSUS, includes other printed matter, pictures, designs, and photographs, while subheading 4911.99, HTSUS, covers printed matter other than pictures, designs, and photographs that is, printed matter such as characters, symbols, and letters. *See* HQ 963858. As a result, HQ 963858 classified cards with photos on them in subheading 4911.91, HTSUS.

By contrast, the subject merchandise can readily be distinguished from the merchandise of these rulings, as it contains no photographs or reproductions of photographs; neither does it contain framed prints of paintings. To the contrary, the subject merchandise consists of stickers containing symbols and words associated with weddings and love. As such, these stickers are described by the terms of subheading 4911.99, HTSUS, and will be classified there.

#### **HOLDING:**

Under the authority of GRI 1, Item #509109 is provided for in subheading 4823.90.86, HTSUS, which provides for “other paper, paperboard, cellulose wadding, and webs of cellulose fibers, cut to size or shape; other articles of paper pulp, paper, paperboard, cellulose wadding or webs of cellulose fibers: other: other: other: other: other.” The applicable duty rate is free. Under the authority of GRI 3(b), Item #143073 is classified under subheading 4911.99.60, which provides for “other printed matter, including printed pictures and photographs: other: other: other: Printed on paper in whole or in part by a lithographic process.” As such, the duty rate is free.

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

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

NY N056183, dated April 29, 2009, is REVOKED.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

HQ H072718  
CLA-2 OT:RR:CTF:TCM H072718 TNA  
CATEGORY: Classification  
TARIFF NO.: 4823.90.86

NANCY QUIRK  
EVANS AND WOOD & Co.  
612 E. DALLAS RD., STE. 200  
GRAPEVINE, TX 76051

RE: Modification of NY N056197; Classification of scrapbooking stickers from China

DEAR Ms. QUIRK:

This letter is in reference to New York Ruling Letter (“NY”) N056197, issued to Evans and Wood & Company on April 23, 2009, concerning the tariff classification of three-dimensional (“3-D”) scrap booking stickers from China. In that ruling, U.S. Customs and Border Protection (“CBP”) classified Item #876516, a set of scrapbooking stickers, under subheading 4821.90.20, Harmonized Tariff Schedule of the United States (“HTSUS”), as “paper and paperboard labels of all kinds, whether or not printed: other (than printed): self-adhesive.” Evans and Wood argue for classification in heading 4911, HTSUS, as “other printed matter.” We have reviewed NY N056183 and found it to be incorrect. However, we have found the correct classification for one item to be in a third heading, as other articles of paperboard. For the reasons set forth below, we hereby modify NY N056197 with respect to the classification of Item #876516. Your sample is being returned in accordance with your instructions.

**FACTS:**

In NY N056197, CBP classified four different packages of scrapbooking stickers from China. Only one of those packages, Item #876516, entitled “La Petites,” or “Fall Icons,” is at issue in this reconsideration. Item #876516 consists of die-cut representations of autumn-related items: a squirrel, acorns, leaves, and a rake in a basket full of leaves. These items are each made up of different materials. The leaves and acorns are made of paper and paperboard. The leaves also have plastic gems on them. The squirrel is made of felt, the basket is made of textile, and the rake and leaves are made of paper and paperboard. A sample of Item #876516 was received and examined by this office, and is being returned as per your request.

**ISSUE:**

Whether lithographically printed stickers made of paper or paperboard or textile should be classified under subheading 4821.90.20, HTSUS, as paper and paperboard labels of all kinds, whether or not printed: printed: printed in whole or in part by a lithographic process or under subheading 4823.90.86, HTSUS, as other paper, paperboard, cellulose wadding and webs of cellulose fibers, cut to size or shape; other articles of paper pulp, paper, paperboard, cellulose wadding or webs of cellulose fibers?

**LAW AND ANALYSIS:**

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

The HTSUS provisions under consideration are as follows:

4821	Paper and paperboard labels of all kinds, whether or not printed:
4821.10	Printed
4821.10.20	Printed in whole or in part by a lithographic process
*	* *
4823	Other paper, paperboard, cellulose wadding and webs of cellulose fibers, cut to size or shape; other articles of paper pulp, paper, paperboard, cellulose wadding or webs of cellulose fibers:
4823.90	Other:
	Other:
	Other:
4823.90.86	Other
*	* *
4911	Other printed matter, including printed pictures and photographs:
	Other:
4911.91	Pictures, designs and photographs:
	Other:
4911.91.30	Over 0.51 mm in thickness
4911.99	Other
	Other
4911.99.60	Printed on paper in whole or in part by a lithographic process

Note 12 to Chapter 48, HTSUS, states, in pertinent part, the following:

Except for the articles of heading 4814 or 4821, paper, paperboard, cellulose wadding and articles thereof, printed with motifs, characters or pictorial representations, which are not merely incidental to the primary use of the goods, fall in chapter 49.

The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 8980, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The EN for heading 4821, HTSUS, states, in pertinent part:

This heading covers all varieties of paper and paperboard labels of a kind used for attachment to any type of article for the purpose of indicating its

nature, identity, ownership, destination, price, etc. They may be of the stick-on type (gummed or self-adhesive) or designed to be affixed by other means, e.g., string.

These labels may be plain, printed to any extent with characters or pictures, gummed, fitted with ties, clasps, hooks or other fasteners or reinforced with metal or other materials. They may be perforated or put up in sheets or booklets.

Self-adhesive printed stickers designed to be used, for example, for publicity, advertising or mere decoration, e.g., “comic stickers” and “window stickers,” are excluded (heading 49.11 ).

The heading does not cover “labels” consisting of a relatively strong sheet of base metal covered on one or both sides with a thin sheet of paper, whether or not printed (headings 73.26, 76.16, 79.07, etc., or heading 83.10).

The EN to subheading 4821.10, HTSUS, states, in pertinent part:

This subheading covers all printed labels regardless of the significance or extent of the printing thereon. Labels printed, for example, with lines or other simple borders or merely incorporating small motifs or other symbols are therefore regarded as “printed” for the purposes of this subheading.

The EN for heading 4823, HTSUS, states, in pertinent part:

This heading includes:

(A) Paper and paperboard, cellulose wadding and webs of cellulose fibres, not covered by any of the previous headings of this Chapter:

- in strips or rolls of a width not exceeding 36 cm;
- in rectangular (including square) sheets of which no side exceeds 36 cm in the unfolded state;
- cut to shape other than rectangular (including square) ...

(B) Articles of paper pulp, paper, paperboard, cellulose wadding or webs of cellulose fibres, not covered by any of the previous headings of this Chapter nor excluded by Note 2 to this Chapter.

Thus the heading includes:

(1) Filter paper and paperboard (folded or not). Generally these are in shapes other than rectangular (including square), such as circular filter papers and boards ...

(3) Paper and paperboard, of a kind used for writing, printing or other graphic purposes, not covered in the earlier headings of this Chapter, cut to shape other than rectangular (including square) ....

The EN to heading 4911, HTSUS, states, in pertinent part, the following:

This heading covers all printed matter (including photographs and printed pictures) of this Chapter (see the General Explanatory Note above) but not more particularly covered by any of the preceding headings of the Chapter ...

Certain printed articles may be intended for completion in manuscript or typescript at the time of use but remain in this heading provided they are essentially printed matter (see Note 12 to Chapter 48) ...

On the other hand, certain articles of stationery with printing which is merely incidental to their primary use for writing or typing are classified in Chapter 48 (see Note 12 to Chapter 48 and in particular the Explanatory Notes to headings 48.17 and 48.20) ....

The heading includes the following in addition to the more obvious products: ...

(10) Self-adhesive printed stickers designed to be used, for example, for publicity, advertising or mere decoration, e.g., “comic stickers” and “window stickers.” ...

The following articles, in particular, are also excluded from this heading: ...

(b) Goods of heading 39.18, 39.19, 48.14 or 48.21 or printed paper products of Chapter 48 in which the printed characters or pictures are merely incidental to the primary use of the products.

We begin by noting that the scrapbooking stickers of Item #876516 are all made of different materials. The leaves, acorns, the rake and the leaves are all made of paper and paperboard, which are provided for in Chapter 49, HTSUS. Furthermore, the leaves and acorns have plastic on them, which is provided for in Chapter 39, HTSUS. The squirrel is made of felt, which is provided for in heading 5602, HTSUS. The basket is made of textile, whose classification in the headings of Section XI, HTSUS, depends on the specific material. Thus, no single heading completely describes the subject merchandise, and it cannot be classified under GRI 1. As a result, the analysis moves to GRI 3(a). No single heading under consideration most specifically describes the subject merchandise. Thus, the analysis moves to GRI 3(b), and we consider whether Item #876516 can be considered a set for classification purposes. GRI 3(b) states, in pertinent part, that:

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

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

Explanatory Note VIII to GRI 3(b) states, in pertinent part, 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, weight, quantity, weight or value, or by the role of the constituent material in relation to the use of the goods.

Explanatory Note (X) to GRI 3(b) states, impertinent part, that:

For the purposes of this Rule, the term “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 needs 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 cases or on boards).

The merchandise in question contains multiple items, made of multiple materials, that are put up together in a single package to be sold as such to the consumer. Furthermore, the merchandise consists of stickers with an autumn theme that are put up together as materials for scrapbooking, which is a specific activity. As a result, the merchandise constitutes a set under GRI 3(b) and must be classified according to its essential character. *See* Explanatory Note IX to GRI 3(b).

One item in the subject merchandise, the squirrel, is made of felt. One item, the basket, is made of textile. The merchandise's other items, such as the leaves, the acorns, and the rake, are made of paper, and the leaves also contain plastic gems. Hence, the greatest surface area and number of items in this merchandise are represented by the paper material. As a result, we find that the paper constitutes the essential character of this set.

In NY N056197, CBP classified the subject merchandise under heading 4821, HTSUS. Upon reconsideration, we note that heading 4821, HTSUS, provides for paper labels used to give information about the merchandise to which they are affixed. Such labels tend to indicate the nature, identity, ownership, destination, price, etc. of this merchandise. *See* EN 48.21. The types of labels that CBP has typically classified in heading 4821, HTSUS, for example, have identified merchandise as gifts or have provided other information about the merchandise such as the country of origin. *See. e.g.*, NY N081716, dated November 4, 2009; NY N081718, dated November 4, 2009; NY N058601, dated May 15, 2009.

By contrast, the subject merchandise consists of stickers in various shapes that depict acorns, leaves, and other items associated with autumn. They are intended to decorate objects rather than giving information about them. In addition, they are three-dimensional and have decorations that are designed to make them appear more so. This further distinguishes them from the flat paper labels that are classified in heading 4821, HTSUS. As a result, the subject merchandise is not described by the terms of heading 4821, HTSUS, and we examine other headings.

In its request for reconsideration, Evans and Woods requests classification in heading 4911, HTSUS, as "Other printed matter, including printed pictures and photographs." It is not disputed that the subject stickers are self-adhesive and are made of lithographically printed paper. Citing CBP's Informed Compliance Publication entitled "Decals, Decorative Stickers and Window Clings," dated January 2007, Evan and Wood argues that the difference between printed paper labels of heading 4821, HTSUS, and the printed paper stickers of heading 4911, HTSUS, is a matter of principal use. The company therefore argues that because its merchandise is decorative rather than utilitarian, it should be classified under heading 4911, HTSUS.

In order to be classified in heading 4911, HTSUS, the printed motifs, characters or pictorial representations must determine the nature of the merchandise rather than being merely incidental to the primary use of the

goods. See Note 12 to Chapter 48, HTSUS; EN 49.11. As Evans and Woods notes, the products of heading 4821, HTSUS, are utilitarian and those of 4911, HTSUS, are generally decorative. However, this is not the only factor for determining classification in either heading. Note 12 to Chapter 48, HTSUS, specifically states that the printing, characters or motifs on products of Chapter 48, HTSUS, is “merely incidental” to those products. This is in contrast to the printing, characters, or motifs on products of heading 4911, HTSUS, which define the nature and use of the product.

In the present case, the subject stickers are lithographically printed. However, it is the shapes of the stickers, not the printing, that conveys the autumn themes of this merchandise. The acorns, squirrel, leaves, etc. of the subject stickers have been produced by cutting the printed stickers into their specific shapes. Furthermore, these stickers have not been printed with any lettering or photographs that would convey any motifs. Thus, the printing on these stickers conveys their color, but little else. As a result, the printing is “merely incidental” to these stickers, and they cannot be classified in heading 4911 HTSUS.

Heading 4823, HTSUS, provides for “Other paper, paperboard, cellulose wadding and webs of cellulose fibers, cut to size or shape; other articles of paper pulp, paper, paperboard, cellulose wadding or webs of cellulose fibers.” It includes articles of paper that have been cut to a shape other than rectangular. Merchandise of this heading is cut to a width and length that does not exceed 36 cm. See heading 4823, HTSUS; EN 48.23. Item #876516 consists of paper stickers that have been cut to an exact shape and size that is smaller than 36 cm. As a result, the subject merchandise meets the terms of heading 4823, HTSUS, and will be classified there. This conclusion is consistent with prior CBP rulings, which have classified self-adhesive, lithographically printed stickers of the kind used for scrapbook embellishments in heading 4823, HTSUS. See, e.g., NY N040239, dated October 30, 2008; NY L83150, dated March 17, 2005.

#### **HOLDING:**

Under the authority of GRIs 3(b), Item #876516 is provided for in subheading 4823.90.86, HTSUS, which provides for other paper, paperboard, cellulose wadding, and webs of cellulose fibers, cut to size or shape; other articles of paper pulp, paper, paperboard, cellulose wadding or webs of cellulose fibers: other: other: other: other: other. The applicable duty rate is free.

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

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

NY N056197, dated April 23, 2009, is MODIFIED with respect to the classification of Item #876516.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

**PROPOSED REVOCATION OF A RULING LETTER AND  
PROPOSED REVOCATION OF TREATMENT RELATING TO  
THE TARIFF CLASSIFICATION OF SAND TIMERS**

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

**ACTION:** Notice of proposed revocation of a ruling letter and proposed revocation of treatment relating to the classification of a sand timer.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP intends to revoke HQ 957780, dated July 18, 1995, concerning the tariff classification of sand timers under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

**DATES:** Comments must be received on or before [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

**ADDRESSES:** Written comments are to be addressed to the U.S. Customs and Border Protection, Office of International Trade, Regulations & Rulings, Attn: Trade and Commercial Regulations Branch, 10th Floor, 90 K St. NE, Washington, DC 20229–1179. Submitted comments may be inspected at the address stated above during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

**FOR FURTHER INFORMATION CONTACT:** Claudia Garver, Tariff Classification and Marking Branch: (202) 325–0024

**SUPPLEMENTARY INFORMATION:**

**BACKGROUND**

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



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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP is proposing to revoke one ruling letter pertaining to the tariff classification of a sand timer. Although in this notice, CBP is specifically referring to Headquarters Ruling Letter (HQ) 957780, dated July 18, 1995 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e. a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

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

In HQ 957780, CBP determined that three models of sand timers were classified under heading 7020, HTSUS, as other articles of glass. It is now CBP’s position that the subject timers are classified under heading 7013, HTSUS, which provides for “Glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke HQ 957780, and any other ruling not specifically identified, to reflect the tariff classification of the subject merchandise according to the analysis contained in Proposed Headquarters Ruling Letter (HQ) H136475, set forth as Attachment 8 to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: March 18, 2015

MYLES B. HARMON,  
*Director*  
*Commercial and Trade Facilitation Division*  
IEVA K. O'ROURKE

Attachments

HQ 957780

July 18, 1995

CLA-2 R:C:M 957780 MMC

CATEGORY: Classification

TARIFF NO.: 7020.00.00

AREA DIRECTOR  
 U.S. CUSTOMS SERVICE  
 COMMERCIAL OPERATIONS DIVISION  
 NEW YORK SEAPORT  
 6 WORLD TRADE CENTER, RM 423  
 NEW YORK, NEW YORK 10048

RE: IA 11/95; sand timers; EN 91.GEN (a.), GEN 3(b), 70.13; Composite good; GRI 3; Heraeus-Amersil, Inc. v. U. S., 8 CIT 329, 600 F. Supp. (1984); 315(d), Tariff Act of 1930; Sturm, A Manual of Customs Law (1993), 52.4.

DEAR AREA DIRECTOR:

This is in response to your memorandum of February 22, 1995, (CLA-01-S: C: TOB: 213/NM) forwarding a request for internal advice(IA) initiated by a customs broker regarding the tariff classification of 3 models of sand timers under the Harmonized Tariff Schedule of the United States (HTSUS) . A sample of each model was submitted for examination.

**FACTS:**

The articles under consideration are sand timers. The body of each consists of glass (in the shape of an hourglass) which contains sand. Model 309 (3 minute timer )and Model 706 (15 minute timer) are framed in wood. Model 209(b), a 30 second timer, has a plastic frame.

The IA applicant contends that the sand timers are classifiable under subheading 4419.00.80, HTSUS, as tableware and kitchenware, of wood: other. According to the IA applicant, this classification is based on an established and uniform practice under the Tariff Schedules of the United States (TSUS) . This classification stems from the reasoning that the wood portion of the timer provides the support structure and chief value to the subject article. In the alternative, the IA applicant claims that the sand provides the essential character of the article as it is the component which provides the measurement of time.

In addition to these two possible classifications, it has been suggested that the essential character of the article is not determinable and therefore, the sand timers are classifiable under the applicable provision which appears last in the HTSUS.

The under consideration headings are:

- |      |  |
|------|--|
| 3926 | Other articles of plastics and articles of other materials of headings 3901 to 3914  |
| 4419 | Tableware and kitchenware, of wood   |
| 6815 | Articles of stone or of other mineral substances (including articles of peat), not elsewhere specified or included                           |
| 7013 | Glassware of a kind-used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018) |

7020	Other articles of glass
9106	Time of day recording apparatus and apparatus for measuring, recording or otherwise indicating intervals of time, with clock or watch movement or with synchronous motor ( for example, time registers, time-recorders) :

**ISSUE:**

What is the proper classification of the sand timers?

**LAW AND ANALYSIS:**

The classification of merchandise under the HTSUS is governed by the General Rules of Interpretation (GRI's). GRI 1, HTSUS, states, in part, that "for legal purposes, classification shall be determined according to terms of the headings and any relative section or chapter notes .... "

Because the sand timers are used to measure time, we first must determine if they are classifiable under Chapter 91, HTSUS, which covers clocks and watches and parts thereof.

In understanding the language of the headings, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding system may be utilized. The ENs, although not dispositive, or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of the HTSUS. See, T.D. 89-90, 54 Fed. Reg. 35127, 35128 (August 23, 1989). ENGEN 91, pg.1539, states, in pertinent part, that:

... In addition to the exclusions specified in the Explanatory Note to each heading, this Chapter excludes, inter alia:

- (a) Sundials and hourglasses (classified according to their constituent material) ...

The ENs specifically exclude hourglasses from classification in chapter 91, HTSUS, and direct that they are classifiable according to their constituent material. These sand timers, which are smaller versions of hourglasses, consist of four different materials, plastic, sand, wood and glass. Inasmuch as the sand timers constituent materials are described by more than one heading, they cannot be classified according to GRI 1.

GRI 2(b) states, in pertinent part, that any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. The classification of goods consisting of more than one material or substance shall be according to the principles of GRI 3.

GRI 3 states that when, by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:

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

Several of the headings under consideration describe part only of the article. Therefore, the headings are considered equally specific and GRI 3(b) must be examined.

GRI 3(b) states:

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

According to EN GRI 3, pg.4, the factor which determines essential character will vary as between different kinds of goods. It may for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

The IA applicant suggests that the wood or sand imparts the sand timers' essential character. We disagree. The wood's function of supporting the glass is no more or less important than the functioning of the glass to hold the sand or the sand to measure the time. Because none of the constituent materials constitute the articles' essential character, GRI (C) must be applied.

Heading 7013, HTSUS, which provides in pertinent part for glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes, and heading 7020, which provides for other articles of glass both describe the glass portion of the sand timers. EN 70.13, pg. 936-937, states, in pertinent part, that:

...Articles of glass combined with other materials (base metal, wood, etc.), are classified in this heading only if the glass gives the whole the character of glass articles ...

The glass portion of the sand timers does not give the timer the character of a glass article. Rather, they merely contain, as part of their whole, a shaped piece of glass. Therefore, sand timers are excluded from classification under heading 7013, HTSUS.

GRI 3 (c) states:

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.

The heading which appears last in numerical order among those which equally merit consideration, is heading 7020, HTSUS. Therefore, the article is classifiable under heading 7020, HTSUS, as other articles of glass.

Finally, we note that IA applicant suggests that an established and uniform practice, has developed under the TSUS with respect to sand timers. The U.S. Courts have long recognized that the Customs Service has and does establish uniform practices in regard to the treatment of goods coming into this country. A uniform practice may be established, inter alia, by actual uniform treatment of goods by the various ports. See, *Heraeus-Amersil, Inc. v. United States*, 8 CIT 329, 600 F. Supp. (1984) and 315(d), *Tariff Act of 1930*, as amended. The existence of an established and uniform practice must be shown by positive evidence. *Strum, A Manual of Customs Law* (1993), 52.4. The IA applicant has not provided any positive evidence of an established and uniform practice.

Furthermore, classification of goods under the HTSUS, which became effective as the tariff law of the United States on January 1, 1989, is governed by the General Rules of Interpretation, which provide in pertinent part, that “classification shall be determined according to the terms of the headings and any relative section or chapter notes, and provided such headings or notes do not otherwise require, according to the remaining GRIs.” The classification of the instant sand timers results from a change made by Congress in enacting a new tariff schedule, the HTSUS.

**HOLDING:**

For the foregoing reasons we find that the sand timers are classifiable under heading 7020, HTSUS, as other articles of glass with a general column one duty rate of 6.3% ad valorem.

This decision should be mailed by your office to the internal advice requester no later than 60 days from the date of this letter. On that date, the Office of Regulations and Rulings will take steps to make the decision available to Customs personnel via the Customs Rulings Module in ACS and the public via the Diskette Subscription Service, Freedom of Information Act and other public access channels.

*Sincerely,*

JOHN DURANT,

*Director*

*Commercial Rulings*

HQ H136475  
CLA-2 OT:RR:CTF:TCM H136475 CkG  
CATEGORY: Classification  
TARIFF NO: 7013.49.20  
U.S. Customs and Border Protection

ROBERT PEREZ  
DIRECTOR OF FIELD OPERATIONS  
NEW YORK FIELD OFFICE  
ONE PENN PLAZA  
STE. 1100  
NEW YORK, NY 10119

RE: Revocation of HQ 957780, dated July 18, 1995; classification of sandglass timers

DEAR DIRECTOR,

This is in reference to Headquarters Ruling Letter (HQ) 957780 issued by Customs and Border Protection (CBP) on July 18, 1995, regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of sand timers. We have reconsidered this decision, and for the reasons set forth below, have determined that classification of the sand timers in heading 7020, HTSUS, as other articles of glass, was incorrect.

**FACTS:**

The articles under consideration are 15 minute, 3 minute and 30 second glass timers. They are used in a home/kitchen to measure the passage of time for the preparation of eggs and other food items. The body of each consists of a glass vessel with obconical ends connected by a constricted neck (i.e., an hourglass shape) through which a quantity of sand runs in the specified time intervals. Model 309 (a 3 minute timer) and Model 706 (a 15 minute timer) are framed in wood. Model 209(b), a 30 second timer, has a plastic frame. The invoice values are as follows: Model 209(b) and 309 are valued at under \$3, and Model 706 is valued between \$3 and \$5.

**ISSUE:**

Whether the instant sand timers are classified in heading 4419, HTSUS, as tableware or kitchenware of wood; heading 6815, HTSUS, as articles of other mineral substances (i.e., sand); heading 7013, HTSUS, as glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes, or heading 7020, HTSUS, as other articles of glass.

**LAW AND ANALYSIS:**

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to the remaining GRIs 2 through 6.

The 2015 HTSUS provisions under consideration are as follows:

3924: Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics:

3924.10	Tableware and kitchenware:
3924.10.40:	Other...
* * *	* *
4419:	Tableware and kitchenware, of wood:
4419.00.80:	Other...
* * *	* *
6815:	Articles of stone or of other mineral substances (including carbon fibers, articles of carbon fibers and articles of peat), not elsewhere specified or included:
	Other articles:
6815.99:	Other:
6815.99.40:	Other ...
* * *	* *
7013:	Glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018):
	Glassware of a kind used for table (other than drinking glasses) or kitchen purposes other than that of glass ceramics
7013.49:	Other:
	Other:
7013.49.20:	Valued not over \$3 each ...
	Valued over \$3 each:
	Other:
7013.49.50:	Valued over \$3 but not over \$5 each ...
* * *	* *
7020:	Other articles of glass:
7020.00.60:	Other ...
* * *	* *

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

EN 70.13 provides, in pertinent part, as follows:

Articles of glass combined with other materials (base metal, wood, etc.), are classified in this heading **only** if the glass gives the whole the character of glass articles. Precious metal or metal clad with precious metal may be present, **as minor trimmings only**; articles in which such metals constitute more than mere trimmings are excluded (**heading 71.14**).

EN 70.20 provides as follows:

This heading covers glass articles (including glass parts of articles) **not covered** by other headings of this Chapter or of other Chapters of the Nomenclature.



These articles remain here even if combined with materials other than glass, **provided** they retain the essential character of glass articles.

\* \* \* \* \*

There is no *eo nomine* provision for sand timers in the HTSUS. Inasmuch as the constituent materials of the sand timers are described by more than one heading, classification of this article cannot be determined according to the terms of GRI 1. GRI 2(b) states that “[a]ny reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances [and] any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.”

GRI 3 states as follows:

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

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods ... , 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.

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

(c) 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.

\* \* \* \* \*

The instant timers are composite goods of wood (heading 4419, HTSUS) or plastic (heading 3924, HTSUS), sand (heading 6815, HTSUS) and glass (heading 7013, HTSUS), and are thus *prima facie* classifiable under more than one heading. The article must be classified as if it consisted of the material or component which gives it its essential character, pursuant to GRI 3(b).

The “essential character” of an article is “that which is indispensable to the structure, core or condition of the article, i.e., what it is.” *Structural Industries v. United States*, 360 F. Supp. 2d 1330, 1336 (Ct. Int’l Trade 2005). EN VIII to GRI 3(b) explains that “[t]he 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 the constituent material in relation to the

use of the goods.” Recent court decisions on the essential character for GRI 3(b) purposes have looked primarily to the role of the each material or component in relation to the use of the goods. See *Structural Industries*, 360 F. Supp. 2d 1330; *Conair Corp. v. United States*, 29 C.I.T. 888 (2005); *Home Depot USA, Inc. v. United States*, 427 F. Supp. 2d 1278 (Ct. Int’l Trade 2006), aff’d 491 F.3d 1334 (Fed. Cir. 2007).

We find that the glass vessel plays the most essential role in the use of the timers. An hourglass is identified and recognized by its particular shape, which is provided in this case by the glass. The hourglass shape in turn provides the mechanism for measuring time, the primary function of the timers, because the rate at which the sand falls depends on the shape of the glass. Hence, the glass imparts the essential character to the sand timer.

Heading 7013, HTSUS, is a “principal use” provision (*Group Italglass. U.S.A., Inc. v. United States*, 17 CIT 1177, 839 F. Supp. 866 (1993)), governed by Additional U.S. Rule of Interpretation 1 (a), HTSUS, which provides that:

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

The Court in *Group Italglass* stressed “that it is the principal use of the class or kind of good to which the imports belong and not the principal use of the specific imports that is controlling under the Rules of Interpretation.” *Group Italglass*, 839 F. Supp. at 867 Principal use’ is defined as the use “which exceeds any other single use”. *Automatic Plastic Molding, Inc., v. United States*, 26 CIT 1201, 1205 (2002).

The Courts have provided factors, which are indicative but not conclusive, to apply when determining whether merchandise is classifiable under a particular “principal use” tariff provision. These include: general physical characteristics, the expectation of the ultimate purchaser, channels of trade, environment of sale (accompanying accessories, manner of advertisement and display), use in the same manner as merchandise which defines the class, economic practicality of so using the import, and recognition in the trade of this use. See *United States v. Carborundum Company*, 63 CCPA 98, C.A.D. 1172, 536 F. 2d 373 (1976), cert. denied, 429 U.S. 979 (1976).

The products at issue are 15 minute, 3 minute and 30 second timers. Their physical characteristics are consistent with principal use in a kitchen or office; they must be placed on a flat, stable surface in order for the sand to run through them in the correct manner and time interval. The specified time intervals are also convenient for the preparation of foods. They are marketed for use in a home or kitchen, to tell time for the preparation of eggs and other food items. Glass timers in general are similarly marketed as office or home supplies, and sold in the same channels of trade—e.g., home and garden or kitchen departments of retailers such as amazon.com-as other home and kitchen appliances.<sup>1</sup> Based on the above factors, we find that the instant

<sup>1</sup> See e.g., Amazon.com, [http://www.amazon.com/s/ref=nb\\_sb\\_ss\\_c\\_1\\_15?url=search-alias%3Dgarden&field-keywords=hourglass+timer&prefix=hourglass+timer4](http://www.amazon.com/s/ref=nb_sb_ss_c_1_15?url=search-alias%3Dgarden&field-keywords=hourglass+timer&prefix=hourglass+timer4);

timers are glassware of a kind used for table or kitchen purposes. As such, they are classifiable in heading 7013, HTSUS. Because the sand timers are provided for in heading 7013, HTSUS, they cannot be classified in heading 7020, HTSUS.

This finding is consistent with prior CBP rulings classifying similar timers as glassware for home or office use in heading 7013, HTSUS. *See* NY E86805, dated September 20, 1999, and NY 182591, dated June 12, 2002.

#### **HOLDING:**

By application of GRI 3(b) and GRI 6, the hourglass timers are classified in heading 7013, HTSUS. Specifically, model 309 and 209(b) are classified under subheading 7013.49.20, HTSUS, which provides for “Glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018): Glassware of a kind used for table (other than drinking glasses) or kitchen purposes other than that of glass-ceramics: Other: Other: Valued not over \$3 each.” The 2015 column one, general rate of duty is 22.5% *ad valorem*.

Model 709 is classified in subheading 7013.49.50, HTSUS, which provides for “Glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018): Glassware of a kind used for table (other than drinking glasses) or kitchen purposes other than that of glass-ceramics: Other: Other: Valued over \$3 each: Other: Valued over \$3 but not over \$5 each.” The 2015 column one, general rate of duty is 15% *ad valorem*.

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

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

HQ 957780, dated July 18, 1995, is hereby revoked.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*



### **COPYRIGHT, TRADEMARK, AND TRADE NAME RECORDATIONS**

**(No. 2 2015)**

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

[http://www.amazon.com/s/ref=nb\\_ss?url=searchalias%3Daps&field-keywords=egg+timer&x=11&y=19](http://www.amazon.com/s/ref=nb_ss?url=searchalias%3Daps&field-keywords=egg+timer&x=11&y=19); and Nextag.com, <http://www.nextag.com/hourglass-timer/search-html>.

**SUMMARY:** The following copyrights, trademarks, and trade names were recorded with U.S. Customs and Border Protection in February 2015. The last notice was published in the CUSTOMS BULLETIN February 25, 2015.

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

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

Dated: March 18, 2015

CHARLES R. STEUART  
*Chief,*  
*Intellectual Property Rights Branch*  
*Regulations & Rulings Office of International*  
*Trade*

## CBP IPR RECORDATION — APRIL 2015

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 05-00354	2/12/2015	3/28/2024	TROJAN	TROJAN BATTERY COMPANY, LLC	No
TMK 05-00142	2/26/2015	3/14/2025	DESIGN ONLY	ROXY TRADING INC.	No
TMK 02-00148	2/26/2015	4/17/2025	PRADA MILANO DAL 1913 & Triangle Design	PRADA S.A.	No
TMK 05-00104	2/9/2015	1/12/2025	CHAIR 477352	KNOLL, INC.	No
TMK 02-00733	2/12/2015	7/9/2021	Configuration: Goldfish Solid Cracker (3-D)	PEPPERIDGE FARM, INCORPORATED	No
TMK 05-00507	2/6/2015	1/23/2025	ABSOLUT	THE ABSOLUT COMPANY AKTIEBOLAG	No
TMK 86-00196	2/12/2015	6/26/2015	ELVIS	ABG EPE IP LLC	No
TMK 03-00203	2/26/2015	1/9/2023	GOLDFISH	PEPPERIDGE FARM, INCORPORATED	No
TMK 05-00105	2/12/2015	1/19/2025	CONFIGURATION OF A COUCH WITH A METAL FRAME	Knoll, Inc.	No
TMK 06-00502	2/5/2015	3/28/2025	EMR	Prestige Autotech Corporation	No
TMK 06-00489	2/4/2015	2/16/2025	Indian Head Logo	Pro-Football, Inc.	No
TMK 06-00490	2/24/2015	3/14/2025	BLUETOOTH	BLUETOOTH SIG, INC.	No
TMK 06-00597	2/26/2015	7/2/2024	COLDWATER CREEK	CWC DIRECT LLC	No
TMK 06-01130	2/26/2015	5/22/2025	A-Pocket Design	Seven For All Mankind, LLC	No
TMK 06-01330	2/26/2015	4/6/2024	BABOLAT	BABOLAT VS SOCIT ANONYME	No
TMK 06-01431	2/10/2015	12/13/2025	JUICY	JUICY COUTURE, INC.	No

## CBP IPR RECORDATION — APRIL 2015

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 06-01479	2/4/2015	2/28/2025	BOOSTRIX	GLAXOSMITHKLINE BIOLOGICALS S.A.	No
TMK 07-00097	2/4/2015	2/9/2025	ARRANON	GLAXOSMITHKLINE LLC	No
TMK 07-00504	2/26/2015	5/5/2025	PEPSI	PEPSICO, INC.	No
TMK 07-00813	2/26/2015	5/8/2025	PLYTANIUM	GEORGIA-PACIFIC WOOD PRODUCTS LLC	No
TMK 07-01228	2/12/2015	7/18/2020	AMUL	Kaira District Co-Operative Milk Producers Union Ltd.	No
TMK 08-00532	2/26/2015	5/8/2025	REVLIMID	Celgene Corporation	No
TMK 08-00895	2/26/2015	3/30/2024	H & CROWN DESIGN	HUSQVARNA AKTIEBOLAG	No
TMK 08-00955	2/12/2015	2/27/2025	MARK	Ocean Garden Products, Inc.	No
TMK 09-00953	2/26/2015	5/22/2025	VIDAZA	Celgene Corporation	No
TMK 09-01239	2/5/2015	1/13/2020	INSANTIY	BEACHEODY, LLC	No
TMK 10-00323	2/26/2015	5/9/2025	VANTAGE	REYNOLDS INNOVATIONS INC.	No
TMK 10-00389	2/26/2015	2/22/2025	BAYTRIL	Bayer Aktiengesellschaft	No
TMK 10-00718	2/4/2015	2/8/2025	GYMBOREE	GYM-MARK, INC.	No
TMK 10-01000	2/26/2015	4/10/2025	Cadillac Crest & Wreath	GENERAL MOTORS LLC	No
TMK 10-01015	2/26/2015	4/3/2025	Cadillac Crest & Wreath	GENERAL MOTORS LLC	No
TMK 11-00386	2/26/2015	5/10/2024	ZEST	HIGH RIDGE BRANDS CO.	No
TMK 11-00392	2/9/2015	8/5/2022	GM Logo	GENERAL MOTORS LLC	No

## CBP IPR RECORDATION — APRIL 2015

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 11-00362	2/12/2015	9/12/2021	GMC	GENERAL MOTORS LLC	No
TMK 11-00394	2/12/2015	9/19/2021	GMC	GENERAL MOTORS LLC	No
TMK 11-00436	2/26/2015	12/24/2022	HUMMER	GENERAL MOTORS LLC	No
TMK 11-00378	2/26/2015	3/10/2023	PONTIAC	GENERAL MOTORS LLC	No
TMK 11-00951	2/4/2015	2/28/2025	FLOVENT	GLAXO GROUP LIMITED	No
TMK 11-00892	2/4/2015	4/3/2025	FLOINASE	GLAXO GROUP LIMITED	No
TMK 11-01417	2/12/2015	7/23/2022	PONTIAC	GENERAL MOTORS LLC	No
TMK 11-01398	2/26/2015	1/15/2023	Pontiac Emblem	GENERAL MOTORS LLC	No
TMK 12-00968	2/5/2015	12/13/2024	HUGO HUGO BOSS (Stylized)	HUGO BOSS TRADE MARKS MANAGEMENT GMBH & CO. KG	No
TMK 12-01180	2/24/2015	1/26/2025	CHEFWEAR & DESIGN	Chefwear, Inc.	No
TMK 12-01156	2/26/2015	2/28/2025	DENTASTIX	MARS, INCORPORATED	No
TMK 12-01376	2/9/2015	4/25/2025	DIXIE	Dixie Consumer Products LLC	No
TMK 13-00069	2/12/2015	4/4/2025	DESIGN ONLY (VEHICULAR BACKUP ALARM)	Electronic Controls Company	No
TMK 13-00205	2/9/2015	6/23/2024	VILEBREQUIN	T.R.B. International S.A.	No
TMK 13-00528	2/26/2015	5/16/2025	ALPO	Societe des Produits Nestle S.A.	No
TMK 13-00578	2/25/2015	2/28/2025	MACHINE POUR NEUF MODE	MACHINE JEANS, INC.	No

## CBP IPR RECORDATION — APRIL 2015

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 13-00782	2/12/2015	2/22/2025	AMERICAN PETROLEUM INSTITUTE and Starburst Design	American Petroleum Institute	No
TMK 13-00772	2/23/2015	4/10/2025	API SERVICE ENERGY CONSERVING and Design	American Petroleum Institute	No
TMK 14-00501	2/4/2015	2/1/2025	CHRONOS	DEPUY SYNTHES, INC.	No
TMK 14-00523	2/4/2015	1/31/2025	ANSPACH	DEPUY SYNTHES, INC.	No
COP 15-00048	2/26/2015	11/26/2034	MIGHTY BLASTER Packaging.	Telebrands Corp	No
TMK 15-00104	2/4/2015	5/11/2024	Corvette C7 Emblem	General Motors LLC	No
TMK 15-00105	2/4/2015	11/15/2017	DEXRON	GENERAL MOTORS LLC	No
TMK 15-00108	2/9/2015	12/13/2021	Wenger Emblem	Wenger NA, Inc.	No
TMK 15-00112	2/9/2015	9/12/2021	GMC	GENERAL MOTORS LLC	No
TMK 15-00113	2/9/2015	9/4/2017	BENTLEY	BENTLEY MOTORS LIMITED	No
TMK 15-00114	2/9/2015	10/24/2017	EB BUGATTI logo	Bugatti International S.A.	No
TMK 15-00115	2/9/2015	2/12/2024	ALPHA BRAIN	Onnit Labs, LLC	No
TMK 15-00150	2/11/2015	12/25/2022	SMART TONE	Ideal DRTV, LLC	No
COP 15-00044	2/19/2015	2/19/2035	Windows Server 2012.	Microsoft Corporation	No
COP 15-00039	2/9/2015	1/30/2035	Bunch O Balloons Variation 1 et al.	Tinnus Enterprises, Transfer	No
TMK 15-00156	2/18/2015	11/14/2022	Akomplice (6. <)	McCarney, Michael J	No
TMK 15-00157	2/18/2015	8/27/2024	BOOM (stylized)	BOOM MOVEMENT, LLC	No



## CBP IPR RECORDATION — APRIL 2015

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 15-00158	2/18/2015	7/29/2018	RETRACTABLE TECHNOLOGIES, INC.	Retractable Technologies, Inc.	No
TMK 15-00116	2/19/2015	8/30/2019	K & M	K & M ASSOCIATES L.P.	No
TMK 15-00159	2/18/2015	10/22/2018	Goldfish Finn Design	Pepperidge Farm, Incorporated	No
TMK 15-00162	2/18/2015	2/24/2020	PEPPERIDGE FARM	PEPPERIDGE FARM, INCORPORATED	No
TMK 15-00161	2/18/2015	1/17/2021	PEPPERIDGE FARM & DESIGN 5	PEPPERIDGE FARM, INCORPORATED	No
COP 15-00038	2/9/2015	1/30/2035	POKEMON OMEGA RUBY.	GAME FREAK INC., Transfer	No
TMK 15-00163	2/18/2015	12/23/2024	POLK HAMPDEN	POLK AUDIO, LLC	No
TMK 15-00164	2/18/2015	10/16/2023	BMW Logo	Bayerische Motoren Werke Aktiengesellschaft (joint stock company)	No
TMK 15-00165	2/18/2015	1/21/2024	OLDSMOBILE	GENERAL MOTORS LLC	No
TMK 15-00166	2/18/2015	1/28/2024	Oldsmobile Emblem	GENERAL MOTORS LLC	No
TMK 15-00167	2/18/2015	8/13/2017	ZEXEL	BOSCH CORPORATION	No
TMK 15-00169	2/19/2015	4/20/2025	CHI ARC	Farouk Systems, Inc.	No
TMK 15-00117	2/9/2015	2/4/2025	DESIGN ONLY (Bullet Design)	Caliber Corporation	No
TMK 15-00171	2/19/2015	4/20/2025	DURA CHI	Farouk Systems, Inc.	No
TMK 15-00118	2/19/2015	6/23/2020	COCOON	COCOON INNOVATIONS, LLC	No
TMK 15-00119	2/19/2015	4/15/2023	HANDBAG REPUBLIC	Handbag Republic Inc.	No
TMK 15-00172	2/19/2015	4/22/2023	HANDBAG REPUBLIC HR	Handbag Republic Inc	No

## CBP IPR RECORDATION — APRIL 2015

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 15-00120	2/9/2015	6/30/2020	GRID IT	COCOON INNOVATIONS, LLC	No
TMK 15-00173	2/19/2015	4/1/2023	HR (stylized)	Handbag Republic Inc	No
COP 15-00026	2/9/2015	7/12/2033	Apple icon - iOS 7 Compilations	Apple Inc.	No
COP 15-00027	2/9/2015	11/19/2034	Apple icon - Apple Watch Activity	Apple Inc.	No
COP 15-00028	2/9/2015	11/19/2034	Apple icon - Apple Watch Alarm	Apple Inc.	No
COP 15-00029	2/9/2015	11/19/2034	Apple icon - Apple Watch Camera Remote	Apple Inc.	No
COP 15-00030	2/9/2015	11/19/2034	Apple icon - Apple Watch Clock	Apple Inc.	No
COP 15-00031	2/9/2015	11/20/2034	Apple Watch Maps Icon	Apple Inc.	No
COP 15-00032	2/9/2015	11/20/2034	Apple icon - Apple Watch Settings	Apple Inc.	No
COP 15-00033	2/9/2015	11/19/2034	Apple icon - Apple Watch Stocks	Apple Inc.	No
COP 15-00034	2/9/2015	11/20/2034	Apple Watch Stopwatch Icon	Apple Inc.	No
TMK 15-00103	2/4/2015	7/2/2023	WEMO	Belkin International, Inc.	No
TMK 15-00121	2/9/2015	11/12/2017	DESIGN ONLY (DRAGON DESIGN)	DRAGON ALLIANCE, LLC	No
TMK 15-00111	2/9/2015	7/4/2016	DESIGN ONLY (DRAGON WITHIN A CIRCLE)	DRAGON ALLIANCE, LLC	No
TMK 15-00110	2/9/2015	11/1/2025	DRAGON	DRAGON ALLIANCE, LLC	No
TMK 15-00109	2/9/2015	5/24/2018	DESIGN ONLY (DRAGON DESIGN)	DRAGON ALLIANCE, LLC	No
TMK 15-00122	2/9/2015	11/21/2021	DESIGN ONLY (Dragon Design)	DRAGON ALLIANCE, LLC	No

## CBP IPR RECORDATION — APRIL 2015

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 15-00124	2/9/2015	2/19/2024	STINGRAY	General Motors LLC	No
TMK 15-00123	2/9/2015	7/15/2024	DESIGN ONLY (Stingray Emblem)	General Motors LLC	No
TMK 15-00125	2/9/2015	10/22/2024	TECH 2	General Motors LLC	No
TMK 15-00126	2/9/2015	12/4/2021	Z06	GENERAL MOTORS LLC	No
TMK 15-00127	2/9/2015	10/15/2024	Z28	General Motors LLC	No
TMK 15-00128	2/9/2015	10/10/2022	ZL1	General Motors LLC	No
TMK 15-00129	2/9/2015	9/8/2020	ZR-1	GENERAL MOTORS LLC	No
TMK 15-00130	2/9/2015	2/18/2025	DESIGN ONLY (Cadillac Crest Emblem)	General Motors LLC	No
TMK 15-00131	2/9/2015	2/1/2022	JACKI EASLICK	Jacki Easlick LLC	No
COP 15-00085	2/9/2015	7/20/2034	PIYO.	Beachbody, LLC	No
TMK 15-00132	2/9/2015	7/20/2020	DSIGN ONLY (Swirl Design)	Intel Corporation	No
TMK 15-00133	2/9/2015	3/9/2025	IPAD AIR	Apple Inc.	No
TMK 15-00136	2/10/2015	8/11/2020	DESIGN ONLY (iPod Shuffle Product Configuration)	Apple Inc.	No
TMK 15-00134	2/9/2015	10/23/2023	MADE FOR ADVENTURE	Otter Products, LLC	No
COP 15-00086	2/9/2015	1/19/2035	LANY Flower Girl 2	Samdae Enterprises, Inc.	No
COP 15-00087	2/9/2015	11/27/2034	LANY Amusement Park	Sam Dae Enterprises, Inc.	No
TMK 15-00135	2/9/2015	2/25/2025	WORLD SELECT	FOLLEA, INC.	No

## CBP IPR RECORDATION — APRIL 2015

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 15-00137	2/10/2015	1/16/2023	IMPERIAL SMOKE	ASHLYN MARKETING GROUP, INC.	No
TMK 15-00138	2/10/2015	7/30/2023	IMPERIAL HOOKAH	ASHLYN MARKETING GROUP, INC.	No
TMK 15-00139	2/10/2015	3/10/2017	TRIDON	Trico Products Corporation	No
TMK 15-00107	2/9/2015	2/14/2017	M (Stylized)	SWEET PEOPLE APPAREL, INC.	No
TMK 15-00106	2/9/2015	11/27/2023	MISS ME	Sweet People Apparel, Inc.	No
TMK 15-00140	2/10/2015	4/10/2025	INSENSE (Stylized)	IVMH FRAGRANCE BRANDS	No
TMK 15-00141	2/10/2015	12/13/2018	MEDEX	SIERRAPINE COMPOSED OF EMMER-SON INVESTMENTS, INC.	No
TMK 15-00142	2/10/2015	6/20/2017	SRT	Callaway Golf Company	No
TMK 15-00143	2/10/2015	10/15/2024	(UL)	UL LLC	No
TMK 15-00144	2/10/2015	1/29/2023	RETRAK	Emerge Technologies, Inc.	No
TMK 15-00145	2/10/2015	6/8/2021	COOPERSTAND	Cooperceptia, LLC	No
TMK 15-00146	2/10/2015	11/19/2024	ALWAZAH	Sulaiman Al Abdul Karim & Bros. Co. W.L.L. LIMITED LIABILITY COMPANY	No
TMK 15-00147	2/10/2015	9/3/2024	DESIGN ONLY (Cluster of Triangles)	Wlmo Labs LLC	No
TMK 15-00148	2/10/2015	1/7/2019	XW7Z-15A201-AB	Ford Motor Company	No
TMK 15-00149	2/10/2015	1/7/2019	F2UZ-1526801-A	Ford Motor Company	No
TMK 15-00170	2/19/2015	1/7/2019	F7AZ-3049-AA	Ford Motor Company	No
TMK 15-00174	2/19/2015	1/7/2019	1W1Z-3355-AA	Ford Motor Company	No

## CBP IPR RECORDATION — APRIL 2015

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tm	Owner Name	GM Restricted
TMK 15-00151	2/11/2015	3/4/2023	MCF and Design (Real Madrid's MCF Logo)	Real Madrid Club De Futbol	No
TMK 15-00160	2/18/2015	11/20/2023	Real Madrid's MCF Logo Design Mark	Real Madrid Club De Futbol	No
TMK 15-00180	2/23/2015	9/17/2018	FSAZ-9590-AA	Ford Motor Company	No
TMK 15-00152	2/13/2015	1/7/2019	FL-820S	Ford Motor Company	No
TMK 15-00168	2/19/2015	1/7/2019	F8AZ-6B209-AA	Ford Motor Company	No
TMK 15-00153	2/18/2015	10/2/2023	RealMadrid (Stylized)	Real Madrid Club De Futbol	No
TMK 15-00154	2/18/2015	4/20/2025	REACH TECHNOLOGY	Reach Technology, Inc. DBA Reach Technology, Inc.	No
TMK 15-00155	2/18/2015	4/8/2023	REALMADRID (Stylized)	Real Madrid Club De Futbol	No
TMK 15-00181	2/23/2015	5/4/2024	FS FLYSKY	Egrandbuy Inc	No
TMK 15-00182	2/23/2015	7/7/2019	ROCKIN' KEYS - Guitar Shaped Keys - Brass core hardware - keys for locks of doors.	TD Rand Company	No
COP 15-00040	2/11/2015	9/26/2032	Gents Skull Maltese Cross Bracelet SK1370	Kenny Michael Miller	No
COP 15-00042	2/12/2015	8/23/2032	Poker Run Bracelet #SK1364	Kenny Michael Miller	No
COP 15-00043	2/12/2015	2/7/2034	SK1180 1 1/4" Wide Skull Stainless Steel Motorcycle Chain Bracelet	Kenny Miller	No

## CBP IPR RECORDATION — APRIL 2015

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tm	Owner Name	GM Restricted
COP 15-00045	2/19/2015	2/19/2035	SK1174 All Silver Tone 1 Inch Wide Skull Bracelet.	Kenny Michael Miller	No
COP 15-00046	2/19/2015	2/19/2035	Skull Chain Bracelet. SK1170.	Kenny Michael Miller	No
COP 15-00047	2/19/2015	2/19/2035	Photo of bracelet.	Kenny Miller	No
TMK 15-00202	2/26/2015	11/27/2023	DESIGN ONLY (Gray and White Cat, Talking Tom 2)	Outfit7 Limited	No
COP 15-00041	2/12/2015	2/2/2035	LANY Garden in France	Samdae Enterprises, Inc.	No
TMK 15-00187	2/26/2015	5/3/2025	ROSE ACRE FARMS THE GOOD EGG PEOPLE	Rose Acre Farms, Inc.	No
TMK 15-00184	2/24/2015	4/27/2025	REROBX	Maple Trade Corp.	No
TMK 15-00188	2/26/2015	7/15/2018	RHINO EQUIPMENT	Rhino Equipment	No
TMK 15-00189	2/26/2015	6/4/2018	KORDES	W. KORDES' SOHNE ROSENSCHULEN GMBH & CO KG	No
TMK 15-00175	2/19/2015	3/2/2019	BUSHNELL	Bushnell Inc.	No
TMK 15-00176	2/19/2015	10/12/2021	BUSHNELL	Bushnell Inc.	No
TMK 15-00190	2/26/2015	2/27/2023	ECOTOOLS	Paris Presents Incorporated	No
TMK 15-00191	2/26/2015	9/1/2020	ECOTOOLS	Paris Presents Incorporated	No
TMK 15-00177	2/19/2015	2/17/2022	KANGAROO	COVIDIEN AG CORPORATION	No

## CBP IPR RECORDATION — APRIL 2015

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 15-00192	2/26/2015	4/13/2025	ECOTOOLS LOOK BEAUTIFUL, LIVE BEAUTIFULLY.	Pans Presents Incorporated	No
TMK 15-00178	2/19/2015	11/26/2024	REAL TECHNIQUES	Paris Presents Incorporated	No
TMK 15-00183	2/24/2015	2/22/2022	CHI AIR	Farouk Systems, Inc.	No
TMK 15-00193	2/26/2015	7/20/2020	GET COOL (Stylized)	Roltay Inc.,	No
TMK 15-00179	2/20/2015	8/27/2024	MIND FIX	(REGISTRANT) Ewing, Georgette INDI-VIDUAL UNITED STATES 3643 Westchester Dr Roseville CALIFORNIA 95747(REGISTRANT) Ewing, Troy INDI-VIDUAL UNITED STATES 3643 Westchester Dr Roseville CALIFORNIA 95747	No
TMK 15-00203	2/26/2015	7/23/2023	BAMDECK	Cali Bamboo LLC	No
TMK 15-00185	2/24/2015	3/11/2023	GREENCLAIMED	Cali Bamboo LLC	No
TMK 15-00204	2/26/2015	11/13/2023	FOSSILIZED	Cali Bamboo LLC	No
TMK 15-00186	2/24/2015	6/2/2020	CALI BAMBOO	Goldberg, Jeff	No
TMK 15-00194	2/26/2015	4/13/2025	NSK (Stylized)	NSK Ltd.	No
TMK 15-00195	2/26/2015	9/12/2017	ALBERTO VO5 and Design	HIGH RIDGE BRANDS CO.	No
TMK 15-00196	2/26/2015	4/21/2024	ZEST FOR MEN	High Ridge Brands Co.	No

## CBP IPR RECORDATION — APRIL 2015

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 15-00197	2/26/2015	6/2/2024	Zest (Stylized)	HIGH RIDGE BRANDS CO.	No
COP 15-00049	2/26/2015	2/26/2035	M&M'S Ms. Brown Character	Mars, Incorporated	No
COP 15-00050	2/26/2015	2/26/2035	M Character (Blue)	Mars, Inc.	No
TMK 15-00198	2/26/2015	5/10/2024	GOLDEN GRAIN	LUXCO, INC.	No
COP 15-00052	2/26/2015	2/26/2035	"M" character (green)	Mars, Inc.	No
TMK 15-00199	2/26/2015	7/8/2024	ANYTHING IS POSSIBLE	Margrill, Mary	No
COP 15-00051	2/26/2015	2/26/2035	"M" Character (Crispy)	Mars, Inc.	No
COP 15-00053	2/26/2015	2/26/2035	"M" character (plain)	Mars, Inc.	No
TMK 15-00201	2/26/2015	5/5/2025	KENSINGTON	ACCO BRANDS CORPORATION	No
TMK 15-00200	2/26/2015	2/28/2022	ALTERNATIVE	ALTERNATIVE APPAREL, INC.	No



**19 CFR PART 177****PROPOSED REVOCATION OF TWO RULING LETTERS  
AND REVOCATION OF TREATMENT RELATING TO THE  
TARIFF CLASSIFICATION OF CERTAIN TWO-PIECE  
UMBRELLAS**

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

**ACTION:** Notice of proposed revocation of two ruling letters and modification of treatment concerning the tariff classification of certain two-piece umbrellas.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP intends to revoke two ruling letter pertaining to the tariff classification of certain umbrellas, having a two-piece pole, under the Harmonized Tariff Schedule of the United States (HTSUS). CBP also proposes to revoke any treatment previously accorded by it to substantially identical transactions. Comments are invited on the correctness of the proposed action.

**DATES:** Comments must be received on or before (30 days from the date of publication of notice in the Customs Bulletin).

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

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

**SUPPLEMENTARY INFORMATION:****Background**

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), this notice advises interested parties that CBP intends to revoke two ruling letter pertaining to the classification of certain umbrellas that have a two-piece pole. Although in this notice CBP is specifically referring to New York Ruling Letter (NY) N242418, dated June 11, 2013, (Attachment A) and N242443, dated June 14, 2013, (Attachment B) this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. This treatment may, among other reasons, be the result of the importer’s reliance on a ruling issued to a third party, CBP personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer’s or CBP’s previous interpretation of the Harmonized Tariff Schedule of the United States. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer’s failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of

the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

In N242418, CBP classified a two-piece portable umbrella under subheading 6601.91.00, HTSUS, which provides for “Umbrellas and sun umbrellas ... : Other: Having a telescopic shaft.” In N242443, CBP classified a two-piece portable beach umbrella under subheading 6601.91.00, HTSUS, which provides for “Umbrellas and sun umbrellas ... : Other: Having a telescopic shaft.” It is now CBP’s position that the umbrellas in N242418 and N242443 did not have a telescopic shaft as described, but rather had a two-piece *adjustable* shaft. CBP thus proposes to classify these two umbrellas at issue in subheading 6601.10.00, HTSUS, which provides for “Umbrellas and sun umbrellas ... : Garden or similar umbrellas.”

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke N242418 and N242443 and any other ruling not specifically identified in order to reflect the proper classification of the merchandise. Pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

Dated: March 16, 2015

MYLES B. HARMON,  
*Director*  
*Commercial and Trade Facilitation Division*  
IEVA K. O’ROURKE

Attachments

N242418

June 11, 2013

CLA-2-66:OT:RR:NC:N3 :351

CATEGORY: Classification

TARIFF NO.: 6601.91.0000

Ms. ALICE LIU

ATICO INTERNATIONAL USA, INCORPORATED

501 SOUTH ANDREWS AVENUE

FORT LAUDERDALE, FL 33301

RE: The tariff classification of a shelter umbrella China

DEAR Ms. LIU:

In your letter dated May 24, 2013, you requested a tariff classification ruling.

You submitted photographs of a portable umbrella with a 2-piece telescopic pole. The umbrella, item #A050CA00185, includes a textile carrying bag along with six steel stakes and cords. In your letter you state that the umbrella measures approximately 6-1/2' wide including two elongated sides with pockets. The umbrella can be used in two ways, as a shelter tied down with the stakes and cords or as an umbrella.

The applicable subheading for the umbrella shelter, item #A050CA00185, will be 6601.91.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Umbrellas ... Other ... :Having a telescopic shaft." The rate of duty will be Free.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Mitchel Bayer at (646) 733-3102.

*Sincerely,*

THOMAS J. RUSSO

*Director**National Commodity Specialist Division*

N242443

June 14, 2013

CLA-2-66:OT:RR:NC:N3 :351

CATEGORY: Classification

TARIFF NO.: 6601.91.0000

MR. STEVE HAVERSTICK  
RIO BRANDS, LLC  
10981 DECATUR ROAD  
PHILADELPHIA, PA 19154

RE: The tariff classification of a beach umbrella

DEAR MR. HAVERSTICK:

In your letter dated May 24, 2013, you requested a tariff classification ruling.

In your letter you describe a portable outdoor umbrella with a 2-piece telescopic pole. The umbrella, item #8211, includes a textile carrying bag. You also state that the upper portion of the telescopic pole is both adjustable for height and can be tilted for optimal sun coverage. The applicable subheading for the telescopic beach umbrella, item #8211, will be 6601.91.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Umbrellas ... Other ... :Having a telescopic shaft." The rate of duty will be Free.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Mitchel Bayer at (646) 733-3102.

*Sincerely,*

THOMAS J. RUSSO

*Director*

*National Commodity Specialist Division*

HQ H248132  
CLA-2 OT:RR: CTF:TCM: HQ H248132 ERB  
CATEGORY: Classification  
TARIFF NO.: 6601.10.00

Ms. ALICE LIU  
ATICO INTERNATIONAL USA, INC.  
501 SOUTH ANDREWS AVENUE  
FORT LAUDERDALE, FL 33301

MR. STEVE HAVERSTICK  
RIO BRANDS, LLC  
10981 DECATUR ROAD  
PHILADELPHIA, PA 19154

RE: Revocation of NY N242418 and NY N242443; tariff classification of beach or outdoor umbrellas

DEAR Ms. LIU AND MR. HAVERSTICK:

On June 11, 2013, U.S. Customs and Border Protection (CBP) issued Atico International USA, Inc. New York Ruling Letter (NY) N242418. On June 14, 2013, CBP issued RIO Brands, Inc. NY N242443. Both rulings pertain to the tariff classification under the Harmonized Tariff Schedule of the United States, (HTSUS) of an outdoor umbrella, also referred to as a shelter umbrella or a beach umbrella. We have reviewed additional information regarding the central pole of the umbrellas at issue, and have since found NY N242418 and NY N242443 to be in error.

**FACTS:**

In NY N242418 CBP found the following:

You submitted photographs of a portable umbrella with a 2-piece telescopic pole. The umbrella, item #A050CA00 185, includes a textile carrying bag along with six steel stakes and cords.

In your letter you state that the umbrella measures approximately 6–1/2' wide including two elongated sides with pockets. The umbrella can be used in two ways, as a shelter tied down with the stakes and cords or as an umbrella.

The applicable subheading for the umbrella shelter, item #A040CA00185, will be 66901.91.0000 Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Umbrellas ... Other. . . : Having a telescopic shaft. The rate of duty will be Free.

Additional information provided for this submission notes that the umbrella has a two-piece *adjustable* pole that does not tilt.

In NY N242443, CBP found the following:

In your letter you describe a portable outdoor umbrella with a 2-piece telescopic pole. The umbrella, item #8211, includes a textile carrying bag. You also state that the upper portion of the telescopic pole is both adjustable for eight and can be tilted for optimal sun coverage.

The applicable subheading for the telescopic beach umbrella, item #8211, will be 6601.91.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Umbrellas ... Other ... : Having a telescopic shaft. The rate of duty will be Free.

Additional information provided states that the umbrella is a two-piece *adjustable* pole, whereby the upper pole and the lower pole fit together with a cantilever lock, and can be adjusted for height or tilt. It is not telescopic.

### ISSUE:

Whether the subject outdoor umbrellas are considered “garden umbrellas” of subheading 6601.10, HTSUS or “Other similar umbrellas” under subheading 6601.91, HTSUS.

### LAW AND ANALYSIS:

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

The HTSUS provisions under consideration are as follows:

6601	Umbrellas and sun umbrellas (including walking-stick umbrellas, garden umbrellas and similar umbrellas):
6601.10.00	Garden or similar umbrellas
6601.91.00	Other

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

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

There is no dispute that the goods at issue are umbrellas, and are properly classified in heading 6601, HTSUS. Therefore, as the GRI’s instruct, CBP’s analysis turns to whether the subject umbrellas are classified under subheading 6601.10, HTSUS, which provides for “Garden or similar umbrellas ...” or under subheading 6601.91, HTSUS, which provides for all *other* types of umbrellas.

The HTSUS does not define the term “garden umbrella” or even the term “umbrella,” but the terms of the HTSUS are construed according to their common commercial meaning. See *Millennium Lumber Distrib. Ltd. v. United States*, 558 F.3d 1326, 1329 (Fed. Cir. 2009). That said, to ascertain the common commercial meaning of a tariff term, CBP, “may rely on its own understanding of the term as well as lexicographic and scientific authorities.” See *Lon-Ron Mft. Co. v. United States*, 334 F.3d 1304, 1309 (Fed. Cir. 2003). Merriam-Webster defines “umbrella” as a “collapsible shade for protection against weather consisting of fabric stretched over hinged ribs radiating from

a central pole; *especially*: a small one for carrying in the hand.”<sup>1</sup> It can be “a device ... consisting of a collapsible, usually circular canopy mounted on a central rod;”<sup>2</sup> and the Oxford University Press notes that it can be used against rain or sun<sup>3</sup>.

A garden umbrella is often sold as a component of an outdoor dining set to provide shade for use during moments of acceptable ambient air temperatures and meteorological tranquility. It has a central, non-telescopic pole and usually a very large canopy so as to accommodate multiple persons and in some cases, furniture. It is also used interchangeably with “patio umbrella” and sometimes “shade umbrella” or “dining umbrella.” Hence, “similar umbrellas” would have these same characteristics. They would be large, with a central, non-telescopic pole so that they may remain stationary for long periods of time in the garden or other outdoor setting.

CBP has had occasion to distinguish between similar products and has been consistent with its classification of garden umbrellas and beach umbrellas, and those which are hand-held or for personal use, such as mini umbrellas, golf umbrellas, or stick umbrellas. See NY G89320, dated April 9, 2001, which classified a 36-inch diameter beach umbrella under heading 6601.10, HTSUS, as a “garden or similar umbrella,” but classified a “mini” umbrella described as a “hand-open umbrella, 21-inches in diameter with a telescopic shaft,” under subheading 6601.91, HTSUS, as an “Other: having a telescopic shaft,” and a 27-inch golf umbrella and a 23-inch in diameter stick umbrella, (not described as telescopic) under heading 6601.99, HTSUS.<sup>4</sup> See also NY K84498, dated April 1, 2004, where CBP classified a 60-inch golf umbrella under subheading 6601.99, HTSUS, as an “Other” umbrella and a “beach/tailgater umbrella” under subheading 6601.10, HTSUS, as a “garden or similar umbrella;” NY K87585, dated July 12, 2004, classified a beach umbrella under subheading 6601.10, HTSUS; NY M80104, dated January 27, 2006, classified a beach umbrella comprised of two pieces that fit together under subheading 6601.10, HTSUS.

The instant merchandise, contrary to the statements in N242443 and N242418, have central non-telescoping poles. Thus, they are properly classified under subheading 6601.10, HTSUS, which provides for, “Umbrellas and sun umbrellas (including walking-stick umbrellas, garden umbrellas and similar umbrellas): Garden or similar umbrellas.”

#### HOLDING:

Under the authority of GRI 1 and GRI 6, the subject umbrellas are properly classifiable under subheading 6601.10.00, HTSUS, which provides for “Umbrellas and sun umbrellas (including walking-stick umbrellas, garden umbrellas and similar umbrellas): Garden or similar umbrellas.” The duty rate is 6.5% *ad valorem*.

<sup>1</sup> See <http://www.merriam-webster.com/dictionmylumbrella>, Emphasis in original.

<sup>2</sup> See also, <http://ahdictionary.com/word/search.html?q=umbrella>

<sup>3</sup> See <http://www.oxforddictionaries.com/us/definition/american-english/umbrella?q=umbrella>

<sup>4</sup> Though not defined in the ruling, a golf umbrella is usually understood to be large enough to protect one person and his or her golf bag from weather elements which occur during a golf game.



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

EFFECT ON OTHER RULINGS:

NY N242418, dated June 11, 2013, and NY N242443, dated June 14, 2013 are REVOKED.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

**NOTICE OF ISSUANCE OF FINAL DETERMINATION  
CONCERNING CERTAIN ORAL SOLUTION PRODUCTS**

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

**ACTION:** Notice of final determination.

**SUMMARY:** This document provides notice that U.S. Customs and Border Protection (“CBP”) has issued a final determination concerning the country of origin of certain oral solution products for cleansing of the colon known as Prepopik. Based upon the facts presented, CBP has concluded that, the country of origin of the oral solution is China for purposes of U.S. Government procurement.

**DATES:** The final determination was issued on March 13, 2015. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination within April 20, 2015.

**FOR FURTHER INFORMATION CONTACT:** Grace A. Kim, Valuation and Special Programs Branch, Regulations and Rulings, Office of International Trade (202) 325–7941.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that on March 13, 2015, pursuant to subpart B of Part 177, U.S. Customs and Border Protection Regulations (19 CFR part 177, subpart B), CBP issued a final determination concerning the country of origin of certain oral solution products known as Prepopik, which may be offered to the U.S. Government, Department of Veterans Affairs under its Federal Supply Schedule contract. This final determination, HQ H253443, was issued under procedures set forth at 19 CFR part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18). In the final determination, CBP

concluded that the processing in China results in a substantial transformation. Therefore, the country of origin of the oral solution is China for purposes of U.S. Government procurement.

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

Dated: March 13, 2015.

GLEN E. VEREB,  
*Acting Executive Director,  
Regulations and Rulings, Office of  
International Trade.*

[Published in the Federal Register, March 20, 2015 (80 FR 15024)]

HQ H253443

March 13, 2015

OT:RR:CTF:VS H253443 GaK

CATEGORY: Origin

MICHAEL T. SHOR  
ARNOLD & PORTER LLP  
555 12TH STREET, NW  
WASHINGTON, DC 20004-1206

RE: U.S. Government Procurement; Country of Origin of PREPOPIK®; Substantial Transformation

DEAR MR. SHOR:

This is in response to your letter dated April 23, 2014, and your supplemental submission dated July 18, 2014, requesting a final determination on behalf of your client, Ferring Pharmaceuticals Inc. (“Ferring”), pursuant to subpart B of part 177 of the U.S. Customs and Border Protection (“CBP”) Regulations (19 CFR part 177). Under these regulations, which implement Title III of the Trade Agreements Act of 1979 (“TAA”), as amended (19 U.S.C. § 2511 *et seq.*), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain “Buy American” restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

This final determination concerns the country of origin of Ferring’s PREPOPIK® for Oral Solution (“Prepopik”), which is a powder for oral solution for cleansing of the colon. We note that as a U.S. importer, Ferring is a party-at-interest within the meaning of 19 CFR § 177.22(d)(1) and is entitled to request this final determination.

Pursuant to 19 CFR § 177.22(b)(7), you requested confidential treatment with respect to certain information submitted. As that information constitutes privileged or confidential matters, it has been bracketed and will be redacted from any published versions.

**FACTS:**

Prepopik is a dual-acting osmotic and stimulant laxative bowel preparation for a colonoscopy in adults. Prepopik is imported in packets containing one dose, to which a dosing cup is added in the U.S. Prepopik is ingested by dissolving the powder in water, using the supplied plastic dosing cup. To produce Prepopik, sodium picosulfate (manufactured in Country A [\*\*\*\*\*]), magnesium oxide (manufactured in Country B [\*\*\*\*\*]), anhydrous citric acid (manufactured in Country C [\*\*\*\*\*]), and three inactive ingredients (sourced from Country C and Country D [\*\*\*\*\*]) are sent to China in powder form or in fine particles. The manufacturing process, described in detail to CBP, consists of sieving, wet mixing the sodium picosulfate to form granules, mixing magnesium oxide and citric acid into a granule formulation, product flavoring, and final blending which is stated not to result in a chemical reaction during any of the steps carried out in China. The final product is placed into single dosage packets. Each Prepopik packet contains 10mg sodium picosulfate, 3.5g magnesium oxide, and 12g citric acid. The packets are sent to a third party in the U.S. to be packaged into child-resistant pouches along with the pre-marked, plastic dosing cup.

After importation, once water is added, the magnesium oxide and citric acid combine to form magnesium citrate. The magnesium citrate, is an osmotic laxative that stimulates the absorption of water into the bowel, while the sodium picosulfate stimulates peristalsis in the bowel to expel its contents.<sup>1</sup>

#### ISSUE:

What is the country of origin of the Prepopik for purposes of U.S. government procurement and marking?

#### LAW AND ANALYSIS:

##### *Country of Origin*

Pursuant to Subpart B of Part 177, 19 CFR 177.21 *et seq.*, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. § 2511 *et seq.*), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain “Buy American” restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

Under the rule of origin set forth under 19 U.S.C. § 2518(4)(B):

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

*See also* 19 CFR 177.22(a).

In determining whether a substantial transformation occurs in the manufacture of chemical products such as pharmaceuticals, CBP has consistently examined the complexity of the processing, and whether the final article retains the essential identity and character of the raw materials. To that end, CBP has generally held that the processing of pharmaceutical products from bulk form into measured doses, filtering and packaging does not result in a substantial transformation. *See* Headquarters Rulings Letter (“HQ”) H197582, dated August 9, 2012; HQ H561975, dated April 3, 2002; and HQ H561544, dated May 1, 2000.

In HQ H215656, dated January 11, 2013, a pain reliever medicine called Rybix ODT was imported from France. The active pharmaceutical ingredient (“API”) was manufactured in India, which was shipped to France and processed in four stages. In the first stage, the API was de-lumped and granulated with a suspension of inactive ingredients then sieved and sized. In the second stage, several inactive ingredients designed to assist in drug administration were added to the API to make a flavor preblend. In the third stage, the tablets were formed and collected in polyethylene-lined foil bags. In the last stage, the tablets were packaged in child-resistant blister packs and prepared for shipment to the U.S. CBP found that the imported good did not

<sup>1</sup> *See* <http://www.nlm.nih.gov/medlineplus/ency/article/002282.htm>; *see also* <http://www.nlm.nih.gov/medlineplus/druginfo/meds/a613020.html>.

undergo a substantial transformation in France, because the processing in France did not result in a change in the medicinal use of the product and the API retained its chemical and physical properties.

However, in HQ 563207, dated June 1, 2005, Actoplus Met™ was produced in Japan by combining two APIs: pioglitazone HCl (pioglitazone), an insulin sensitizer metformin, a biguanide used to decrease the amount of glucose produced by the liver and make muscle tissue more sensitive to insulin so glucose can be absorbed. The two APIs were mixed together to form a fix combination drug. The decision noted that with the combination of the two APIs, type 2 diabetes patients will receive more medical benefits than taking metformin alone. CBP held that the finished pharmaceutical, Actoplus Met™ had a new name, character and use distinct from the two APIs used in the production of the finished product. It was noted that while pioglitazone and metformin could be prescribed separately, the final product, Actoplus Met™, increased the individual effectiveness of pioglitazone and metformin in treating type 2 diabetes patients. Therefore, a substantial transformation was found to take place in Japan where the two APIs were combined to produce Actoplus Met.™

Ferring states that as imported, the only API present in Prepopik is the sodium picosulfate which retains its chemical and physical properties and is merely put into a dosage form and packaged. Ferring further contends that the processing in China does not result in a change in the medicinal use of the finished product. However, we note that magnesium oxide may be used for different reasons, as an antacid to relieve heartburn, sour stomach, or acid indigestion; or as a laxative for short-term, rapid emptying of the bowel. See <http://www.nlm.nih.gov/medlineplus/druginfo/meds/a601074.html>; see also [http://pubchem.ncbi.nlm.nih.gov/compound/magnesium\\_oxide](http://pubchem.ncbi.nlm.nih.gov/compound/magnesium_oxide) (Magnesium oxide (MgO) is an inorganic compound that occurs in nature as the mineral periclase and in aqueous media combines quickly with water to form magnesium hydroxide. It is used as an antacid and mild laxative and has many nonmedicinal uses). We note that combining magnesium oxide with water results in magnesium hydroxide which is also known for its laxative effect. While the combination with water by the user may cause the “chemical reaction,” we note that most medicines are taken with water, so we do not find that the addition of water in this case is what makes the magnesium oxide to function as a laxative. The combination of the magnesium oxide, citric acid and water may form the osmotic effect; however, the fundamental laxative property is already found in the magnesium oxide. Accordingly, we find that as in HQ 563207, the two ingredients (sodium picosulfate and magnesium oxide) contribute to the purpose of Prepopik. As the two ingredients are combined in China, we find that as in HQ 563207 a substantial transformation occurs in China. Individually, the sodium picosulfate and the magnesium oxide may be used to alleviate constipation, and together, when combined to form Prepopik, these ingredients have a more stimulative effect. Therefore, we find that the country of origin of Prepopik is China.

### *Marking*

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. § 1304), provides that, unless excepted, every article of foreign origin (or its container) imported into the United States shall be marked in a conspicuous place as

legibly, indelibly and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the United States the English name of the country of origin of the article. Congressional intent in enacting 19 U.S.C. § 1304 was “that the ultimate purchaser should be able to know by an inspection of the marking on 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.” *United States v. Friedlaender & Co.*, 27 CCPA 297, 302, C.A.D. 104 (1940). Part 134, CBP Regulations (19 CFR § 134) implements the country of origin marking requirements and exceptions of 19 U.S.C. § 1304.

Section 134.1(b), CBP Regulations (19 CFR § 134.1(b)), defines “country of origin” as: the country of manufacture, production or growth of any article of foreign origin entering the United States. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the “country of origin” within the meaning of this part; . . .

The country of origin of an article for U.S. tariff purposes is the country in which the last substantial transformation took place. A substantial transformation occurs when an article is used in a manufacturing process or operation that results in a new article that has a new name, character or use different from that of the original imported article. A substantial transformation will not result from a minor manufacturing or combining process that leaves the identity of the article intact. See *United States v. Gibson-Thomsen Co.*, 27 C.C.P.A. 267 (1940); and *National Hand Tool Corp. v. United States*, 989 F.2d 1201 (Fed. Cir. 1992).

In the instant case, Ferring mixes all the ingredients by blending, sieving, and mixing. We find that this processing results in a substantial transformation. The combination of the two ingredients results in a more stimulative laxative effect for purposes of cleansing the bowels. Therefore, we find that the country of origin of Prepopik is China for country of origin marking purposes.

#### **HOLDING:**

Based on the facts in this case, we find that the imported Prepopik is substantially transformed in China. The country of origin for government procurement and marking purposes is China.

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

*Sincerely,*

GLEN E. VEREB,

*Acting Executive Director,*

*Regulations and Rulings, Office of International Trade.*

**ACCREDITATION AND APPROVAL OF INTERTEK USA,  
INC., AS A COMMERCIAL GAUGER AND LABORATORY**

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

**ACTION:** Notice of accreditation and approval of Intertek USA, Inc., as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given, pursuant to CBP regulations, that Intertek USA, Inc., has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of October 30, 2014.

**EFFECTIVE DATE:** The accreditation and approval of Intertek USA, Inc., as commercial gauger and laboratory became effective on October 30, 2014. The next triennial inspection date will be scheduled for October 2017.

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

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Intertek USA, Inc., 1708 Marshall St., Jacksonville, FL 32206, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Intertek USA, Inc., is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API Chapters	Title
1 .....	Vocabulary.
3 .....	Tank gauging.
7 .....	Temperature determination.
8 .....	Sampling.
12 .....	Calculations.
17 .....	Maritime measurement.

Intertek USA, Inc., is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27-08 .....	ASTM D-86 .....	Standard test method for distillation of petroleum products at atmospheric pressure.
27-48 .....	ASTM D-4052 .	Standard test method for density and relative density of liquids by digital density meter.
27-58 .....	ASTM D-5191 .	Standard test method for vapor pressure of petroleum products (mini-method).
27-11 .....	ASTM D-445 ...	Standard test method for kinematic viscosity of transparent and opaque liquids (and calculations of dynamic viscosity).
27-06 .....	ASTM D-473 ...	Standard test method for sediment in crude oils and fuel oils by the extraction method.
27-57 .....	ASTM D-7039 .	Standard Test Method for Sulfur in Gasoline and Diesel Fuel by Monochromatic Wavelength Dispersive X-Ray Fluorescence Spectrometry.

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

Dated: March 13, 2015.

IRA S. REESE,  
*Executive Director,*  
*Laboratories and Scientific Services*  
*Directorate.*



**ACCREDITATION AND APPROVAL OF AMSPEC SERVICES, LLC, AS A COMMERCIAL GAUGER AND LABORATORY**

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

**ACTION:** Notice of accreditation and approval of AmSpec Services, LLC, as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given, pursuant to CBP regulations, that AmSpec Services, LLC, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of July 22, 2014.

**EFFECTIVE DATE:** The accreditation and approval of AmSpec Services, LLC, as commercial gauger and laboratory became effective on July 22, 2014. The next triennial inspection date will be scheduled for July 2017.

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

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that AmSpec Services, LLC, 1350 Slater Rd., Unit 9, Ferndale, WA 98248, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. AmSpec Services, LLC is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API Chapters	Title
3 .....	Tank gauging.
7 .....	Temperature determination.
8 .....	Sampling.
11 .....	Physical Properties.
12 .....	Calculations.
17 .....	Maritime measurement.

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

CBPL No.	ASTM	Title
27-01.....	D-287 .....	API gravity of crude petroleum and petroleum products (hydrometer method).
27-48 .....	D-4052 .....	Density and Relative density of liquids by digital density meter.
27-05.....	D-4928 .....	Water in crude oils by coulometric Karl Fishcher Titration.
27-13 .....	D-4294 .....	Sulfur in petroleum and petroleum products by energy-dispersive X-ray fluorescence spectrometer.

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

Dated: March 13, 2015.

IRA S. REESE,  
*Executive Director,*  
*Laboratories and Scientific Services*  
*Directorate.*

[Published in the Federal Register, March 20, 2015 (80 FR 15027)]

### ACCREDITATION AND APPROVAL OF AMSPEC SERVICES, LLC, AS A COMMERCIAL GAUGER AND LABORATORY

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

**ACTION:** Notice of accreditation and approval of AmSpec Services, LLC, as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given, pursuant to CBP regulations, that AmSpec Services, LLC, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of October 27, 2014.

**EFFECTIVE DATE:** The accreditation and approval of AmSpec Services, LLC, as commercial gauger and laboratory became effective on October 27, 2014. The next triennial inspection date will be scheduled for October 2017.

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

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that AmSpec Services, LLC, 4075 Sprig Driver, Suite A, Concord, CA 94520, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. AmSpec Services, LLC is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API Chapters	Title
1 .....	Vocabulary.
3 .....	Tank gauging.
7 .....	Temperature determination.
8 .....	Sampling.
11 .....	Physical Properties.
12 .....	Calculations.
17 .....	Maritime measurement.

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

CBPL No.	ASTM	Title
27-13 .....	ASTM D-4294 .....	Standard test method for sulfur in petroleum and petroleum products by energy-dispersive x-ray fluorescence spectrometry.
27-06 .....	ASTM D-473 .	Standard test method for sediment in crude oils and fuel oils by the extraction method.
27-01 .....	ASTM D-287 .	Standard test method for API gravity of crude petroleum and petroleum products (hydrometer method).
27-46 .....	ASTM D-5002 .....	Standard test method for density and relative density of crude oils by digital density analyzer.
27-05 .....	ASTM D-4928 .....	Standard test method for water in crude oils by Coulometric Karl Fischer Titration.
27-48 .....	D-4052 .....	Density and Relative density of liquids by digital density meter.

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

Dated: March 13, 2015.

IRA S. REESE,  
*Executive Director,  
 Laboratories and Scientific Services  
 Directorate.*

[Published in the Federal Register, March 20, 2015 (80 FR 15026)]

**APPROVAL OF SAYBOLT, LP, AS A COMMERCIAL GAUGER**

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

**ACTION:** Notice of approval of Saybolt, LP, as a commercial gauger.

**SUMMARY:** Notice is hereby given, pursuant to CBP regulations, that Saybolt, LP, has been approved to gauge petroleum and certain petroleum products for customs purposes for the next three years as of December 4, 2014.

**EFFECTIVE DATE:** The approval of Saybolt, LP, as commercial gauger became effective on December 4, 2014. The next triennial inspection date will be scheduled for December 2017.

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

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to 19 CFR 151.13, that Saybolt, LP, 4025 Oak Ln, Sulphur, LA 70665, has been approved to gauge petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.13. Saybolt, LP is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API Chapters	Title
3 .....	Tank gauging.
7 .....	Temperature determination.
8 .....	Sampling.
12 .....	Calculations.
17 .....	Maritime measurement.

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

Dated: March 13, 2015.

IRA S. REESE,  
*Executive Director,*  
*Laboratories and Scientific Services*  
*Directorate.*

[Published in the Federal Register, March 20, 2015 (80 FR 15027)]



## 19 CFR PART 177

### **MODIFICATION OF A RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF A TEXTILE SPONGE CONTAINING TALC**

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

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

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that CBP is modifying a ruling concerning the tariff classification of a regenerated cellulose sponge that contains talc on its non-scratch woven cloth side. Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed modification was published on January 1, 2015, in Volume 49, Number 1. No comments were received in response to this notice.

**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or before (60 DAYS FROM PUBLICATION DATE)

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

**SUPPLEMENTARY INFORMATION:**

#### **BACKGROUND**

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice of the proposed revocation was published on January 1, 2015, in the *Customs Bulletin*, Volume 49, No. 1, proposing to revoke New York Ruling Letter (NY) 875045, dated June 16, 1992, pertaining to the tariff classification of a cellulose sponge with a nonwoven cloth side that contains talc in heading 5603, HTSUS, which provides for “Nonwovens, whether or not impregnated, coated, covered or laminated.” CBP received no comments in response to this notice.

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

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

In NY 875045, CBP ruled that a sponge composed of cellulose with a non woven cloth backing containing talc was classified in subheading 5603.00.30, HTSUS.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying NY 875045 to reflect the tariff classification of the subject merchandise according to the analysis contained in Headquarters Ruling Letter (HQ) H258156, as set forth as Attachment B to this notice. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: March 9, 2015

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

Attachment



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

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

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

DEAR MR. JARVIS:

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice of the proposed revocation was published on January 1, 2015, in the *Customs Bulletin*, Volume 49, No. 1. CBP received no comments in response to this notice.

#### **FACTS:**

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

#### **ISSUE**

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

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

**LAW AND ANALYSIS:**

Classification under the Harmonized Tariff Schedule of the United States (HTSUS) is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes.

The HTSUS provisions under consideration are as follows:

5603	Nonwovens, whether or not impregnated, coated, covered or laminated
6805	Natural or artificial abrasive powder or grain, on a base of textile material, paper, of paperboard or of other materials, whether or not cut to shape or sewn or otherwise made up:

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

1. This section does not cover: \*\*\*

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

Chapter 68, HTSUS, provides in pertinent part:

1. This chapter does not cover: \*\*\*

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

\* \* \*

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

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

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

The EN to 68.05 states, in pertinent part:

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

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

\* \* \* \* \*

The instant sponge is composed of regenerated cellulose sponge which has a non-woven textile cloth side that contains talc. Thus, heading 5603, HTSUS, does not completely describe the article, since the sponge is also composed of cellulose and talc, in addition to the non-woven textile backing. Nor is the classifiable under GRI1 in heading 6805, HTSUS, as the terms “abrasive grain, on a base of textile material”, describes only part of the good. Since the instant article is not classifiable by GRI 1, and because the sponge is a composite good which consists of different materials, GRI 3 governs.

GRI 3 provides, in pertinent part:

...

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

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

The relevant EN for GRI 3(b) provides:

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

GRI 3(b) requires that classification be based on the component that provides the article with its essential character. As noted above, EN (VIII) to GRI 3(b) provides that when performing an essential character analysis, the factors that should be considered are the bulk, quantity, weight or value, or the role of a constituent material in relation to the use of the goods. There have been several court decisions on “essential character” for purposes of classification under GRI 3(b). *See, e.g., Conair Corp. v. United States*, 29 C.I.T. 888 (2005); *Structural Industries v. United States*, 360 F. Supp. 2d 1330, 1337–1338 (Ct. Int’l Trade 2005); and *Home Depot USA, Inc. v. United States*, 427 F. Supp. 2d 1278, 1295–1356 (Ct. Int’l Trade 2006), *aff’d* 491 F.3d 1334 (Fed. Cir. 2007). “[E]ssential character is that which is indispensable to the structure, core or condition of the article, i.e., what it is.” *Home Depot USA, Inc. v. United States*, 427 F. Supp. 2d at 1293 *quoting* *A.N. Deringer, Inc. v. United States*, 66 Cust. Ct. 378, 383 (1971). In particular, in *Home Depot USA, Inc. v. United States*, the court stated “[a]n essential character inquiry requires a fact intensive analysis.” 427 F. Supp. 2d 1278, 1284 (Ct. Int’l Trade 2006). Therefore, a case-by-case determination on essential character is warranted in this situation.

In this case, the textile cloth layer plays the most important role in the use of the sponge. As a “non-scratch” sponge, the product is designed to clean and

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

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

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

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

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

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

The analysis in *C.J. Tower* is echoed by the exemplars in the EN 68.05, which states “The abrasives used include emery, corundum, silicon carbide, garnet, pumice, flint, quartz, sand and glass powder ....” Furthermore, under

the uniform usage rule of statutory construction, terms ordinarily have the same meaning throughout the statute, unless there is such variation in connection in which the words are used. *See Gen. Dynamics Land Syst. v. Cline*, 540 U.S. 581, 591–596 (2004), *Roberts*, 132 S. Ct. 1350 (2012). For example, heading 2513, HTSUS, provides for natural abrasives: “pumice; emery; natural corundum, natural garnet and other natural abrasives, whether or not heat treated.” EN 25.13, HTSUS, explains that “artificial abrasives such as artificial corundum and silicon carbide” are provided for in other headings.<sup>2</sup>

Therefore, under the uniform usage rule of statutory construction, the term “abrasives” in heading 6805, HTSUS, refers to the natural mineral abrasives covered by heading 2513, and other headings of chapter 25, HTSUS, and artificial (*i.e.*, synthetic chemical) versions (*i.e.*, imitations) of those natural abrasives. Articles classifiable in heading 6805, HTSUS, consist of a textile base covered with a natural mineral abrasive or with an artificial abrasive powder or grain. For example, a product classifiable in heading 6805, HTSUS, could be coated with the natural mineral abrasive corundum or with a synthetic chemical version of corundum (*i.e.*, aluminum oxide). Hence, between the court in *C.J. Tower*, the tariff terms and the ENs we now have the following exemplars of abrasives: emery, corundum, silicon carbide, garnet, pumice, flint, quartz sand and glass powder, silicon carbide, aluminium oxide, and Tripoli. Many of these exemplars are mentioned two or three times. Talc is notably absent.

However, these exemplars are further described by the next paragraph in the EN 68.05 which reads: “goods ... mainly used (by hand or mechanically) for smoothing or cleaning up metal, wood, cork, glass, leather, rubber (hardened or not) or plastics; also for smoothing or polishing varnished or lacquered surfaces, or for sharpening card clothing.” For instance, emery is a variety of corundum (also listed) and is the hardest mineral after diamonds. It is used to make abrasive powder and coated abrasives such as emery cloth and emery paper which are used to abrade metal. They remove metal particles and rust from steel and other metals. But it also has a well-known use in emery boards used to file finger-nails. Pumice, a stone composed of volcanic ash, is used as an abrasive to “stone-wash” denim which abrades the fabric. It is also used to abrade callused skin and in toothpaste to remove plaque without removing enamel. Tripoli is used in polishing. Tripoli has had unique uses as an abrasive and the deburring of metal and plastic castings. The automobile industry uses it in buffing and included uses in sharpening tools for wood polishing compounds in lacquer finishing. Garnet is often used as an abrasive because of how hard it is. It can be used as an abrasive blasting material in “water jet cutting,” but has also been used in more simple grinding tools such as sandpaper to finish metals and wood.<sup>3</sup>

<sup>2</sup> Heading 2513, HTSUS, provides for “pumice stone; emery; natural corundum, natural garnet and other natural abrasives, whether or not heat treated”. This conforms with requestor’s own citation to Reade. *See* [http://www.reade.com/Particle Briefings/mohs hardness abrasive grit.html](http://www.reade.com/Particle%20Briefings/mohs%20hardness%20abrasive%20grit.html) (last accessed June 13, 2012).

<sup>3</sup> *See* [http://www.people.carleton.edu/~cdauidso/Geo11 O/MinUse05.htm](http://www.people.carleton.edu/~cdauidso/Geo11%20O/MinUse05.htm)

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

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

By application of GRI 3(b), the subject sponge composed of an abrasive grain (talc) on a textile, is classified in heading 6805, HTSUS. Specifically, it is classified in subheading 6805.30.50, HTSUS, which provides for “Natural or artificial abrasive powder or grain, on a base of textile material, of paper, of paperboard or of other materials, whether or not cut to shape or sewn or otherwise made up: On a base of other materials: Other.” The column one general rate of duty is Free.

#### **HOLDING:**

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

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

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

NY 875045 is MODIFIED.

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

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

ALLYSON MATTANAH

**AGENCY INFORMATION COLLECTION ACTIVITIES:****Small Vessel Reporting System**

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

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

**SUMMARY:** U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Small Vessel Reporting System (SVRS). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours, but no changes to the information collected. This document is published to obtain comments from the public and affected agencies.

**DATES:** Written comments should be received on or before April 20, 2015 to be assured of consideration.

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

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

**SUPPLEMENTARY INFORMATION:** This proposed information collection was previously published in the **Federal Register** (79 FR 77020) on December 23, 2014, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10. CBP invites the general public and other Federal agencies to comment on proposed and/ or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13; 44 U.S.C. 3507). The comments should address: (a) Whether the

collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden, including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

**Title:** Small Vessel Reporting System.

**OMB Number:** 1651-0137.

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

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

For each voyage, SVRS participants will be required to submit a float plan about their voyage via the SVRS Web site in advance of arrival in the United States. The float plan includes vessel information, a listing of all persons on board, estimated dates and times of departure and return, and information on the locations to be visited on the trip. Participants in SVRS can create a float plan for an individual voyage or a template for a float plan that can be used multiple times.

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



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

**Type of Review:** Extension (with change).

**Affected Public:** Individuals.

### **SVRS Application**

*Estimated Number of Respondents:* 7,509.

*Estimated Number of Total Annual Responses:* 7,509.

*Estimated Time per Response:* 15 minutes.

*Estimated Total Annual Burden Hours:* 1,877.

### **Float Plan**

*Estimated Number of Respondents:* 2,589.

*Estimated Number of Total Annual Responses:* 2,589.

*Estimated Time per Response:* 10.6 minutes.

*Estimated Total Annual Burden Hours:* 457.

Dated: March 11, 2015.

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

[Published in the Federal Register, March 20, 2015 (80 FR 15023)]

