

U.S. Customs and Border Protection

[CBP Dec. 15-09]

**WESTERN HEMISPHERE TRAVEL INITIATIVE:
DESIGNATION OF AN APPROVED NATIVE AMERICAN
TRIBAL CARD ISSUED BY THE SENECA NATION OF
INDIANS AS AN ACCEPTABLE DOCUMENT TO DENOTE
IDENTITY AND CITIZENSHIP FOR ENTRY IN THE UNITED
STATES AT LAND AND SEA PORTS OF ENTRY**

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

ACTION: Notice.

SUMMARY: This notice announces that the Commissioner of U.S. Customs and Border Protection is designating an approved Native American Tribal Card issued by the Seneca Nation of Indians to U.S. and Canadian citizens as an acceptable travel document for purposes of the Western Hemisphere Travel Initiative. The approved card may be used to denote identity and citizenship of Seneca Nation of Indians members entering the United States from contiguous territory or adjacent islands at land and sea ports of entry.

DATES: This designation will become effective on July 13, 2015.

FOR FURTHER INFORMATION CONTACT: Arthur A. E. Pitts, Director, Traveler Policies Division, Admissibility and Passenger Programs, Office of Field Operations, U.S. Customs and Border Protection, via email at arthur.a.pitts@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION:

Background

The Western Hemisphere Travel Initiative

Section 7209 of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), Public Law 108-458, as amended, required the Secretary of Homeland Security (Secretary), in consultation with the Secretary of State, to develop and implement a plan to require U.S. citizens and individuals for whom documentation requirements have previously been waived under section 212(d)(4)(B) of the Immigration

and Nationality Act (8 U.S.C. 1182(d)(4)(B)) to present a passport or other document or combination of documents as the Secretary deems sufficient to denote identity and citizenship for all travel into the United States. *See* 8 U.S.C. 1185 note. On April 3, 2008, the Department of Homeland Security (DHS) and the Department of State promulgated a joint final rule, effective on June 1, 2009, that implemented the plan known as the Western Hemisphere Travel Initiative (WHTI) at U.S. land and sea ports of entry. *See* 73 FR 18384 (the WHTI land and sea final rule). It amended, among other sections of the Code of Federal Regulations (CFR), 8 CFR 212.0, 212.1, and 235.1. The WHTI land and sea final rule specifies the documents that U.S. citizens and nonimmigrant aliens from Canada, Bermuda, and Mexico are required to present when entering the United States at land and sea ports of entry.

Under the WHTI land and sea final rule, one type of citizenship and identity document that may be presented upon entry to the United States at land and sea ports of entry from contiguous territory or adjacent islands¹ is a Native American Tribal Card that has been designated as an acceptable document to denote identity and citizenship by the Secretary, pursuant to section 7209 of IRTPA. Specifically, 8 CFR 235.1(e), as amended by the WHTI land and sea final rule, states:

Upon designation by the Secretary of Homeland Security of a United States qualifying tribal entity document as an acceptable document to denote identity and citizenship for the purposes of entering the United States, Native Americans may be permitted to present tribal cards upon entering or seeking admission to the United States according to the terms of the voluntary agreement entered between the Secretary of Homeland Security and the tribe. The Secretary of Homeland Security will announce, by publication of a notice in the **Federal Register**, documents designated under this paragraph. A list of the documents designated under this paragraph will also be made available to the public.

A “United States qualifying tribal entity” is defined as a “tribe, band, or other group of Native Americans formally recognized by the United States Government which agrees to meet WHTI document standards.”² Native American tribal cards are also referenced in 8 CFR 235.1(b) which lists the documents U.S. citizens may use to establish identity and citizenship when entering the United States. *See* 8 CFR 235.1(b)(7).

¹ “Adjacent islands” is defined in 8 CFR 212.0 as “Bermuda and the islands located in the Caribbean Sea, except Cuba.” This definition applies to 8 CFR 212.1 and 235.1.

² *See* 8 CFR 212.0. This definition applies to 8 CFR 212.1 and 235.1.

The Secretary has delegated to the Commissioner of U.S. Customs and Border Protection (CBP) the authority to designate certain documents as acceptable border crossing documents for persons arriving in the United States by land or sea from within the Western Hemisphere, including certain United States Native American tribal cards. See DHS Delegation Number 7105 (Revision 00), dated January 16, 2009.

Tribal Card Program

The WHTI land and sea final rule allowed U.S. federally recognized Native American tribes to work with CBP to enter into agreements to develop tribal ID cards that can be designated as acceptable to establish identity and citizenship when entering the United States at land and sea ports of entry from contiguous territory or adjacent islands. CBP has been working with various U.S. federally recognized Native American tribes to facilitate the development of such cards.³ As part of the process, CBP will enter into one or more agreements with a U.S. federally recognized tribe that specify the requirements for developing and issuing WHTI-compliant tribal cards, including a testing and auditing process to ensure that the cards are produced and issued in accordance with the terms of the agreements.

After production of the cards in accordance with the specified requirements, and successful testing and auditing by CBP of the cards and program, the Secretary of Homeland Security or the Commissioner of CBP may designate the tribal card as an acceptable WHTI-compliant document for the purpose of establishing identity and citizenship when entering the United States by land or sea from contiguous territory or adjacent islands. Such designation will be announced by publication of a notice in the **Federal Register**. More information about WHTI-compliant documents is available at www.cbp.gov/travel.

Seneca Nation of Indians WHTI-Compliant Tribal Card Program

The Seneca Nation of Indians (Seneca Nation) has voluntarily established a program to develop a WHTI-compliant tribal card that denotes identity and U.S. or Canadian citizenship. On November 10, 2009, CBP and the Seneca Nation signed a Memorandum of Agreement (MOA) to develop, issue, test, and evaluate tribal cards to be used for border crossing purposes. Pursuant to this MOA, the cards are issued to members of the Seneca Nation who can establish identity, tribal membership, and U.S. or Canadian citizenship. The cards

³ The Native American tribal cards qualifying to be a WHTI-compliant document for border crossing purposes are commonly referred to as “Enhanced Tribal Cards” or “ETCs.”

incorporate physical security features acceptable to CBP as well as facilitative technology allowing for electronic validation of identity, citizenship, and tribal membership by CBP. In 2013, CBP and the Seneca Nation entered into two related agreements, a January 15, 2013 service level agreement and an April 15, 2013 security agreement. The former memorializes the technical specifications for the production, issuance and use of the card, and the latter addresses confidentiality and information sharing.

CBP has tested the cards developed by the Seneca Nation pursuant to the above agreements and has performed an audit of the tribe's card program. On the basis of these tests and audit, CBP has determined that the cards meet the requirements of section 7209 of the IRTPA and are acceptable documents to denote identity and citizenship for purposes of entering the United States at land and sea ports of entry from contiguous territory or adjacent islands. CBP's continued acceptance of the tribal card as a WHTI-compliant document is conditional on compliance with the MOA and all related agreements.

Acceptance and use of the WHTI-compliant tribal card is voluntary for tribe members. If an individual is denied a WHTI-compliant tribal card, he or she may still apply for a passport or other WHTI-compliant document.

Designation

This notice announces that the Commissioner of CBP designates the tribal card issued by the Seneca Nation in accordance with the MOA and all related agreements between the tribe and CBP as an acceptable WHTI-compliant document pursuant to section 7209 of the IRTPA and 8 CFR 235.1(e). In accordance with these provisions, the approved card, if valid and lawfully obtained, may be used to denote identity and U.S. or Canadian citizenship of Seneca Nation members for the purposes of entering the United States from contiguous territory or adjacent islands at land and sea ports of entry.⁴

Dated: July 7, 2015.

R. GIL KERLIKOWSKE,
Commissioner.

[Published in the Federal Register, July 13, 2015 (80 FR 40076)]

⁴ The Native American Tribal Card issued by the Seneca Nation of Indians may not, by itself, be used by Canadian citizen tribal members to establish that they meet the requirements of section 289 of the Immigration and Nationality Act (INA) [8 U.S.C. 1359]. INA § 289 provides that nothing in this title shall be construed to affect the right of American Indians born in Canada to pass the borders of the United States, but such right shall extend only to persons who possess at least 50 per centum of blood of the American Indian race. While the tribal card may be used to establish a card holder's identity for purposes of INA § 289, it cannot, by itself, serve as evidence of the card holder's Canadian birth or that he or she possesses at least 50% American Indian blood, as required by INA § 289.

[CBP Dec. 15–10]**DESIGNATION OF AN ENHANCED DRIVER'S LICENSE
AND IDENTITY DOCUMENT ISSUED BY THE STATE OF
MINNESOTA AS A TRAVEL DOCUMENT UNDER THE
WESTERN HEMISPHERE TRAVEL INITIATIVE**

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

ACTION: Notice.

SUMMARY: This notice announces that the Commissioner of U.S. Customs and Border Protection is designating enhanced driver's licenses and identity documents issued by the State of Minnesota as acceptable documents for purposes of the Western Hemisphere Travel Initiative. These documents may be used to denote identity and citizenship of U.S. citizens entering the United States from within the Western Hemisphere at land and sea ports of entry.

DATES: This designation is effective July 13, 2015.

FOR FURTHER INFORMATION CONTACT: Arthur A. E. Pitts, Director, Traveler Policies Division, Admissibility and Passenger Programs, Office of Field Operations, U.S. Customs and Border Protection, via email at *arthur.a.pitts@cbp.dhs.gov*.

SUPPLEMENTARY INFORMATION:**Background***The Western Hemisphere Travel Initiative*

Section 7209 of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), Public Law 108–458, as amended, required the Secretary of Homeland Security (Secretary), in consultation with the Secretary of State, to develop and implement a plan to require U.S. citizens and individuals for whom documentation requirements have previously been waived under section 212(d)(4)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(4)(B)) to present a passport or other document or combination of documents as the Secretary deems sufficient to denote identity and citizenship for all travel into the United States. *See* 8 U.S.C. 1185 note. On April 3, 2008, the Department of Homeland Security (DHS) and the Department of State promulgated a joint final rule, effective on June 1, 2009, that implemented the plan known as the Western Hemisphere Travel Initiative (WHTI) at U.S. land and sea ports of entry. *See* 73 FR 18384 (the WHTI land and sea final rule). It amended various sections of title 8

of the Code of Federal Regulations (CFR), including 8 CFR 212.0, 212.1, and 235.1. The WHTI land and sea final rule specifies the documents that U.S. citizens and nonimmigrant aliens from Canada, Bermuda, and Mexico are required to present when entering the United States at land and sea ports of entry from within the Western Hemisphere (which includes contiguous territories and adjacent islands of the United States).

Under the WHTI land and sea final rule, one type of citizenship and identity document that U.S. citizens may present upon entry to the United States is an enhanced driver's license or identification document¹ (EDL) designated as an acceptable document to denote identity and citizenship by the Secretary pursuant to section 7209 of IRTPA, as amended. Section 235.1(d) of title 8 of the Code of Federal Regulations, as amended by the WHTI land and sea final rule, states:

Upon designation by the Secretary of Homeland Security of an enhanced driver's license as an acceptable document to denote identity and citizenship for purposes of entering the United States, U.S. citizens and Canadians may be permitted to present these documents in lieu of a passport upon entering or seeking admission to the United States according to the terms of the agreements entered between the Secretary of Homeland Security and the entity. The Secretary of Homeland Security will announce, by publication of a notice in the **Federal Register**, documents designated under this paragraph. A list of designated documents will also be made available to the public.

The Secretary has delegated to the Commissioner of U.S. Customs and Border Protection (CBP) the authority to designate certain documents as acceptable border crossing documents for persons arriving in the United States by land or sea from within the Western Hemisphere, including state-specific EDLs. *See* DHS Delegation Number 7105 (Revision 00), dated January 16, 2009.

EDL Programs

DHS is committed to working with the various States of the Union and the Government of Canada to facilitate the development of State and province-issued EDLs as travel documents that denote identity and citizenship as required under section 7209 of IRTPA, as amended. As part of the process, CBP will enter into one or more agreements with a State that specifies the requirements for developing and issuing WHTI-compliant EDLs, including a testing and au-

¹ The enhanced driver's license or identification document may be in one of two forms, as decided by the issuing authority, provided that the document (card) denotes identity and citizenship and meets technical requirements: (1) An enhanced driver's license or (2) an enhanced identity card. The designation "EDL" covers both documents.

ding process to ensure that the cards are produced and issued in accordance with the terms of the agreements.

After production of the cards in accordance with the specified requirements, and successful testing and auditing by CBP of the cards and program, the Secretary of DHS or the Commissioner of CBP may designate the EDL as an acceptable WHTI-compliant document for the purpose of establishing identity and citizenship when entering the United States by land or sea from contiguous territory or adjacent islands. Such designation will be announced by publication of a notice in the **Federal Register**. More information about WHTI-compliant documents is available at www.cbp.gov/travel.

Minnesota EDLs

The State of Minnesota (Minnesota) has established a voluntary program to develop EDLs that would denote identity and citizenship. On October 1, 2012, CBP and Minnesota entered into a Memorandum of Agreement (MOA) to develop, issue, test, and evaluate an enhanced driver's license and identification card with facilitative technology to be used for border crossing purposes. On November 21, 2012, CBP approved the plan outlining the business process for the implementation of the Minnesota EDL program. Under the terms of the MOA and business plan, Minnesota will only issue EDLs to U.S. citizens. EDLs also may be issued as photo identification cards to non-drivers. The cards are to incorporate physical security features acceptable to CBP as well as facilitative technology allowing for electronic validation of identity and citizenship.

Subsequently, CBP and Minnesota entered into two related agreements, a December 11, 2012 service level agreement and an April 15, 2013 security agreement. The former memorializes the technical specifications for the production, issuance and use of the card, and the latter addresses confidentiality and information sharing.

CBP has tested the cards developed by Minnesota pursuant to the above agreements and has performed an audit of Minnesota's EDL program. On the basis of these tests and audit, CBP has determined that the cards meet the requirements of section 7209 of IRTPA and are acceptable documents to denote identity and citizenship for purposes of entering the United States at land and sea ports of entry from contiguous territory or adjacent islands. CBP's continued acceptance of the Minnesota EDL as a WHTI-compliant document is conditional on compliance with the MOA and all related agreements.

Acceptance and use of the WHTI-compliant EDL is voluntary. If an individual is denied a WHTI-compliant EDL, he or she may still apply for a passport or other WHTI-compliant document.

Designation

This notice announces that the Commissioner of CBP designates the EDL issued by Minnesota in accordance with the MOA and all related agreements between Minnesota and CBP as an acceptable document to denote identity and citizenship pursuant to section 7209 of IRTPA and 8 CFR 235.1(d). Therefore, pursuant to 8 CFR 235.1(d), U.S. citizen holders of Minnesota EDLs may present these EDLs as an alternative to a passport upon entering the United States at all land and sea ports of entry when coming from contiguous territory and adjacent islands from within the Western Hemisphere.

Dated: July 7, 2015.

R. GIL KERLIKOWSKA,
Commissioner.

[Published in the Federal Register, July 13, 2015 (80 FR 40077)]



**AUTOMATED COMMERCIAL ENVIRONMENT (ACE)
EXPORT MANIFEST FOR AIR CARGO TEST**

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

ACTION: General notice.

SUMMARY: This document announces that U.S. Customs and Border Protection (CBP) plans to conduct the Automated Commercial Environment (ACE) Export Manifest for Air Cargo Test, a National Customs Automation Program (NCAP) test concerning ACE export manifest capability. The ACE Export Manifest for Air Cargo Test is a voluntary test in which participants agree to submit export manifest data electronically, at least 4 hours prior to loading of the cargo onto the aircraft in preparation for departure from the United States. CBP regulations require carriers to submit a paper manifest for export air shipments generally within 4 days after departure. This notice provides a description of the test, sets forth eligibility requirements for participation, and invites public comment on any aspect of the test.

DATES: The test will begin no earlier than August 10, 2015 and will run for approximately two years. CBP is accepting applications for participation in this planned test until CBP has received applications from nine parties that meet all test participant requirements. Comments concerning this notice and all aspects of the announced test may be submitted at any time during the test period.

ADDRESSES: Applications to participate in the ACE Export Manifest for Air Cargo Test must be submitted via email to CBP

Export Manifest at *cbpexportmanifest@cbp.dhs.gov*. In the subject line of the email, please use “ACE Export Manifest for Air Cargo Test Application”. Written comments concerning program, policy, and technical issues may also be submitted via email to CBP Export Manifest at *cbpexportmanifest@cbp.dhs.gov*. In the subject line of the email, please use “Comment on ACE Export Manifest for Air Cargo Test”.

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

SUPPLEMENTARY INFORMATION:

Background

The National Customs Automation Program

The National Customs Automation Program (NCAP) was established in Subtitle B of Title VI—Customs Modernization, in the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057, Dec. 8, 1993) (Customs Modernization Act) (19 U.S.C. 1411–14). Through NCAP, the initial thrust of customs modernization was on trade compliance and the development of the Automated Commercial Environment (ACE), the planned successor to the Automated Commercial System (ACS). ACE is an automated and electronic system for commercial trade processing which is intended to streamline business processes, facilitate growth in trade, ensure cargo security, and foster participation in global commerce, while ensuring compliance with U.S. laws and regulations and reducing costs for CBP and all of its communities of interest. The ability to meet these objectives depends on successfully modernizing CBP’s business functions and the information technology that supports those functions. CBP’s modernization efforts are accomplished through phased releases of ACE component functionality designed to replace a specific legacy ACS or paper function. Each release begins with a test and ends with mandatory use of the new ACE feature, thus retiring the legacy ACS or paper function. Each release builds on previous releases and sets the foundation for subsequent releases.

Authorization for the Test

The Customs Modernization Act provides the Commissioner of CBP with the authority to conduct limited test programs or procedures designed to evaluate planned components of the NCAP. The test described in this notice is authorized pursuant to the Customs Mod-

ernization Act and section 101.9(b) of title 19 of the Code of Federal Regulations (19 CFR 101.9(b)) which provides for the testing of NCAP programs or procedures. As provided in 19 CFR 101.9(b), for purposes of conducting an NCAP test, the Commissioner of CBP may impose requirements different from those specified in the CBP regulations.

International Trade Data System (ITDS)

This test is also in furtherance of the International Trade Data System (ITDS) key initiatives, set forth in section 405 of the Security and Accountability for Every Port Act of 2006 (Pub. L. 109–347, 120 Stat. 1884, Oct. 13, 2006) (SAFE Port Act) (19 U.S.C. 1411(d)) and Executive Order 13659 of February 19, 2014, *Streamlining the Export/Import Process for America's Businesses*. The purpose of ITDS, as stated in section 405 of the SAFE Port Act, is to eliminate redundant information requirements, efficiently regulate the flow of commerce, and effectively enforce laws and regulations relating to international trade, by establishing a single portal system, operated by CBP, for the collection and distribution of standard electronic import and export data required by all participating Federal agencies. CBP is developing ACE as the “single window” for the trade community to comply with the ITDS requirement established by the SAFE Port Act.

Executive Order 13659 requires that by December 2016, ACE, as the ITDS single window, have the operational capabilities to serve as the primary means of receiving from users the standard set of data and other relevant documentation (exclusive of applications for permits, licenses, or certifications) required for the release of imported cargo and clearance of cargo for export, and to transition from paper-based requirements and procedures to faster and more cost-effective electronic submissions to, and communications with, U.S. government agencies.

Current Air Cargo Export Information Requirements

Under 19 CFR 122.72, 19 CFR 122.73, 19 CFR 122.74, 19 CFR 122.75, and 19 CFR 192.14, certain information must be submitted to CBP for aircraft with export cargo leaving the United States for any foreign area.¹ In most cases, the aircraft commander or agent must file a general declaration on CBP Form 7507 pertaining to the out-

¹ Section 122.72 requires the filing of a general declaration, an air cargo manifest, and any required Shipper's Export Declarations. Shipper's Export Declarations were the Department of Commerce paper forms used by the Bureau of the Census under the Foreign Trade Statistics Regulations to collect information from an entity exporting from the United States. These forms were used for compiling the official U.S. export statistics for the United States and for export control purposes. The Shipper's Export Declarations became obsolete on October 1, 2008, with the implementation of the Foreign Trade Regulations (FTR) and

bound flight. Also, the aircraft commander or agent must file the air cargo manifest, CBP Form 7509, with CBP at each port where export cargo is loaded on the aircraft. Under 19 CFR 122.74, the airline must file the complete air cargo manifest generally within 4 days after departure of the aircraft. Finally, the U.S. Principal Party in Interest (USPPI) must file any required Electronic Export Information (EEI) for the cargo on the aircraft.² More details regarding the manifest requirements, the subject of this test, are provided in the next section.

Current Air Cargo Manifest Requirements

As indicated in the previous section, the aircraft commander or agent must file copies of the air cargo manifest on CBP Form 7509. CBP Form 7509 consists of the following data elements:

- (1) Owner/Operator
- (2) Marks of nationality and registration
- (3) Flight number
- (4) Port of lading
- (5) Port of unloading
- (6) Date
- (7) Consolidator (conditional)
- (8) De-consolidator (conditional)
- (9) Air waybill type (Master, House, or Sub)
- (10) Air waybill number
- (11) Number of pieces
- (12) Weight (kg./lb.)
- (13) Number of house air waybills
- (14) Shipper name and address

have been superseded by the Electronic Export Information (EEI) filed in AES or through the AESDirect. *See* 15 CFR 30.1. *See also* 19 CFR 192.14, regarding required EEI.

² The USPPI is defined in the FTR as the person or legal entity in the United States that receives the primary benefit, monetary or otherwise, from the export transaction. Generally, that person or entity is the U.S. seller, manufacturer, or order party, or the foreign entity while in the United States when purchasing or obtaining the goods for export. 15 CFR 30.1.

- (15) Consignee name and address
- (16) Nature of goods
- (17) Internal Transaction Number (ITN) or AES Exemption Statement³

The air cargo manifest may be filed in complete form or incomplete form (pro forma). Under 19 CFR 122.74, the complete manifest must be filed with CBP before the aircraft will be cleared to depart during any time covered by a proclamation of the President that a state of war exists between foreign nations, or if the aircraft is departing on a flight from the United States directly or indirectly to a foreign country listed in 19 CFR 4.75. Otherwise, for shipments to a foreign country, an incomplete manifest may be filed with CBP at the departure airport when accompanied by the proper bond. For shipments on direct flights to Puerto Rico, an incomplete manifest may be filed with CBP upon arrival in Puerto Rico. If the complete manifest will not be filed within one business day of arrival in Puerto Rico, the proper bond must be filed at that time.

Under the bond accompanying the incomplete manifest, the complete manifest must be filed with CBP by the airline within the appropriate time period. For shipments to foreign countries, the complete manifest must generally be filed no later than 4 business days post-departure. For shipments between the United States and Puerto Rico, the complete manifest must be filed no later than 7 business days after arrival into or departure from Puerto Rico. For shipments between the United States or Puerto Rico and U.S. possessions, the complete manifest must be filed no later than 7 business days after departure.

Trade Act and the Automated Export System (AES)

Section 343(a) of the Trade Act of 2002, as amended (Trade Act) (19 U.S.C. 2071 note), requires CBP to promulgate regulations providing for the mandatory transmission of electronic cargo information by way of a CBP-approved electronic data interchange (EDI) system before the cargo is brought into or departs the United States by any mode of commercial transportation (sea, air, rail, or truck). The required cargo information is that which is reasonably necessary to enable high-risk shipments to be identified for purposes of ensuring cargo safety and security and preventing smuggling pursuant to the laws enforced and administered by CBP. Section 192.14 of title 19 of

³ Though not a data element on CBP Form 7509 itself, the carrier must include the ITN or AES Exemption Statement on the outward manifest pursuant to 19 CFR 192.14(c)(3).

the Code of Federal Regulations (19 CFR 192.14) implements the requirements of the Trade Act with regard to cargo departing the United States.

While the air cargo manifest described above must be submitted by the aircraft commander or agent, that is, by the air carrier, any required EEI must be filed by the USPPPI under 19 CFR 192.14. Using a CBP-approved EDI system, the USPPPI or its authorized agent must transmit and verify system acceptance of this EEI, generally no later than 2 hours prior to the scheduled departure time of the aircraft from the last U.S. port. The air carrier may not load cargo without first receiving from the USPPPI or its authorized agent either the related EEI filing citation, covering all cargo for which the EEI is required, or exemption legends, covering cargo for which EEI need not be filed. The outbound air carrier then must annotate the air cargo manifest, waybill, or other export documentation with the applicable AES proof of filing, post departure, downtime, exclusion or exemption citations, conforming to the approved data formats found in the Bureau of the Census Foreign Trade Regulations (FTR) (15 CFR part 30).

Description of the ACE Export Manifest for Air Cargo Test

Purpose

The ACE Export Manifest for Air Cargo Test will test the functionality regarding the filing of export manifest data for air cargo electronically to ACE in furtherance of the ITDS initiatives described above. CBP has re-engineered AES to move it to an ACE system platform. The re-engineering and incorporation of AES into ACE will result in the creation of a single automated export processing platform for certain export manifest, commodity, licensing, export control, and export targeting transactions. This will reduce costs for CBP, partner government agencies, and the trade community and improve facilitation of export shipments through the supply chain.

The ACE Export Manifest for Air Cargo Test will also test the feasibility of requiring the manifest information to be filed electronically in ACE within a specified time before the cargo is loaded on the aircraft. (Under the current regulatory requirements, the complete manifest is required to be submitted by the airline on paper CBP Form 7509 generally after the departure of the aircraft). As described in the paragraph below, in the test, participants will submit export manifest data electronically to ACE at least 4 hours prior to loading of the cargo. This will enable CBP to easily link the EEI submitted by the USPPPI with the export manifest information earlier in the process. This capability will better enable CBP to assess risk and effec-

tively target and inspect shipments prior to the loading of cargo to ensure compliance with all U.S. export laws.

Procedures

Participants in the ACE Export Manifest for Air Cargo Test agree to provide export manifest data electronically at least 4 hours prior to loading of the cargo onto the aircraft in preparation for departure from the United States. If the air carrier files this ACE Export Manifest data, the electronic filing is in lieu of the paper filing of CBP Form 7509. If a freight forwarder files the ACE Export Manifest data, the carrier is still required to file the CBP Form 7509 (or ACE Export Manifest data, if the air carrier is also a test participant).

The ACE Export Manifest data submission will be used to target high-risk air cargo. The data should be available to test participants early in the planning stages of an export air cargo transaction. It is anticipated that data provided 4 hours prior to loading will permit adequate time for proper risk assessment and identification of shipments to be inspected early enough in the supply chain to enhance security while minimizing disruption to the flow of goods.

Any air cargo identified as potentially high-risk will receive a hold until required additional information related to the shipment is submitted to clarify non-descriptive, inaccurate, or insufficient information, a physical inspection is performed, or some other appropriate action is taken, as specified by CBP. Once the cargo is cleared for loading, a release message will be generated and transmitted to the filer.

Data Elements

The ACE Export Manifest for Air Cargo Test data elements are similar, but not identical to the data elements required on CBP Form 7509. The data elements are mandatory unless otherwise indicated. Data elements that are indicated as “conditional” must be transmitted to CBP only if the particular information pertains to the cargo. The ACE Export Manifest for Air Cargo data elements are to be submitted at the lowest bill level. The data elements consist of:

- (1) Exporting Carrier (CBP finds this term to be clearer than the term “Owner/Operator” used on CBP Form 7509)
- (2) Marks of nationality and registration
- (3) Flight number
- (4) Port of lading

- (5) Port of unloading
- (6) Scheduled date of departure (CBP finds this term to be clearer than the term “Date” used on CBP Form 7509)
- (7) Consolidator (conditional)
- (8) De-consolidator (conditional)
- (9) Air waybill type (Master, House, Simple or Sub)
- (10) Air Waybill number
- (11) Number of pieces and unit of measure
- (12) Weight (kg./lb.)
- (13) Number of house air waybills
- (14) Shipper name and address
- (15) Consignee name and address
- (16) Cargo description (CBP finds this term to be clearer than the term “Nature of goods” used on CBP Form 7509)
- (17) AES Internal Transaction Number (ITN) or AES Exemption Statement/ Exception Classification (per shipment)
- (18) Split air waybill indicator (conditional)
- (19) Hazmat indicator (Yes/No)
- (20) UN Number (conditional) (If the hazmat indicator is yes, the four-digit UN (United Nations) Number assigned to the hazardous material must be provided.)
- (21) In-bond number (conditional)
- (22) Mode of transportation (Air, containerized or Air, non-containerized)

There are currently no additional data elements identified for other participating U.S. Government Agencies (PGAs) for the ACE Export Manifest for Air Cargo Test. However, CBP may enhance the test in the future with additional data or processing capabilities to assist with facilitation of air shipment movements and to be consistent with

Executive Order 13659. Any such enhancement will be announced in the **Federal Register**.

Eligibility Requirements

CBP is limiting this test to nine stakeholders in the air cargo environment. Specifically, CBP is seeking participation from:

- At least three, but no more than six, air carriers currently required to file paper export air cargo manifest CBP Form 7509 under 19 CFR 122.72 and 122.73; and
- At least three, but no more than six, freight forwarders.

There are no restrictions with regard to organization size, location, or commodity type. However, participation is limited to those parties able to electronically transmit export manifest data in the identified acceptable format. Prospective ACE Export Manifest for Air Cargo Test participants must have the technical capability to electronically submit data to CBP and receive response message sets via Cargo-IMP, AIR CAMIR, XML, or Unified XML, and must successfully complete certification testing with their client representative. (Unified XML may not be immediately available at the start of the test. However, parties wishing to utilize Unified XML may be accepted, pending its development and implementation). Once parties have applied to participate, they must complete a test phase to determine if the data transmission is in the required readable format. Applicants will be notified once they have successfully completed testing and are permitted to participate fully in the test. In selecting participants, CBP will take into consideration the order in which the applications are received.

Conditions of Participation

Test participants agree to submit export manifest data electronically to CBP via an approved EDI at least 4 hours prior to the loading of the cargo onto the aircraft in preparation for departure from the United States. In addition, test participants agree to establish operational security protocols that correspond to CBP hold messages that mandate the participant to take responsive action and respond to CBP confirming that the requested action was taken to mitigate any threat identified, respond promptly with complete and accurate information when contacted by CBP with questions regarding the data submitted, and comply with any “Do Not Load” instructions.

Finally, test participants agree to participate in any teleconferences or meetings established by CBP, when necessary, to ensure any chal-

lenges, or operational or technical issues regarding the test are properly communicated and addressed.

Participation in the ACE Export Manifest for Air Cargo Test does not impose any legally binding obligations on either CBP or the participant, and CBP generally does not intend to enforce or levy punitive measures if test participants are non-compliant with these conditions of participation during the test.

Application Process and Acceptance

Those interested in participating in the ACE Export Manifest for Air Cargo Test should submit an email to CBP Export Manifest at cbpexportmanifest@cbp.dhs.gov, stating their interest and their qualifications based on the above eligibility requirements. The email will serve as an electronic signature of intent to participate and must also include a point of contact name and telephone number. Applications will be accepted until CBP has received applications from nine parties that meet all test participant requirements. CBP will notify applicants whether they have been selected to participate in the test. Applicants will also be notified once they have successfully completed testing and are permitted to participate fully in the test.

Test participants will receive technical, operational, and policy guidance through all stages of test participation, from planning to implementation, on the necessary steps for the transmission of electronic export manifest data.

Costs to ACE Export Manifest for Air Cargo Test Participants

ACE Export Manifest for Air Cargo Test participants are responsible for all costs incurred as a result of their participation in the test and such costs will vary, depending on their pre-existing infrastructures. Costs may be offset by a significant reduction in expenses associated with copying, storing, and courier services for presenting the paper manifest to CBP.

Benefits to ACE Export Manifest for Air Cargo Test Participants

While the benefits to ACE Export Manifest for Air Cargo Test participants will vary, several advantages of joining may include:

- Reduction in costs associated with generating copies, transportation, and storage of paper manifest documentation;
- Increases in security by leveraging CBP threat model and other data to employ a risk-based approach to improve air cargo security and to ensure compliance with U.S. export laws, rules and regulations through targeted screening;

- Gains in efficiencies by automating the identification of high-risk cargo for enhanced screening;
- The ability to provide input into CBP efforts to establish, test, and refine the interface between government and industry communication systems for the implementation of the electronic export manifest; and
- Facilitation of corporate preparedness for future mandatory implementation of electronic export manifest submission requirements.

Waiver of Certain Regulatory Requirements

For purposes of this test, the requirement to file a paper CBP Form 7509, as provided in 19 CFR 122.72–122.75 will be waived for air carrier test participants that submit the ACE Export Manifest for Air Cargo data elements electronically as described above. If a freight forwarder submits the electronic ACE Export Manifest data, the air carrier is still required to file the paper CBP Form 7509 (or the electronic ACE Export Manifest data, if the air carrier is a test participant). The air carrier maintains responsibility for submitting the manifest data to CBP to cover all cargo on the aircraft, even if the freight forwarder has also submitted manifest data. Participation in the test does not alter the participant's obligations to comply with any other applicable statutory and regulatory requirements, including 19 CFR 122.72–122.75, and participants will still be subject to applicable penalties for non-compliance. In addition, submission of data under the pilot does not exempt the participant from any CBP or other U.S. Government agency program requirements or any statutory sanctions in the event that a violation of U.S. export laws or prohibited articles are discovered within a shipment/container presented for export destined from the United States on an aircraft owned and/ or operated by the participant.

Duration and Evaluation of the ACE Export Manifest for Air Cargo Test

The test will be activated on a case-by-case basis with each participant and may be limited to a single or small number of ports until any operational, training, or technical issues on either the trade or government side are established and/or resolved. The test will run for approximately two years from August 10, 2015. While the test is ongoing, CBP will evaluate the results and determine whether the test will be extended, expanded to include additional participants, or otherwise modified. CBP will announce any such modifications by

notice in the **Federal Register**. When sufficient test analysis and evaluation has been conducted, CBP intends to begin rulemaking to require the submission of electronic export manifest data before the cargo is loaded onto the aircraft for all international shipments destined from the United States. The results of the test will help determine the relevant data elements, the time frame within which data should be submitted to permit CBP to effectively target, identify, and mitigate any risk with the least impact practicable on trade operations, and any other related procedures and policies.

Confidentiality

All data submitted and entered into ACE is subject to the Trade Secrets Act (18 U.S.C. 1905) and is considered confidential, except to the extent as otherwise provided by law. However, participation in this or any ACE test is not confidential and upon a written Freedom of Information Act (FOIA) request, the name(s) of an approved participant(s) will be disclosed by CBP in accordance with 5 U.S.C. 552.

Misconduct Under the Test

If a test participant fails to abide by the rules, procedures, or terms and conditions of this and all other applicable **Federal Register** Notices, fails to exercise reasonable care in the execution of participant obligations, or otherwise fails to comply with all applicable laws and regulations, then the participant may be suspended from participation in this test and/or subjected to penalties, liquidated damages, and/or other administrative or judicial sanction. Additionally, CBP has the right to suspend a test participant based on a determination that an unacceptable compliance risk exists.

If CBP determines that a suspension is warranted, CBP will notify the participant of this decision, the facts or conduct warranting suspension, and the date when the suspension will be effective. In the case of willful misconduct, or where public health interests or safety are concerned, the suspension may be effective immediately. This decision may be appealed in writing to the Assistant Commissioner, Office of Field Operations, within 15 days of notification. The appeal should address the facts or conduct charges contained in the notice and state how the participant has or will achieve compliance. CBP will notify the participant within 30 days of receipt of an appeal whether the appeal is granted. If the participant has already been suspended, CBP will notify the participant when their participation in the test will be reinstated.

Paperwork Reduction Act

As noted above, CBP will be accepting no more than nine participants in the ACE Export Manifest for Air Cargo Test. This means that

fewer than ten persons will be subject to any information collections under this test. Accordingly, collections of information within this notice are exempted from the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3502 and 3507).

Dated: July 7, 2015.

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

[Published in the Federal Register, July 10, 2015 (80 FR 39790)]

**NATIONAL CUSTOMS AUTOMATION PROGRAM (NCAP)
CONCERNING REMOTE LOCATION FILING ENTRY
PROCEDURES IN THE AUTOMATED COMMERCIAL
ENVIRONMENT (ACE) AND THE USE OF THE DOCUMENT
IMAGE SYSTEM FOR THE SUBMISSION OF INVOICES
AND THE USE OF E BONDS FOR THE TRANSMISSION OF
SINGLE TRANSACTION BONDS**

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

ACTION: General notice.

SUMMARY: This document announces U.S. Customs and Border Protection's (CBP's) plan to conduct a National Customs Automation Program (NCAP) test concerning entries filed using remote location (RLF) filing procedures. The test expands the entry types eligible for RLF procedures and the port locations where RLF entries may be filed; requires the electronic transmission of invoices using the Document Image System (DIS); and requires that single transaction bonds be transmitted using eBond for RLF entries requiring a single transaction bond. This test applies only to entries "certified for cargo release from summary" filed through the Automated Commercial Environment (ACE). Remote location filing is a special entry procedure which allows importers of record and brokers with a national permit to file an entry electronically from a remote location other than where the goods are being entered.

This test is in furtherance of key CBP modernization initiatives and the development of ACE. CBP is transitioning all entry types to ACE from the legacy Automated Commercial System (ACS). This test checks the viability, reliability and functionality associated with filing invoices using DIS; submitting single transaction bonds using eBond for RLF entries submitted in ACE; and expanding the entry types eligible for RLF procedures and port locations.

This notice invites public comment concerning the test program; provides legal authority for the test; explains the purpose of the test; provides test participant responsibilities; identifies the regulations that will be waived under the test; provides eligibility criteria for participation in the test; explains the application process; and establishes the duration of the test. This notice also explains the repercussions and appeals process for misconduct under the test.

DATES: The initial phase of the RLF test will begin on August 12, 2015. This test will continue until concluded by way of an announcement in the **Federal Register**. Comments will be accepted through the duration of the test.

ADDRESSES: Comments concerning this notice and any aspect of this test may be submitted at any time during the test via email to Josephine Baiamonte, ACE Business Office (ABO), Office of International Trade at *josephine.baiamonte@cbp.dhs.gov*. In the subject line of your email, please indicate, “*Comment on RLF Test FRN*”.

FOR FURTHER INFORMATION CONTACT: For technical questions related to the Automated Commercial Environment (ACE) or Automated Broker Interface (ABI) transmissions, contact your assigned client representative. Interested parties without an assigned client representative should direct their questions to Steven Zaccaro at *steven.j.zaccaro@cbp.dhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The National Customs Automation Program (NCAP) was established in Subtitle B of Title VI—Customs Modernization (Customs Modernization Act), in the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057 (19 U.S.C. 1411). Through NCAP, the initial thrust of customs modernization was on trade compliance and the development of the Automated Commercial Environment (ACE), the planned successor to the Automated Commercial System (ACS). The ability to meet these objectives depends on successfully modernizing CBP’s business functions and the information technology that supports those functions. CBP’s modernization efforts are accomplished through phased releases of ACE component functionality designed to introduce a new capacity or to replace a specific legacy ACS function. Each release will begin with a test and will end with mandatory compliance with the new ACE feature, thus retiring the legacy ACS function. Each release builds on previous releases and sets the foundation for subsequent releases.

For the convenience of the public, a chronological listing of **Federal Register** publications detailing ACE test developments is set forth below in Section XII, entitled, “Development of ACE Prototypes.” The procedures and criteria related to participation in the prior ACE tests remain in effect unless otherwise explicitly changed by this or subsequent notices published in the **Federal Register**.

II. Authorization for the Test

The Customs Modernization provisions provide the Commissioner of CBP with authority to conduct limited test programs or procedures designed to evaluate planned components of the NCAP. The test described in this notice is authorized pursuant to § 101.9(b) of title 19 of the Code of Federal Regulations (19 CFR 101.9(b)), which provides for the testing of NCAP programs or procedures. *See* Treasury Decision (T.D.) 95–21.

III. Remote Location Filing (RLF)

Remote location filing is a planned component of the NCAP, authorized by section 411 of the Tariff Act of 1930, as amended by section 631 of the Customs Modernization Act. *See* 19 U.S.C. 1411(a)(2)(B). After years of testing RLF entry procedures, CBP published a final rule in the **Federal Register** that implemented RLF as a special entry procedure. *See* 74 FR 69015 (December 30, 2009). These regulations, codified at 19 CFR part 143, subpart E, authorize importers of record and brokers with a national permit to file an entry electronically from a remote location other than where the goods are being entered. Under CBP regulations, only certain entry types may be filed using RLF procedures and these entries must be filed at a RLF-operational CBP location. A current listing of RLF eligible entry types may be found at the following link: <http://www.cbp.gov/trade/entry-summary/remote-location-filing/eligibility>. A current list of RLF-operational CBP locations may be found at the following link: <http://www.cbp.gov/document/guidance/rlf-operational-location-points-contact>.

At this time, the entry types that may be filed using RLF procedures for parties not participating in this test are 01 entries (formal consumption entries), 03 entries (formal consumption entries subject to antidumping or countervailing duties), and 11 entries (informal entries). Interested parties should check the CBP links referenced above for changes to the entry types authorized for RLF procedures and changes to the RLF operational CBP locations.

Under the CBP regulations (19 CFR part 143, subpart E), importers and licensed customs brokers with a national permit must be operational on (1) the Automated Broker Interface (ABI); an interface that

allows participants to electronically file required import data with CBP and transfers that data into ACE; (2) the Electronic Invoice Program (EIP), a module of ABI which allows entry filers to transmit detailed invoice data through the Automated Invoice Interface (AII); and (3) the Automated Clearing House (ACH) which is a CBP- approved method for the electronic payment of duties, fees and taxes. RLF entry filers must be operational on ACH at least 30 days prior to filing a RLF entry. Additionally, all entries filed using RLF procedures must be secured by a continuous bond. The CBP regulations also require that any invoice data required or requested by CBP be transmitted electronically using EIP, and any payment of duties, fees and taxes be submitted through ACH. The CBP regulations prohibit combining the use of RLF procedures with the use of line release or immediate entry procedures. RLF filers may certify release from summary, *i.e.*, file an entry summary that serves as both an entry and an entry summary. RLF filers must file electronically (including by facsimile transmissions) all additional information required to be presented with an entry and entry summary that CBP can accept electronically. If CBP cannot accept the additional information electronically, the additional information must be presented in paper form at the port of entry.

IV. Request for Participation and Test Participation Criteria

Any party who wishes to participate in this test should contact their assigned client representative and request to participate. Interested parties without an assigned client representative should direct their questions to Steven Zaccaro at steven.j.zaccaro@cbp.dhs.gov, request the assignment of a client representative and submit a request to participate in this test to the newly assigned client representative. Any party seeking to participate in this test must provide CBP, as part of its request to participate, its filer code and the port(s) at which it is interested in filing RLF entries.

In order to participate in this test, an interested party must be a participant in the DIS test. Moreover, any party who participates in this test and wishes to, or is required to, submit a single transaction bond must also participate in the eBond test or use a surety or surety agent participating in the eBond test for the submission of the single transaction bond. For eligibility requirements for participation in the DIS test, *see* 77 FR 20835 (April 6, 2012); 78 FR 44142 (July 23, 2013); 78 FR 53466 (August 29, 2013); and 79 FR 36083 (June 23, 2014). For eligibility requirements for participation in the eBond test, *see* 79 FR 70881 (November 28, 2014) and 80 FR 516 (January 6, 2015).

V. Test Procedures and Participant Responsibilities

Only entries filed through ACE that are certified for ACE cargo release from summary may be submitted under this test. For such ACE entries, this test seeks to determine the viability, reliability and functionality of: (1) Expanding the entry types eligible for RLF procedures and the port locations where RLF entries may be filed; (2) submitting invoices using the DIS, instead of EIP, for entries filed using RLF entry procedures; and (3) submitting single transaction bonds using eBond procedures for entries filed using RLF entry procedures that require such a bond.

Under the RLF ACE test, participants will be allowed to file entry types 01, 03, 11, and 52. Test participants should check *the following link* to determine, for purposes of this test, which entry types are eligible for RLF procedures and the port locations where RLF entries may be filed: <http://www.cbp.gov/trade/entry-summary/remote-location-filing>. Test participants should also check the link regularly for any changes to the list of eligible entry types and port locations. Please note that the list of entry types and operational ports eligible for RLF procedures under this test is larger than the list of entry types and port locations eligible for RLF procedures under the current CBP regulations (19 CFR part 143, subpart E). Test participants are required to submit invoices, including pro forma invoices, required or requested by CBP using the DIS. Test participants may not submit invoice data using EIP. Test participants who file a RLF entry that requires the filing of a single transaction bond must submit it using eBond. The use of eBond for submitting single transaction bonds is mandatory and exclusive, and participants may not submit a single transaction bond through any other manner for RLF entries filed under this test. Test participants are required to follow and abide by all terms, conditions and requirements of the DIS and eBond tests.

VI. Waiver of Regulations Under the Test

For purposes of this test, 19 CFR part 143, subpart E is waived to the extent it is inconsistent with the provisions of this test notice.

VII. Test Duration

The initial phase of the test will begin August 12, 2015 and will continue until concluded by way of an announcement in the **Federal Register**. At the conclusion of the test, an evaluation will be conducted to assess the viability, reliability and utility of receiving invoices and invoice data through DIS and single transaction bonds through eBond for entries filed using RLF procedures. The final results of the evaluation will be published in the **Federal Register**

and the *Customs Bulletin* as required in 19 CFR 101.9(b)(2). Any modification, change or expansion of this test or the DIS or eBond tests will be announced via a separate **Federal Register** notice.

VIII. Comments

All interested parties are invited to comment on any aspect of this test at any time. CBP requests comments and feedback on all aspects of this test, including the design, conduct and implementation of the test, in order to determine whether to modify, alter, expand, limit, continue, end, or fully implement this program.

IX. Paperwork Reduction Act

The collection of information contained in this test has been approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) and assigned OMB number 1651-0024. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

X. Confidentiality

All data submitted and entered into ACE is subject to the Trade Secrets Act (18 U.S.C. 1905) and is considered confidential, except to the extent as otherwise provided by law. As stated in previous notices, participation in this or any of the previous ACE tests is not confidential and upon a written Freedom of Information Act (FOIA) request, a name(s) of an approved participant(s) will be disclosed by CBP in accordance with 5 U.S.C. 552.

XI. Misconduct Under the Test

A test participant may be subject to civil and criminal penalties, administrative sanctions, liquidated damages, or discontinuance from participation in this test for any of the following:

- (1) Failure to follow the terms and conditions of this test, or the DIS and eBond tests;
- (2) Failure to exercise reasonable care in the execution of participant obligations;
- (3) Failure to abide by applicable laws and regulations that have not been waived; or
- (4) Failure to deposit duties, taxes or fees in a timely manner.

If the Director, Business Transformation Division, ACE Business Office (ABO), Office of International Trade finds that there is a basis for discontinuance of test participation privileges, the test participant will be provided a written notice proposing the discontinuance with a

description of the facts or conduct warranting the action. The test participant will be offered the opportunity to appeal the Director's decision in writing within 10 calendar days of receipt of the written notice. The appeal must be submitted to the Executive Director, ABO, Office of International Trade by emailing *Deborah.Augustin@cbp.dhs.gov*.

The Executive Director will issue a decision in writing on the proposed action within 30 working days after receiving a timely filed appeal from the test participant. If no timely appeal is received, the proposed notice becomes the final decision of the Agency as of the date that the appeal period expires. A proposed discontinuance of a test participant's privileges will not take effect unless the appeal process under this paragraph has been concluded with a written decision adverse to the test participant.

In the case of willfulness or those in which public health, interest, or safety so requires, the Director, Business Transformation Division, ABO, Office of International Trade, may immediately discontinue the test participant's privileges upon written notice to the test participant. The notice will contain a description of the facts or conduct warranting the immediate action. The test participant will be offered the opportunity to appeal the Director's decision within 10 calendar days of receipt of the written notice providing for immediate discontinuance. The appeal must be submitted to the Executive Director, ABO, Office of International Trade by emailing *Deborah.Augustin@cbp.dhs.gov*. The immediate discontinuance will remain in effect during the appeal period. The Executive Director will issue a decision in writing on the discontinuance within 15 working days after receiving a timely filed appeal from the test participant. If no timely appeal is received, the notice becomes the final decision of the Agency as of the date that the appeal period expires.

XII. Developments of ACE Prototypes

A chronological listing of **Federal Register** publications detailing ACE test developments is set forth below.

- ACE Portal Accounts and Subsequent Revision Notices: 67 FR 21800 (May 1, 2002); 69 FR 5360 and 69 FR 5362 (February 4, 2004); 69 FR 54302 (September 8, 2004); 70 FR 5199 (February 1, 2005).
- ACE System of Records Notice: 71 FR 3109 (January 19, 2006).
- Terms/Conditions for Access to the ACE Portal and Subsequent Revisions: 72 FR 27632 (May 16, 2007); 73 FR 38464 (July 7, 2008).

- ACE Non-Portal Accounts and Related Notice: 70 FR 61466 (October 24, 2005); 71 FR 15756 (March 29, 2006).
- ACE Entry Summary, Accounts and Revenue (ESAR I) Capabilities: 72 FR 59105 (October 18, 2007).
- ACE Entry Summary, Accounts and Revenue (ESAR II) Capabilities: 73 FR 50337 (August 26, 2008); 74 FR 9826 (March 6, 2009).
- ACE Entry Summary, Accounts and Revenue (ESAR III) Capabilities: 74 FR 69129 (December 30, 2009).
- ACE Entry Summary, Accounts and Revenue (ESAR IV) Capabilities: 76 FR 37136 (June 24, 2011).
- Post-Entry Amendment (PEA) Processing Test: 76 FR 37136 (June 24, 2011).
- ACE Announcement of a New Start Date for the National Customs Automation Program Test of Automated Manifest Capabilities for Ocean and Rail Carriers: 76 FR 42721 (July 19, 2011).
- ACE Simplified Entry: 76 FR 69755 (November 9, 2011).
- National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image System (DIS): 77 FR 20835 (April 6, 2012).
- National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Simplified Entry: Modification of Participant Selection Criteria and Application Process: 77 FR 48527 (August 14, 2012).
- Modification of NCAP Test Regarding Reconciliation for Filing Certain Post-Importation Preferential Tariff Treatment Claims under Certain FTAs: 78 FR 27984 (May 13, 2013).
- Modification of Two National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image System (DIS) and Simplified Entry (SE): 78 FR 44142 (July 23, 2013).
- Modification of Two National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image System (DIS) and Simplified Entry (SE); Correction: 78 FR 53466 (August 29, 2013).

- Modification of NCAP Test Concerning Automated Commercial Environment (ACE) Cargo Release (formerly known as Simplified Entry): 78 FR 66039 (November 4, 2013).
- Post-Summary Corrections to Entry Summaries Filed in ACE Pursuant to the ESAR IV Test: Modifications and Clarifications: 78 FR 69434 (November 19, 2013).
- National Customs Automation Program (NCAP) Test Concerning the Submission of Certain Data Required by the Environmental Protection Agency and the Food Safety and Inspection Service Using the Partner Government Agency Message Set Through the Automated Commercial Environment (ACE): 78 FR 75931 (December 13, 2013).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Cargo Release for Ocean and Rail Carriers: 79 FR 6210 (February 3, 2014).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Cargo Release to Allow Importers and Brokers to Certify From ACE Entry Summary: 79 FR 24744 (May 1, 2014).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Cargo Release for Truck Carriers: 79 FR 25142 (May 2, 2014).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Document Image System: 79 FR 36083 (June 25, 2014).
- Announcement of eBond Test: 79 FR 70881 (November 28, 2014).
- eBond Test Modifications and Clarifications: Continuous Bond Executed Prior to or Outside the eBond Test May Be Converted to an eBond by the Surety and Principal, Termination of an eBond by Filing Identification Number, and Email Address Correction: 80 FR 899 (January 7, 2015).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Document Image System Relating to Animal and Plant Health Inspection Service (APHIS) Document Submissions: 80 FR 5126 (January 30, 2015).

- Modification of National Customs Automation Program (NCAP) Test Concerning the use of Partner Government Agency Message Set through the Automated Commercial Environment (ACE) for the Submission of Certain Data Required by the Environmental Protection Agency (EPA): 80 FR 6098 (February 4, 2015).
- Announcement of Modification of ACE Cargo Release Test to Permit the Combined Filing of Cargo Release and Importer Security Filing (ISF) Data: 80 FR 7487 (February 10, 2015).
- Modification of NCAP Test Concerning ACE Cargo Release for Type 03 Entries and Advanced Capabilities for Truck Carriers: 80 FR 16414 (March 27, 2015).

Dated: July 8, 2015.

BRENDA SMITH,
*Assistant Commissioner,
Office of International Trade.*

[Published in the Federal Register, July 13, 2015 (80 FR 40079)]

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**PROPOSED REVOCATION OF A RULING LETTER AND
PROPOSED MODIFICATION OF A RULING LETTER AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE TARIFF CLASSIFICATION OF TEXTILE AND PLASTIC
NECKLACES**

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

ACTION: Notice of proposed revocation of a ruling letter, proposed modification of a ruling letter, and proposed revocation of treatment relating to the tariff classification of textile and plastic necklaces.

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

DATES: Comments must be received on or before August 28, 2015.

ADDRESSES: Written comments are to be addressed to the U.S. Customs and Border Protection, Office of International Trade, Regulations & 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: Beth Jenior, Tariff Classification and Marking Branch: (202) 325–0347.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility**.” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under customs and related laws. In addition, both the trade community 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 revoke a ruling letter and to modify a ruling letter pertaining to the tariff classification of textile and plastic necklaces. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter (NY) N022480, dated February 13, 2008 (Attachment A), and to the modification of NY N059109, dated May 29, 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 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 N022480 and NY N059109, CBP determined that the necklaces were classified in subheading 6217.10.95, which provides, in pertinent part, for "Other made up clothing accessories....: Accessories: Other: Other." It is now CBP's position that the necklaces are classified in subheading 7117.90.75, HTSUS, which provides, in pertinent part, for "Imitation jewelry: Other: Other: Valued over twenty cents per dozen pieces or parts: Other: Of plastics."

Pursuant to 19 U.S.C. §1625(c)(1), CBP proposes to revoke NY N022480, to modify NY N059109, and to revoke or to modify any other ruling not specifically identified, in order to reflect the proper classification of the necklaces according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H257790, set forth as Attachment C to this document. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: July 7, 2015

IEVA K. O'ROURKE
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N059109

May 29, 2009

CLA-2-71:OT:RR:NC:N4:433

CATEGORY: Classification

TARIFF NO.: 6217.10.9530; 7117.90.5500;
7117.90.7500

MR. RANDY GREEN
TARGET CUSTOMS BROKERS
7000 TARGET PARKWAY NORTH
NCD-0456
BROOKLYN PARK, MN 55445

RE: The tariff classification of a silicone bracelet and necklace from Taiwan.

DEAR MR. GREEN:

In your letter dated April 24, 2009, you requested a tariff classification ruling. The samples submitted with this request will be returned as you requested.

Two submitted samples are identified as Ionic Energy Bands. Both items will be marketed as producing certain benefits, such as increased energy.

Style number 1004154 is a bracelet made of 90% silicone and the balance being a combination of Germanium 123, Titanium and Mineral. It is cut from strips and molded to be worn as a bracelet. The bracelet has a 2 ½ inch diameter and is cut so that it can slip over the wrist without closures and fittings.

You describe the silicone bracelet as being made of silicone rubber. Note 4 to Chapter 40 of the Harmonized Tariff Schedule of the United States (HTSUS), describes synthetic rubber as applying to unsaturated synthetic substances which can be irreversibly transformed by vulcanization with sulfur into non-thermoplastic substances which, at a temperature between 18 and 29 degrees Centigrade, will not break on being extended to three times their original length and will return, after being extended to twice their original length, within a period of 5 minutes, to a length not greater than 1-1/2 times their original length. Silicone is not cross-linkable with sulfur, and thus is not considered to be rubber for tariff classification purposes. The Silicone Bracelet is considered to be of plastics for tariff purposes.

The silicon necklace, style number 1004153 is a 22 inch long silicon tube surrounded by a woven nylon fabric. This item has a plastic clip means of closure and contains 7% polyamide, 6% Germanium and trace Mineral.

The applicable subheading for the silicone bracelet, if valued under 20 cents per dozen pieces or parts, will be 7117.90.5500, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Imitation jewelry: Other: Other: Valued under 20 cents per dozen pieces or parts: Other: Of plastics." The rate of duty will be 7.2% ad valorem.

The applicable subheading for the silicone bracelet, if valued over 20 cents per dozen pieces or parts, will be 7117.90.7500, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Imitation jewelry: Other: Other: Valued over 20 cents per dozen pieces or parts: Other: Of plastics." The rate of duty will be free.

The applicable subheading for the Silicone Necklace will be 6217.10.9530, Harmonized Tariff Schedule of the United States (HTSUS), which provides

for “Other made up clothing accessories; parts of garments or of clothing accessories, other than those of heading 6212: Accessories: Other, Other: Of man-made fibers.” The rate of duty will be 14.6% ad valorem.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Neil H. Levy at (646) 733-3036.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

[ATTACHMENT B]

N022480

February 13, 2008

CLA-2-62:OT:RR:NC:N3:353

CATEGORY: Classification

TARIFF NO.: 6217.10.9530

MR. STEVE COZ
EAGLE WINGS
2101 OLD HICKORY TREE RD.
ST. CLOUD, FLORIDA 34772

RE: The tariff classification of a textile necklace from China.

DEAR MR. COZ:

In your letter undated letter, you requested a classification ruling.

The submitted sample Style 6903 Georgia Titan Necklace is a textile necklace made of woven nylon fabric surrounding a silicone/plastic core with a plastic clasp and two silicone stations with the letter G. The necklace is used to show support of the Georgia Titans Team.

The applicable subheading for the Style 6903 Georgia Titan Necklace will be 6217.10.9530, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Other made up clothing accessories; parts of garment-s...Accessories: Other: Other: Of man-made fibers." The duty rate will be 14.6% ad valorem. The textile category designation is 659.

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/>.

With the exception of certain products of China, quota/visa requirements are no longer applicable for merchandise which is the product of World Trade Organization (WTO) member countries. Quota and visa requirements are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information on quota and visa requirements applicable to this merchandise, we suggest you check, close to the time of shipment, the "Textile Status Report for Absolute Quotas" which is available on our web site at www.cbp.gov. For current information regarding possible textile safeguard actions on goods from China and related issues, we refer you to the web site of the Office of Textiles and Apparel of the Department of Commerce at otexa.ita.doc.gov.

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 Kenneth Reidlinger at 646-733-3053.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

[ATTACHMENT C]

HQ H257790
CLA-2 RR:CTF:TCM H257790 EGJ
CATEGORY: CLASSIFICATION
TARIFF NO.: 7117.90.75

FELICIA L. NOWELS, Esq.
AKERMAN, LLP
106 EAST COLLEGE AVE., SUITE 1200
TALLAHASSEE, FL 323201

Re: Revocation of NY N022480 and Modification of NY N059109; Classification of Textile and Plastic Necklaces

DEAR Ms. NOWELS:

This is in reference to New York Ruling Letter (NY) N022480, dated February 13, 2008, which was issued to your client, Eagles Wings, concerning the tariff classification of a plastic and textile necklace under the Harmonized Tariff Schedule of the United States (HTSUS).

We have reviewed NY N022480 and find it to be in error. For the reasons set forth below, we hereby revoke NY N022480 and modify NY N059109, dated May 29, 2009, which concerned the tariff classification of a substantially similar necklace.¹

FACTS:

In NY N022480, the subject necklace was described as follows:

The submitted sample Style 6903 Georgia Titan Necklace is a textile necklace made of woven nylon fabric surrounding a silicone/plastic core with a plastic clasp and two silicone stations with the letter G. The necklace is used to show support of the Georgia Titans Team.

According to additional documentation which you provided under separate cover dated March 22, 2012, the plastic components weigh substantially more than the textile component. The plastic components also cost substantially more than the textile component. The plastic components are both decorative and functional, because the plastic forms the structure of the necklace and the two plastic Georgia Titans beads add to the visual appeal. The textile component, however, has a much greater visible surface area because it completely covers the plastic core. The textile component is also highly decorative because it is covered in Georgia Titans logos. A picture of the subject necklace is provided below:



¹ In NY N059109, the necklace is described as follows: “The silicon necklace, style number 1004153 is a 22 inch long silicon tube surrounded by a woven nylon fabric. This item has a plastic clip means of closure and contains 7% polyamide, 6% Germinium and trace mineral.”

ISSUE:

Is the necklace classified under heading 6217, HTSUS, as a textile accessory, or under heading 7117, HTSUS, as imitation jewelry?

LAW AND ANALYSIS:

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

The HTSUS provisions at issue are as follows:

6217	Other made up clothing accessories; parts of garments or of clothing accessories, other than those of heading 6212:
6217.10	Accessories:
	Other:
6217.10.95	Other:
* * *	
7117	Imitation jewelry:
7117.90	Other:
	Other:
	Valued over twenty cents per dozen pieces or parts:
	Other:
7117.90.75	Of plastics:
7117.90.90	Other:
* * *	

Note 1 to Chapter 62 states as follows:

This chapter applies only to made up articles of any textile fabric other than wadding, excluding knitted or crocheted articles (other than those of heading 6212).

* * *

Note 3(g) to Chapter 71 states as follows:

3. This Chapter does not cover:

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

* * *

Note 9 to Chapter 71 states as follows:

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

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

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

* * *

Note 11 to Chapter 71 states as follows:

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

* * *

GRI 3 provides as follows:

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

- (a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.
- (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.
- (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 Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System represent the official interpretation of the tariff at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings at the

international level. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

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

- (VII) In all these cases the goods are to be classified as if they consisted of the material or component **which gives them their essential character**, insofar as this criterion is applicable.
- (VIII) The factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

* * *

EN 62.17 provides, in pertinent part, as follows:

This heading covers made up textile clothing accessories, **other than** knitted or crocheted, not specified or included in other headings of this Chapter or elsewhere in the Nomenclature. The heading also covers parts of garments or of clothing accessories, not knitted or crocheted, **other than** parts of articles of **heading 62.12**.

The heading covers, *inter alia*:

- (1) **Dress shields**, usually of rubberized fabric or of rubber covered with textile material. Dress shields wholly of plastics or of rubber are **excluded (headings 39.26 and 40.15 respectively)**.
- (2) **Shoulder or other pads**. These are usually made of wadding, felt, or textile waste covered with textile fabric. Shoulder and other pads consisting of rubber (usually cellular rubber) not covered with textile material are **excluded (heading 40.15)**.
- (3) **Belts of all kinds (including bandoliers) and sashes** (e.g., **military or ecclesiastical**), of textile fabric, whether or not elastic or rubberized, or of woven metal thread. These articles are included here even if they incorporate buckles or other fittings of precious metal, or are decorated with pearls, precious or semi-precious stones (natural, synthetic or reconstructed).
- (4) **Muffs**, including muffs with mere trimmings of furskin or artificial fur on the outside ...

* * *

Note 3(g) to Chapter 71 states that goods of Section XI (Chapters 50 – 63) are excluded from classification in Chapter 71. If the necklace is classifiable as a textile accessory of heading 6217, HTSUS, then it is excluded from classification as imitation jewelry of heading 7117, HTSUS. Therefore, we will first examine the subject necklace in the context of heading 6217, HTSUS.

Note 2 to Chapter 62 states that the Chapter only applies to articles made up of textile fabrics, other than knitted or crocheted fabrics. According to the ENs to heading 62.17, a textile accessory may still be classified in the heading if it has minor components of a different constituent material. For example, EN 62.17 states that if a belt has a clasp or fittings of metal, it remains classified in Chapter 62. As such, the necklace could still be classified in heading 6217, HTSUS, even if it has a clasp or fitting of a material other than textile.

While the necklace has a plastic clasp, it also has a plastic core underneath of the fabric, as well as two large plastic beads. The plastic core gives the necklace its shape. As opposed to a metal clasp or fitting for a textile belt, the plastic components play too great a role to be covered by a heading for articles made up of textiles. As such, the necklace is not classifiable in heading 6217, HTSUS.

Heading 7117, HTSUS, provides for imitation jewelry. Note 11 to Chapter 71 defines imitation jewelry as articles of jewelry which do not incorporate natural or cultured pearls, precious or semiprecious stones, precious metal, or metal clad with precious metal. Note 9(a) to Chapter 71 states that “articles of jewelry” means small objects of personal adornment, such as necklaces, bracelets and rings. As the instant merchandise is a necklace which does not incorporate pearls, precious stones or precious metal, it is classifiable as imitation jewelry of heading 7117, HTSUS.

The subheadings to heading 7117, HTSUS, are broken out according to the constituent material. We note that the instant necklace consists of both textile and plastics. As such, the necklace is a composite good, and we must apply GRI 3(b) to determine which subheading covers the necklace.

According to GRI 3(b), a composite good is classified according to the constituent material which imparts the good’s essential character. In order to identify a composite good’s essential character, the U.S. Court of International Trade (CIT) has applied the factors listed in EN VIII to GRI 3(b) which are “the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.” *The Home Depot v. United States*, 427 F. Supp. 2d 1278, 1293 (Ct. Int’l Trade 2006). With regard to the component which imparts the essential character, the CIT has stated it is “that which is indispensable to the structure, core or condition of the article, i.e. what it is.” *Id. citing A.N. Deringer, Inc. v. United States*, 66 Cust. Ct. 378, 383 (1971).

Turning to the instant necklace, we note that the plastic components weigh more and cost more than the textile components. The plastic components provide shape and structure to the necklace. The plastic components are both decorative and functional, while the textile component is only decorative. However, the textile component covers more of the visible surface area than the plastic components.

Based upon all of these factors, we find that the plastic components impart the essential character to the instant necklace. As such, the instant necklace is classified under subheading 7117.90.75, HTSUS, as imitation jewelry of plastics.

HOLDING:

By application of GRI 1 (Note 9 and Note 11 to Chapter 71), GRI 3(b) and GRI 6, the necklace is classified under subheading 7117.90.75, HTSUS, as “Imitation jewelry: Other: Other: Valued over twenty cents per dozen pieces or parts: Other: Of plastics.” The 2015 column one, general rate of duty is free.

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

EFFECT ON OTHER RULINGS:

NY N022480, dated February 13, 2008, is hereby revoked.

NY N059109, dated May 29, 2009, is hereby modified with regard to the plastic and textile necklace.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division



**REVOCAION OF A RULING LETTER AND REVOCAION
OF TREATMENT RELATING TO THE TARIFF
CLASSIFICATION OF AN ARCHERY TARGET HANDLE
INSERT**

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

ACTION: Notice of revocation of a ruling letter and revocation of treatment relating to the tariff classification of an archery target handle insert.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this Notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking a ruling letter relating to the tariff classification of an archery target handle under the Harmonized Tariff Schedule of the United States (HTSUS). CBP is also revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 49, No. 20, on May 20, 2015. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after September 28, 2015.

FOR FURTHER INFORMATION CONTACT: Beth Jenior, Tariff Classification and Marking Branch: (202) 325–0347.

SUPPLEMENTARY INFORMATION:**BACKGROUND**

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the *Customs Bulletin*, Volume 49, No. 20, on May 20, 2015, proposing to revoke New York Ruling Letter (NY) N209619, dated April 11, 2012, in which CBP determined that the archery target handle insert was classified in subheading 3926.90.25 of the Harmonized Tariff Schedule of the United States (HTSUS), which provides, in pertinent part, for: “Handles and knobs, not elsewhere specified or included, of plastics.” No comments were received in response to this notice.

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

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

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

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY N209619, in order to reflect the proper classification of the archery target handle insert under subheading 9506.99.05, HTSUS, which provides, in pertinent part, for "Archery articles and equipment and parts and accessories thereof," according to the analysis contained in HQ H229978, set forth as an attachment to this document. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: July 6, 2015

JACINTO JUAREZ

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachment

HQ H229978

July 6, 2015

CLA-2 OT:RR:CTF:TCM H229978 EGJ

CATEGORY: Classification

TARIFF NO.: 9506.99.05

ERIKKA BERGSTEN

OAS HOLDINGS INC. DBA SOURCE ONE ENTERPRISES

314 WEST SUPERIOR ST., #502

DULUTH, MN 55802

Re: Revocation of NY N209619; Tariff Classification of the GripPit™ Handle Insert for the Block® Archery Target

DEAR MS. BERGSTEN:

This is in response to your request dated May 3, 2012, asking for reconsideration of New York Ruling Letter (NY) N209619, dated April 11, 2012. In NY N209619, U.S. Customs and Border Protection (“CBP”) classified the handle insert, also identified as the “Block® handle,” for a portable archery target (the handle insert) under subheading 3926.90.25 of the Harmonized Tariff Schedule of the United States (HTSUS), as handles of plastics which are not provided for elsewhere. Upon further review, we find NY N209619 to be in error. For the reasons set forth below, we hereby revoke NY N209619.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice of proposed action was published on May 20, 2015, in the *Customs Bulletin*, Vol. 49, No. 20. No comments were received in response to this notice.

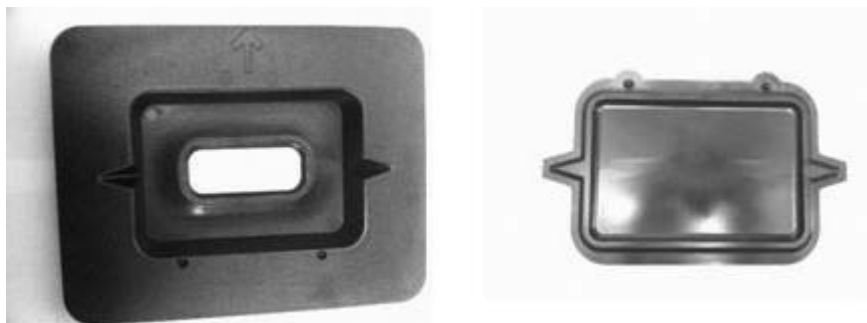
FACTS:

The Block® brand of archery targets consists of different styles of layered polyethylene foam targets. All of the Block® archery targets are portable. The GripPit™ handle insert is embedded into the top of the Block® Black and the Block® Black Crossbow styles of targets. These styles of targets have four sides which can stop field tip, broadhead and expandable arrows. These two styles of targets are pictured below:



The GripPit™ handle insert consists of two pieces of plastic which are custom designed to fit together. During the manufacturing process, the two

pieces are attached together and are permanently embedded into the target. The embedded GripPit™ handle insert enables the consumer to lift, carry and transport the target. The two pieces of the handle insert are pictured below:



The Block® Black and the Block® Black Crossbow styles of targets are large and bulky, measuring in size from 16"x12"x16" to 22"x16"x22". In spite of their cumbersome shape and size, they are marketed as being lightweight and portable. It is the GripPit™ handle insert that enables the consumer to easily move this target from the home, to the backyard, and to the archery range. A picture of consumers holding the bulky targets is provided below:



ISSUE:

Is the GripPit™ handle insert classified as an article of plastics in heading 3926, HTUS, or as a part of sports equipment in heading 9506, 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 the following:

3926	Other articles of plastics and articles of other materials of headings 3901 to 3914:
3926.90	Other:
3926.90.25	Handles and knobs, not elsewhere specified or included, of plastics
* * *	
9506	Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof:
	Other:
9506.99	Other:
9506.99.05	Archery articles and equipment and parts and accessories thereof

* * *

Note 2(y) to Chapter 39 states that:

2. This chapter does not cover:

(t) Articles of chapter 95 (for example, toys, games, sports equipment)

* * *

Note 3 to Chapter 95 states that:

3. Subject to note 1 above, parts and accessories which are suitable for use solely or principally with articles of this chapter are to be classified with those articles ...

* * *

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

EN 95.06(B)(11) states, in pertinent part, that:

This heading covers:

(B) **Requisites for other sports and outdoor games** ... e.g.:

(11) Archery equipment, such as bows, arrows and targets.

* * *

In NY N209619, we classified the handle insert under subheading 3926.90.25, HTSUS, as a handle of plastics which is not elsewhere specified or included. However, Note 2(y) to Chapter 39 states that articles of Chapter 95 are excluded from classification in that chapter. As such, if the handle inserts are classifiable in heading 9506, HTSUS, they cannot be classified in Chapter 39.

Heading 9506 provides for articles and equipment for sports, as well as parts and accessories thereof. It is undisputed that archery is a sport, and

that archery targets constitute equipment for that sport. EN 95.06(B)(11) states that archery equipment, such as bows, arrows and targets are classifiable in that heading. To be classifiable under heading 9506, HTSUS, we must determine whether the handle insert is a part or an accessory to the archery target.

The courts have construed the nature of “parts” under the HTSUS and two distinct though not inconsistent tests have resulted. See *Bauerhin Techs. Ltd. P’ship. v. United States* (“*Bauerhin*”), 110 F. 3d 774 (Fed. Cir. 1997). The first, articulated in *United States v. Willoughby Camera Stores, Inc.* (“*Willoughby*”), 21 C.C.P.A. 322, 324 (1933), requires a determination of whether the imported item is an “integral, constituent, or component part, without which the article to which it is to be joined, could not function as such article.” *Bauerhin*, 110 F.3d at 778 (quoting *Willoughby*, 21 C.C.P.A. 322 at 324). The second, set forth in *United States v. Pompeo*, 43 C.C.P.A. 9, 14 (1955), states that an “imported item dedicated solely for use with another article is a ‘part’ of that article within the meaning of the HTSUS.” *Id.* At 779 (citing *Pompeo*, 43 C.C.P.A. 9 at 13.) Under either line of cases, an imported item is not a part if it is “a separate and distinct commercial entity.” *Id.*

As stated above, the *Willoughby* test for parts of an article is whether the article could still function as such article without the part. 21 C.C.P.A. at 324. The handle insert is used with the Block® Black and the Block® Black Crossbow styles of targets. These targets are marketed as lightweight and portable targets, in spite of their bulky shape and size. We find that the Block® Black and the Block® Black Crossbow could not function as portable targets without the GripPit™ handle insert. As such, the GripPit™ handle insert satisfies the *Willoughby* test for parts. *Id.*

Next, the *Pompeo* test for parts states that the part must be dedicated solely for use with the article at importation. 43 C.C.P.A. at 14. The handle insert is custom designed to be permanently embedded into the Block® archery targets during the manufacturing process. The handle insert has no other use. As such, the GripPit™ handle insert is dedicated solely for use with an archery target at importation, and it satisfies the *Pompeo* test for parts. *Id.*

Note 3 to Chapter 95 states that, subject to the exclusions of Note 1, parts and accessories of goods of Chapter 95 must be classified with those goods if they are solely or principally used with them. The handle inserts are parts of the Block® archery targets, and they are solely used with the Block® archery targets. The handle inserts are not subject to any of the exclusions listed in Note 1 to Chapter 95. As such, the handle inserts are properly classified as parts of sports equipment under heading 9506, HTSUS. Note 2(y) to Chapter 39 excludes the handle inserts from classification in heading 3926, HTSUS.

HOLDING:

By application of GRI 1 (Note 3 to Chapter 95) and GRI 6, the GripPit™ Block Archery Target handle insert is classified under subheading 9506.99.05, HTSUS, which provides for “Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof. Other: Other:

Archery articles and equipment and parts and accessories thereof.” The 2015 column one, general rate of duty is free.

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

EFFECT ON OTHER RULINGS:

NY N209619, dated April 11, 2012, is hereby revoked.

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

Sincerely,

JACINTO JUAREZ

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division



GENERAL NOTICE
19 CFR PART 177

**PROPOSED MODIFICATION OF ONE LETTER
PROPOSED REVOCATION OF ONE RULING LETTER AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE TARIFF CLASSIFICATION OF PLASTIC HEAT
SHRINK TUBING**

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

ACTION: Notice of proposed modification, proposed revocation of ruling letter, and proposed revocation of treatment relating to the classification of plastic heat shrink tubing.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625 (c)), this notice advises interested parties that U.S. Customs and Border Protection (“CBP”) is proposing to revoke one letter and modify another ruling letter relating to the tariff classification of plastic heat shrink tubing 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 intended actions.

DATES: Comments must be received on or before August 28, 2015.

ADDRESSES: Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Commercial Trade and

Regulations Branch, 90K St NE, Washington, D.C., 20229-1177. Submitted comments may be inspected at U.S. Customs and Border Protection, 90K Street NE, Washington, D.C., 20229-1177, 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: Nerissa Hamilton-vom Baur, Tariff Classification and Marking Branch, at (202) 325-0104.

SUPPLEMENTARY INFORMATION:

Background

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to modify one ruling letter and revoke one ruling letter pertaining to the tariff classification of heat shrink tubing. Although in this notice, CBP is specifically referring to the modification of New York Ruling Letter (“NY”) H80297, dated May 31, 2001 (Attachment A) and revocation of NY 843391, dated July 21, 1989 (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., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

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

In NY H80297 and NY 843391, CBP classified certain plastic heat shrink tubing under heading 8546, HTSUS, as "electrical insulators". It is now CBP's position that the tubing made from polyethylene are properly classified in subheading 3926.90.99, HTSUS, which provides for: "Other articles of plastic and articles of other materials of headings 3901 to 3914: Other: Other."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to modify NY H80297 (Attachment A) and revoke NY 843391 (Attachment B), to reflect the proper classification of this merchandise according to the analysis contained in the proposed Headquarters Ruling Letter ("HQ") H118307 (Attachment C). Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: July 6, 2015

IEVA K. O'ROURKE
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

NY H80297

May 31, 2001

CLA-2-85:RR:NC:1:112 H80297

CATEGORY: Classification

TARIFF NO.: 8546.90.0000; 8544.60.6000

MR. BRENT REIDER
INTERNATIONAL TRADE GROUP, INC.
2920 NORTH STAR ROAD
COLUMBUS, OH 43221-2961

RE: The tariff classification of insulated tubing from Hong Kong

DEAR MR. REIDER:

In your letter dated April 22, 2001, on behalf of Fi-Shock, Inc., you requested a tariff classification ruling.

As indicated by the submitted samples and information, there are two different types of tubing. Insultube 500-546 consists of a 50-foot length of polyethylene tubing that is used for insulating electrical conductor. Insultube 500-551 and 500-552 consist of the same type of tubing with an 8300 volt electrical conductor inside.

The applicable subheading for the Insultube 500-546 will be 8546.90.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for electrical insulators of any material: Other. The rate of duty will be Free. The applicable subheading for the Insultube 500-551 and 500-552 will be 8544.60.6000, HTS, which provides for other electric conductors, for a voltage exceeding 1,000 V: Other: Other. The rate of duty will be 3.2 percent ad valorem.

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 David Curran at 212-637-7049.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

[ATTACHMENT B]

NY 843391

JUL 21, 1989

CLA-2-85:S:N:N1B:112 843391

CATEGORY: Classification

TARIFF NP: 8546.90.0000 ADD/CVD * (EN)

MR. HENRY HOFHEIMER
EL-TECH TECHNOLOGY, INC.
7 WOODLAND AVENUE
LARCHMONT, NEW YORK 10538

RE: The Tariff Classification of polyethylene heat-shrinkable products from West Germany.

DEAR MR. HOFHEIMER:

This classification decision under the Harmonized Tariff Schedule of the United States (HTS) is being issued in accordance with the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

DATE OF INQUIRY: July 10, 1989.

DESCRIPTION OF MERCHANDISE: The polyethylene heat-shrinkable products are used to insulate telecommunication cable splices and seal the ends of PVC cables.

Their configuration will vary according to their specific requirements.

HTS PROVISION: Electrical insulators of any material:

Other...

HTS SUBHEADING: 8546.90.0000 ADD/CVD *(EN)

RATE OF DUTY: 3.7 percent ad valorem.

A copy of this ruling 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

[ATTACHMENT C]

HQ H118307
 OT:RR:CTF:TCM H118307 HvB
 CATEGORY: Classification
 TARIFF NO.: 3926.90.99

BRENT REIDER
 INTERNATIONAL TRADE GROUP, INC.
 2920 NORTH STAR ROAD
 COLUMBUS, OH 43221-2961

RE: Modification of NY H80297 and Revocation of NY 843391; Classification of plastic heat-shrink tubing.

DEAR MR. REIDER:

This letter is to inform you that U.S. Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) H80297, issued to you on May 31, 2001, on the classification of Insultube 500–546 under the Harmonized Tariff Schedule of the United States (HTSUS).

We have reviewed NY H80297 and have found it to be partially in error. For the reasons set forth below, we hereby modify NY H80297 with respect to the Insultube 500–546, and revoke NY 843391, dated July 21, 1989, in which CBP classified similar merchandise.

FACTS:

The subject merchandise is heat-shrink tubes made from polyethylene. NY H80297 described the merchandise as consisting of “a 50-foot length of polyethylene tubing that is used for insulating electrical conductor.” In NY 843391, CBP stated that the subject merchandise consisted of “polyethylene heat-shrinkable products used to insulate telecommunication cable splices and seal the ends of PVC cables.”

ISSUE:

Whether the heat-shrink tubes are classified in heading 3926, HTSUS, which provides for “Other articles of plastics and articles of other materials of headings 3901 to 3914” or, in heading 8546, HTSUS, which provides for “Electrical insulators of any material”?

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 following 2015 HTSUS provisions are under consideration:

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

3926.90 Other

8546 Electrical insulators of any material

8546.90 Other

The Notes to Chapter 39 (which include heading 3926) provide in pertinent part:

2. This chapter does not cover:

...

(s) Articles of section XVI (machines and mechanical or electrical appliances[.]

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

The ENs to heading 8486, HTSUS, provide in relevant part:

Insulators of this heading are used for the fixing, supporting or guiding of electric current conductors while at the same time insulating them electrically from each other, from earth, etc.

Usually there is a relation between the size of the insulator and the voltage (large for high voltages, smaller for low voltages). Similarly, the shape of the various types of insulators is influenced by electric, thermic and mechanical considerations. The external surface is very smooth in order to prevent the formation of deposits of non-insulating materials, such as water, salts, dusts, oxides and smoke. Insulators are often given bell, accordion, petticoat, grooved, cylinder or other shapes. Certain types are constructed in such a way that when in position they may contain oil to prevent contamination of the surface by conducting materials.

Insulators may be made of any insulating material, usually very hard and non-porous, e.g., ceramic material (porcelain, steatite), glass, fused basalt, hardened rubber, plastics or compounded insulating materials. They may contain fixing devices (e.g., metal brackets, screws, bolts, clips, laces, slings, pins, cross pieces, caps, rods, suspension or carrying clamps). Insulators equipped with metal horns or guard shields or other devices to form lightning arresters are excluded (heading 85.35).

Insulators are used on outdoor cables, e.g., in telecommunications, power networks, electrical traction systems (railway, tramway, trolleybus, etc.), and also for indoor installations or on certain machines and appliances.

* * *

The instant merchandise consists of plastic tubing that is used to provide a protective seal or jacket. Note 2(s) to Chapter 39, Section VII, HTSUS, excludes "[a]rticles of Section XVI", which includes heading 8546, HTSUS.

Accordingly, before considering whether the articles are classifiable in heading 3926, HTSUS, as a plastic article, it must first be determined whether the subject merchandise is classifiable as an electrical appliance of Section XVI, in heading 8546, HTSUS, which provides for “electrical insulators.”

In order to be classified as an electrical insulator of heading 8546, HTSUS, an article must serve two functions: (1) it must fix, support, or guide an electrical current, and (2) it must also insulate the electric current conductors from each other. *See* Headquarters Ruling Letter (HQ) 088157, dated July 2, 1992, citing to HQ 089276, dated July 24, 1991. *See* EN 85.46. Furthermore, EN 85.46 lists three types of electrical insulators: suspension insulators, rigid insulators, and leading-in insulators. A picture of the subject Insultube 500–546, which is currently discontinued, is available on amazon.com.¹ We note that the instant plastic tubing does not share physical characteristics nor, is it a device that fixes or guides electrical currents. Instead, the subject merchandise is used to form a protective jacket for wires that are buried underground. Thus, we find that the instant articles are not described by heading 8546, HTSUS.

CBP has previously classified substantially similar merchandise in heading 3926, HTSUS. In HQ 082619, dated February 26, 1990, CBP was presented with polyethylene and ethylene vinyl acetate heat shrinkable tubing, and found that the articles were classifiable in heading 3926. *See also* HQ 082700, dated February 15, 1990, describing the tubing as “designed for corrosion protection and sealing of joint connections.” In NY E89483, dated November 19, 1999, CBP classified heat shrink tubing described as “nonconductive polyolefin... designed to provide protection or the wires in a variety of electric and electronic appliances” in heading 3926. Similarly, we classified shrinkable PVC tubes in heading 3926. *See* NY J81242, dated February 26, 2003.

In light of the foregoing, we find that the heat shrinkable tubing at issue is classified in heading 3926, HTSUS, specifically subheading 3926.90.99, which provides for “Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other.” The 2015 general duty rate is 5.3% *ad valorem*.

HOLDING:

By application of GR1 and pursuant to Note 2(s) of Chapter 39, Section VII, the subject heat shrink tubes are classifiable under heading 3926, specifically subheading 3926.90.99, which provides for “Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other.” The 2015 duty rate is 5.3% *ad valorem*.

EFFECT ON OTHER RULINGS:

NY H80297, dated May 31, 2001, is hereby modified with respect to the Insultube 500–546 described therein.

¹ <http://www.amazon.com/Fi-Shock-500-546-Insultube-Discontinued-Manufacturer/dp/B000IK0MCS> (June 6, 2015)


NY 843391, dated July 21, 1989, is hereby revoked.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division



**CORRECTION OF A PROPOSED RULING LETTER
RELATING TO THE PROPOSED MODIFICATION AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE TARIFF CLASSIFICATION OF A FISHING ROD
HOLDER WITH BOAT MOUNT**

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

ACTION: Notice of a correction to a ruling letter for the proposed modification of and proposed revocation of treatment relating to the tariff classification of a certain fishing rod holder with boat mount.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (“CBP”) is correcting a proposed ruling letter that was published in a previous notice on March 4, 2015, in the Customs Bulletin, Volume 49, Number 9, by clarifying that the proposed ruling letter is a modification and not a revocation.

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI, this notice corrects a notice published on March 4, 2015, in the Customs Bulletin Volume 49, Number 9 and advises interested parties that CBP is correcting the proposed ruling letter listed in this previous notice. In the March 4, 2015, notice, the proposed ruling letter labeled as "HQ H240612", stated in the EFFECTS ON OTHER RULINGS section that "NY R00811, dated September 16, 2004, is revoked." This section is corrected by changing the term "revoked" to "modified" such that it reads "NY R00811, dated September 16, 2004, is modified."

The corrected proposed ruling letter, HQ H240612, is set forth as an attachment to this document.

Dated: June 1, 2015

ALLYSON MATTANAH
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

HQ H240612
CLA-2 OT:RR:CTF:TCM H240612 RES
CATEGORY: Classification
TARIFF NO.: 3926.90.99

SUSAN LAKE
SCOTTY FISHING & MARINE PRODUCTS
2065 HENRY AVE. WEST,
SIDNEY V.C., CANADA V81 5Z6

RE: Modification of NY R00811

DEAR Ms. LAKE:

This is in regard to New York (“NY”) Ruling Letter NY R00811, issued to you on September, 16, 2004, regarding the classification of a fishing rod holder with a boat mounting device, under the Harmonized Tariff Schedule of the United States (“HTSUS”). In NY R00811, Customs and Border Protection (“CBP”) classified the articles as fishing rod accessories, under heading 9507, HTSUS. We have reconsidered this ruling and determined that the articles are properly classified under heading 3926, HTSUS, as other articles of plastic.

FACTS:

The following facts were set forth in NY R00811:

The molded plastic fishing rod holder, model 230 Rod Holder, holds a fishing rod while actively fishing. The rod holder attaches to a boat with a model 241 Side/Deck Mount that is permanently screwed to the boat.

The website for Scotty Fishing and Marine Products describes the products this way:

Scotty’s most popular value priced, positive locking, open style rod holder. It’s universal cradle holds almost any reel style and has a front locking ring to prevent rod loss when travelling. Manufactured with fibre reinforced engineering grade nylon, the Power lock offers strength, resilience and reliability.

This Power lock includes a No. 241 Side / Deck Mount which allows mounting on a flat deck surface or on the side of a gunnel or transom.

Power lock Interior Diameter: 1.95”

Mount Dimensions: 4” x 2” x 2”

Bolting Dimension: 1 5/16” x 3 3/16”

<http://www.scotty.com/fishing-gear-equipment/rod-holders/powerlock.htm>.

The mount is also sold separately.

ISSUE:

Whether the plastic fishing rod holder is a part or accessory of a fishing rod of heading 9507, HTSUS, or a plastic article of heading 3926, 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 and any relative section or chapter notes.” In the event that the goods cannot be classified

solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may be applied in order. GRI 3(b), HTSUS, states, in part, that composite goods consisting of different components shall be classified as if consisting of that component which gives the good its essential character.

The following HTSUS provisions are under consideration:

3926	Other articles of plastics and articles of other materials of headings 3901 to 3914:
* * *	
3926.30	Fittings for furniture, coachwork or the like:
3926.30.5000	Other
* * *	
3926.90	Other:
3926.90.99	Other:
3926.90.9980	Other:
* * * * *	
9507	Fishing rods, fish hooks and other line fishing tackle; fish landing nets, butterfly nets and similar nets; decoy "birds" (other than those of heading 9208 or 9705) and similar hunting or shooting equipment; parts and accessories thereof:
9507.10.00	Fishing rods and parts and accessories thereof:
* * *	
9507.10.0080	Other:

Note 1(k) to Chapter 95, HTSUS, states that Chapter 95 does not cover "[p]arts of general use, as defined in Note 2 to Section XV, of base metal (Section XV), or similar goods of plastics (Chapter 39)."

Note 2 to Section XV, HTSUS, defines parts of general use as the following:

Throughout the tariff schedule, the expression "parts of general use" means:

- (a) Articles of heading 7307, 7312, 7315, 7317 or 7318 and similar articles of other base metals;
- (b) Springs and leaves for springs, of base metal, other than clock or watch springs (heading 9114);
- (c) Articles of heading 8301, 8302, 8308 or 8310 and frames and mirrors, of base metal, of heading 8306

In chapters 73 to 76 and 78 to 82 (but not in heading 7315) references to parts of goods do not include references to parts of general use as defined *above*.

Subject to the preceding paragraph and to note 1 to chapter 83, the articles of chapter 82 or 83 are excluded from chapters 72 to 76 and 78 to 81.

In understanding the language of the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System, which constitute the official interpretation of the Harmonized System at the international level, may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are gener-

ally indicative of the proper interpretation of the HTSUS. *See* T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

The EN to GRI 3 states, in pertinent part, the following;

RULE 3 (b)

(VI) This second method relates only to:

* * *

(iii) Composite goods consisting of different components.

* * *

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

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

(IX) For the purposes of this Rule, composite goods made up of different components shall be taken to mean not only those in which the components are attached to each other to form a practically inseparable whole but also those with separable components, provided these components are adapted one to the other and are mutually complementary and that together they form a whole which would not normally be offered for sale in separate parts.

Examples of the latter category of goods are:

- (1) Ashtrays consisting of a stand incorporating a removable ash bowl.
- (2) Household spice racks consisting of a specially designed frame (usually of wood) and an appropriate number of empty spice jars of suitable shape and size.

As a general rule, the components of these composite goods are put up in a common packing.

* * *

The ENs to heading 95.07 provide in pertinent part: This heading covers:

* * * * *

- (3) Line fishing rods and tackle. Fishing rods may be of various sizes, and may be made of various materials (bamboo, wood, metal, glass fibre, plastics, etc.). They may consist of a single piece or be jointed. Fishing tackle comprises such items as reels and reel mountings; artificial bait (e.g., imitation fish, flies, insects or worms) and hooks mounted with such bait; spinning bait; mounted lines and casts; fishing floats (cork, glass, quill, etc.) including luminous floats; line winding frames; automatic striking devices; mounted fishing rings (other than mounted rings of precious or semi-precious stone); sinkers, and fishing rod bells when mounted or attached to external clamps, clips or other devices.

* * * * *

(Emphases in original).

The ENs to 83.02¹ provide in pertinent part:

This heading covers general purpose classes of base metal accessory fittings and mountings, such as are used largely on furniture, doors, windows, coachwork, etc. Goods within such general classes remain in this heading even if they are designed for particular uses (e.g., door handles or hinges for automobiles). The heading does not, however, extend to goods forming an essential part of the structure of the article, such as window frames or swivel devices for revolving chairs.

The heading covers:

* * *

(C) Mountings, fittings and similar articles suitable for motor vehicles (e.g., motor cars, lorries or motor coaches), not being parts or accessories of Section XVII. For example: made up ornamental beading strips; foot rests; grip bars, rails and handles; fittings for blinds (rods, brackets, fastening fittings, spring mechanisms, etc.); interior luggage racks; window opening mechanisms; specialised ash trays; tail-board fastening fittings.

* * * * *

(Emphases in original).

The competing headings for the fishing rod holder with boat mount are headings 3926 and 9507, HTSUS. Note 1(k) to Chapter 95, HTSUS, excludes articles from this Chapter if they are considered similar goods of plastic that would fall under the definition of “parts of general use” as defined in Note 2 to Section XV, HTSUS. In other words, if the fishing rod holder with boat mount is similar to base metal articles that are considered “parts of general use”, then it would be excluded from heading 9507. The heading under consideration in Note 2 to Section XV, would be heading 8302, HTSUS, which provides in pertinent part for “base metal mountings, fittings and similar articles suitable for furniture, doors, staircases, windows, blinds, coachwork, saddlery, trunks, chests, caskets or the like . . .”

For an article classifiable in Chapter 39 to be similar to a “part of general use” in heading 8302, it would have to be a plastic mounting, fitting, or similar article suitable for use on something that is sufficiently similar to the exemplars enumerated in heading 8302, HTSUS. For instance, in NY N192872, dated December 6, 2011, we classified plastic articles used on boat rails to mount an antennae as fittings for boats in heading 3926, HTSUS.

The tariff terms “mountings” and “fittings” are not defined in the HTSUS or its legislative history. “When a tariff term is not defined in either the HTSUS or its legislative history, the term’s correct meaning is presumed to be its common meaning in the absence of evidence to the contrary.” *Timber Prods. Co. v. United States*, 515 F.3d 1213, 1219 (Fed. Cir. 2008). In discerning this common meaning, dictionaries, encyclopedias, scientific authorities, and other reliable information sources may be consulted to construe the

¹ The text of heading 8302, HTSUS reads, in pertinent part, as follows: “Base metal mountings, fittings and **similar articles suitable for furniture, doors, staircases, windows, blinds, coachwork, saddlery, trunks, chests, caskets**, caskets or the like; base metal hat racks, hat-pegs, brackets and similar fixtures; . . .”

meaning of a statute's words. *See Len-Ron Mfg. Co. v. United States*, 334 F.3d 1304, 1309 (Fed. Cir. 2003).

Citing various lexicographic sources, CBP noted in HQ 958784, dated May 17, 1996, that the term "mounting" was defined as:

a frame or support, such as, "an undercarriage or part on which a device (as a motor or an artillery piece) rests in service," or "an attachment for an accessory." *Webster's Ninth New Collegiate Dictionary*, pg. 775-776 (1990). Thus, a mounting is generally a component that serves to join two other parts together.

In regard to "fitting", in HQ 966001, dated October 14, 2003, citing *Webster's Third New International Dictionary* (unabridged; 1961), CBP noted the definition as:

1 a. something used in fitting up: accessory, adjunct, attachment . . . b. a small often standardized part (as a coupling, valve, gauge) entering into the construction of a boiler, steam, water or gas supply installation or other apparatus

A "fixture", is defined in pertinent part as:

1 anything firmly in place[.] 2 any of the fittings or furniture of a house, store, etc attached to the building and, ordinarily, considered legally a part of it . . .

See WEBSTER'S NEW WORLD COLLEGE DICTIONARY 536 (fourth ed. 2007). Hat and coat racks are examples of "fixtures" because they are permanently attached to a structure and provide a function of non-permanently holding another article (hats and coats). *See* EN(G) to 83.02.

The instant mount and fishing rod holder are a composite good under GRI 3 consisting of a mount and a fitting both made of plastic. They are packaged together and meant to fit one to the other in attachment to the boat. The plastic mount is a part of general use in that it is a mount. The fishing rod holder is a fitting for the mount in that it is an attachment to the mount. As such, the composite good is comprised of parts of general use which together form a fixture of the boat. Hence, they are excluded from classification in heading 9507 as accessories to fishing rods.

As the composite good is sold as a fishing rod holder, it is that component which, in relation to the use of the goods, determines its essential character under GRI 3(b). Hence, the entire fixture is classified in subheading 3926.90.99, HTSUS, as "[o]ther articles of plastics and articles of other materials of headings 3901 to 3914: [o]ther." *See* NY 881978, dated February 13, 1997.

HOLDING:

Pursuant to GRI 1 and Note 1(k) to Chapter 95, the fishing rod holder with boat mount is classifiable under subheading of 3926.90.99, HTSUS, as "[o]ther articles of plastics and articles of other materials of headings 3901 to 3914: [o]ther." The column one, rate of duty, is 5.3 percent *ad valorem*.

Duty rates are provided for your convenience and are subject to change.

The text of the most recent HTSUS and the accompanying duty rates are provided on the World Wide Web at www.usitc.gov.

EFFECTS ON OTHER RULINGS:


NY R00811, dated September 16, 2004, is modified.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division



**PROPOSED MODIFICATION OF ONE RULING LETTER
AND REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF FILLER PAPER,
COMPOSITION NOTEBOOKS, SPIRAL NOTEBOOKS, AND
WIRELESS NOTEBOOKS, AND TO THE ELIGIBILITY OF
FILLER PAPER FOR PREFERENTIAL TARIFF
TREATMENT UNDER NAFTA**

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

ACTION: Notice of proposed modification of one ruling letter and revocation of treatment relating to the tariff classification of filler paper, composition notebooks, spiral notebooks, and wireless notebooks, and to the eligibility of filler paper for preferential tariff treatment under the North American Free Trade Agreement (NAFTA).

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to modify one ruling concerning the tariff classification of filler paper, composition notebooks, spiral notebooks, and wireless notebooks under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), as well as the eligibility of filler paper for preferential treatment under NAFTA. 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 August 28, 2015.

ADDRESSES: Written comments are to be addressed to the U.S. Customs and Border Protection, Office of International Trade, Regulations & Rulings, Attention: Trade and Commercial Regulations Branch, 90 K St., NE, 10th Floor, 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: Nikolai C. Diamond, Tariff Classification and Marking Branch, at (202) 325-0292.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP is proposing to modify one ruling letter pertaining to the tariff classification of filler paper, composition notebooks, spiral notebooks, and wireless notebooks, as well as the eligibility of filler paper for preferential treatment under NAFTA. Although in this notice, CBP is specifically referring to New York Ruling Letter (“NY”) N057699, dated May 15, 2009 (Attachment A), this notice covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the five identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, inter-

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

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

In NY N057699, CBP classified filler paper under heading 4802, HTSUSA, specifically under subheading 4802.57.1000, HTSUSA, which provides for "Writing and cover paper," and determined that the filler paper was not eligible for preferential tariff treatment under NAFTA. In that ruling, CBP also classified composition notebooks, spiral notebooks, and wireless notebooks under heading 4820, specifically under subheading 4820.10.2020, HTSUSA, which provides for "Memorandum pads, letter pads and similar articles." It is now CBP's position that the filler paper at issue in NY N057699 is properly classified, by operation of GRI 1, under heading 4811, HTSUSA, specifically under subheading 4811.90.9080, HTSUS, which provides for "Paper, paperboard, cellulose wadding and webs of cellulose fibers, coated, impregnated, covered, surface-colored, surface-decorated or printed, in rolls or rectangular (including square) sheets, of any size, other than goods of the kind described in heading 4803, 4809 or 4810: Other paper, paperboard, cellulose wadding and webs of cellulose fibers: Other: Other." As such, the filler paper is NAFTA-originating under General Note 12, HTSUSA, and is eligible for preferential tariff treatment. By operation of GRIs 1 and 6, the subject composition notebooks are properly classified under subheading 4820.10.2030, HTSUSA, which provides for "Sewn composition books with dimension of 152.4–381 mm (6" - 15") inclusive (smaller side) x 222.5–381 mm (8.75" - 15"), inclusive (large side)," and the subject spiral notebooks and wireless notebooks are classified under subheading 4820.10.2040, HTSUSA, which provides for "Other note books with dimension of 152.4–381 mm (6" - 15") inclusive (smaller side) x 222.5- 381 mm (8.75" - 15"), inclusive (large side)."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to modify NY N057699 and revoke any other ruling not specifically identified to reflect the tariff classification and NAFTA eligibility determination of

the subject merchandise according to the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H072375, set forth as Attachment B to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: July 9, 2015

IEVA K. O’ROURKE
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N057699

May 15, 2009

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

CATEGORY: Classification

TARIFF NO.: 4802.57.1000; 4820.10.2020

MR. DAVID MURPHY

GRUNFELD, DESIDERIO, LEBOWITZ, SILVERMAN & KLESTADT, LLP

399 PARK AVENUE, 25TH FLOOR

NEW YORK, NY 10022-4877

RE: The tariff classification and status under the North American Free Trade Agreement (NAFTA), of filler paper, composition notebooks, spiral notebooks and wireless notebooks from Mexico; Article 509

DEAR MR. MURPHY:

In your letter dated April 13, 2009 and supplemented May 6, 2009, on behalf of your client, Staples, The Office Superstore, LLC ("Staples"), you requested a ruling on the status of filler paper, composition notebooks, spiral notebooks and wireless notebooks from Mexico under the NAFTA.

You state in your original request that all of the items will be formed from jumbo paper rolls sourced in Taiwan and substantially transformed in Mexico into separate and distinct articles of commerce. You state in your supplemental letter dated May 6, 2009, the items being imported into Mexico would be paper in rolls, weighing 40 g/m² or more but not more than 150 g/m². The paper would be in rolls that measure 100 - 102 cm in width. The paper is uncoated, designated as writing paper in the industry, and doesn't contain fibers obtained by a mechanical or chemi-mechanical process. It is white in color, contains less than 3% ash, has a brightness of 60% or more, and is bleached uniformly throughout the mass. The paper is not embossed, perforated, creped or crinkled at the time of importation into Mexico.

At the time of importation into Mexico, the paper would be classified in subheading 4802.55.1000, Harmonized Tariff Schedule of the United States. You state in your letter dated April 13, 2009, that once in Mexico the rolls will be transformed into filler paper, composition notebooks, spiral notebooks or wireless notebooks. The process for all the transformations begins with unwinding the rolls and processing the paper through a lining machine. The purpose of the lining machine is to print lines and margin rulings on the paper in a continuous manner. The lined paper is then jogged and cut into large sheets. The large sheets are cut and trimmed to the appropriate size of the item being formed.

The filler paper is cut to notebook size (20.3 cm x 26.7 cm and 21.6 cm x 27.9 cm), counted and sorted into the specified number of sheets for each package, and three hole punched. The finished sheets are matched with a cover sheet, shrink wrapped and placed in cartons and shipped to your client in the United States for retail sale.

The composition notebooks are cut from large sheets into medium sheets measuring 39 cm x 50 cm and counted and sorted into the specified number of sheets for each notebook. The lined and cut sheets are matched with the appropriate printed cover sheets. Two cover designs are printed on one cover sheet. One is on the top and the other is on the bottom. The covers and sheets of paper are sewn together to create the spine binding which is then folded

over. Spine tape is applied to cover the binding. The composition books are cut and trimmed to their final size of 19 cm x 24 cm and placed in cartons and shipped to your client in the United States for retail sale.

The spiral notebooks are further processed by being simultaneously perforated as it is going through the lining machine. The paper is then jogged and cut into large sheets. The large sheets of lined, perforated paper are cut to the appropriate notebook size 20.3 cm x 26.7 cm, 21.6 cm x 27.9 cm or 22.9 cm x 27.9 cm, counted and sorted into the specified number of sheets for each notebook and are three hole punched. The lined sheets are matched with the printed covers and fly sheets (if applicable) and are bound with wire. Some of the notebooks may be matched with slip-sheets and shrink wrapped. All the finished notebooks are placed in cartons and shipped to your client in the United States for retail sale.

The wireless notebooks like the spiral notebooks are simultaneously perforated as they go through the lining machine. The lined paper is then jogged and cut into large sheets. The large sheets are then cut to medium sheets 21.6 cm x 84 cm and counted and sorted into the specified number of sheets for the notebook. The lined sheets are then matched with printed covers and glued together. A spine tape is applied to cover the binding. The assembled notebooks are then cut to a final size of 21.6 cm x 27.9 cm or 22.9 cm x 27.9 cm and three hole punched. The finished product is placed in cartons and shipped to your clients in the United States.

The applicable tariff provision for the filler paper will be 4802.57.1000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Uncoated paper and paperboard, of a kind used for writing, printing or other graphic purposes . . . other than paper of heading 4801 or 4803; hand-made paper and paperboard: Other paper and paperboard not containing fibers obtained by a mechanical or chemi- mechanical process . . . of such fibers: Other, weighing 40 g/m² or more but not more than 150 g/m²: Writing and cover paper. The general rate of duty will be Free.

The applicable tariff provision for the composition notebooks, spiral notebooks and the wireless notebooks will be 4820.10.2020, HTSUS, which provides for Registers account books, notebooks . . . of paper and paperboard: Registers, account books, notebooks . . . and similar articles: Diaries, notebooks and address books, bound memorandum pads, letter pads and similar articles: Memorandum pads, letter pads and similar articles. The general 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/>.

General Note 12(b), HTSUS, sets forth the criteria for determining whether a good is originating under the NAFTA. General Note 12(b), HTSUS, (19 U.S.C. § 1202) states, in pertinent part, that

For the purposes of this note, goods imported into the customs territory of the United States are eligible for the tariff treatment and quantitative limitations set forth in the tariff schedule as “goods originating in the territory of a NAFTA party” only if—

- (i) they are goods wholly obtained or produced entirely in the territory of Canada, Mexico and/or the United States; or
- (ii) they have been transformed in the territory of Canada, Mexico and/or the United States so that—

(A) except as provided in subdivision (f) of this note, each of the non-originating materials used in the production of such goods undergoes a change in tariff classification described in subdivisions (r), (s) and (t) of this note or the rules set forth therein, or

(B) the goods otherwise satisfy the applicable requirements of subdivisions (r), (s) and (t) where no change in tariff classification is required, and the goods satisfy all other requirements of this note; or

(iii) they are goods produced entirely in the territory of Canada, Mexico and/or the United States exclusively from originating materials; or

(iv) they are produced entirely in the territory of Canada, Mexico and/or the United States but one or more of the nonoriginating materials falling under provisions for “parts” and used in the production of such goods does not undergo a change in tariff classification because—

(A) the goods were imported into the territory of Canada, Mexico and/or the United States in unassembled or disassembled form but were classified as assembled goods pursuant to general rule of interpretation 2(a), or

(B) the tariff headings for such goods provide for and specifically describe both the goods themselves and their parts and is not further divided into subheadings, or the subheadings for such goods provide for and specifically describe both the goods themselves and their parts,

provided that such goods do not fall under chapters 61 through 63, inclusive, of the tariff schedule, and provided further that the regional value content of such goods, determined in accordance with subdivision (c) of this note, is not less than 60 percent where the transaction value method is used, or is not less than 50 percent where the net cost method is used, and such goods satisfy all other applicable provisions of this note.

Based on the facts provided, the notebooks described above qualify for NAFTA preferential treatment, because they will meet the requirements of HTSUS General Note 12(b) (ii) (A). The goods will therefore be entitled to a Free rate of duty under the NAFTA upon compliance with all applicable laws, regulations, and agreements.

This ruling letter has not addressed the Regional Value Content (RVC) of the subject goods. If you desire a ruling regarding the RVC of your goods and their eligibility for NAFTA preferential treatment, provide the information noted in Section 181.93(b) of the Customs Regulations (19 CFR 181.93(b)), to U.S. Customs and Border Protection, Regulations & Rulings, 799 9th Street N.W. - 7th floor, Washington, DC 20229–1177, along with a copy of this letter.

The filler paper does not qualify for preferential treatment under the NAFTA because none of the above requirements are met.

This ruling is being issued under the provisions of Part 181 of the Customs Regulations (19 C.F.R. 181).

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 A. Wilson at (646) 733–3037.

Should you wish to request an administrative review of this ruling, submit a copy of this ruling and all relevant facts and arguments within 30 days of the date of this letter, to the Director, Commercial Rulings Division, Headquarters, U.S. Customs and Border Protection, Regulations & Rulings, 799 9th Street N.W. - 7th floor, Washington, DC 20229-1177.

Sincerely,

ROBERT B. SWIERUPSKI,

Director

National Commodity Specialist Division

[ATTACHMENT B]

HQ H072375

CLA-2 OT:RR:CTF:TCM H072375 NCD

CATEGORY: Classification

TARIFF NO.: 4811.90.9080; 4820.10.2030;

4820.10.2040

DAVID M. MURPHY

GRUNFELD, DESIDERIO, LEBOWITZ, SILVERMAN & KLESTADT LLP

339 PARK AVENUE, 25TH FLOOR

NEW YORK, NY 10022-4877

RE: Modification of New York Ruling Letter N057699, dated May 15, 2009; classification of filler paper, composition notebooks, spiral notebooks, and wireless notebooks; eligibility of filler paper for preferential treatment under NAFTA

DEAR MR. MURPHY:

This is in response to your June 18, 2009 letter, on behalf of Staples, Inc., requesting reconsideration of New York Ruling Letters (“NY”) N057699, dated May 15, 2009, and NY N063779, dated June 10, 2009. In NY N057699, U.S. Customs and Border Protection (CBP) classified filler paper, composition notebooks, spiral notebooks, and wireless notebooks under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), and determined whether this merchandise is eligible for preferential tariff treatment under the North American Free Trade Agreement (NAFTA). NY N063779 involved determination of the subject products’ countries of origin for marking purposes pursuant to NAFTA. We have found NY N057699 to be in error with regard to the classification of all the subject merchandise and to the eligibility of the subject filler paper for NAFTA treatment, and, for the reasons set forth below, are modifying that ruling.

FACTS:

In NY N057699, CBP responded to your April 13, 2009 request for a ruling on “the status of filler paper, composition notebooks, spiral notebooks, and wireless notebooks from Mexico under NAFTA.” CBP stated in that ruling letter as follows:

You state in your original request that all of the items will be formed from jumbo paper rolls sourced in Taiwan and substantially transformed in Mexico into separate and distinct articles of commerce. You state in your supplemental letter dated May 6, 2009, the items being imported into Mexico would be paper in rolls, weighing 40 g/m² or more but not more than 150 g/m². The paper would be in rolls that measure 100 - 102 cm in width. The paper is uncoated, designated as writing paper in the industry, and doesn’t contain fibers obtained by a mechanical or chemi-mechanical process. It is white in color, contains less than 3% ash, has a brightness of 60% or more, and is bleached uniformly throughout the mass. The paper is not embossed, perforated, creped or crinkled at the time of importation into Mexico.

At the time of importation into Mexico, the paper would be classified in subheading 4802.55.1000, Harmonized Tariff Schedule of the United States. You state in your letter dated April 13, 2009, that once in Mexico

the rolls will be transformed into filler paper, composition notebooks, spiral notebooks or wireless notebooks. The process for all the transformations begins with unwinding the rolls and processing the paper through a lining machine. The purpose of the lining machine is to print lines and margin rulings on the paper in a continuous manner. The lined paper is then jogged and cut into large sheets. The large sheets are cut and trimmed to the appropriate size of the item being formed.

The filler paper is cut to notebook size (20.3 cm x 26.7 cm and 21.6 cm x 27.9 cm), counted and sorted into the specified number of sheets for each package, and three hole punched. The finished sheets are matched with a cover sheet, shrink wrapped and placed in cartons and shipped to your client in the United States for retail sale.

The composition notebooks are cut from large sheets into medium sheets measuring 39 cm x 50 cm and counted and sorted into the specified number of sheets for each notebook. The lined and cut sheets are matched with the appropriate printed cover sheets. Two cover designs are printed on one cover sheet. One is on the top and the other is on the bottom. The covers and sheets of paper are sewn together to create the spine binding which is then folded over. Spine tape is applied to cover the binding. The composition books are cut and trimmed to their final size of 19 cm x 24 cm and placed in cartons and shipped to your client in the United States for retail sale.

The spiral notebooks are further processed by being simultaneously perforated as it is going through the lining machine. The paper is then jogged and cut into large sheets. The large sheets of lined, perforated paper are cut to the appropriate notebook size 20.3 cm x 26.7 cm, 21.6 cm x 27.9 cm or 22.9 cm x 27.9 cm, counted and sorted into the specified number of sheets for each notebook and are three hole punched. The lined sheets are matched with the printed covers and fly sheets (if applicable) and are bound with wire. Some of the notebooks may be matched with slip-sheets and shrink wrapped. All the finished notebooks are placed in cartons and shipped to your client in the United States for retail sale.

The wireless notebooks like the spiral notebooks are simultaneously perforated as they go through the lining machine. The lined paper is then jogged and cut into large sheets. The large sheets are then cut to medium sheets 21.6 cm x 84 cm and counted and sorted into the specified number of sheets for the notebook. The lined sheets are then matched with printed covers and glued together. A spine tape is applied to cover the binding. The assembled notebooks are then cut to a final size of 21.6 cm x 27.9 cm or 22.9 cm x 27.9 cm and three hole punched. The finished product is placed in cartons and shipped to your clients in the United States.

Based on these descriptions, in NY N057699 CBP classified the filler paper in subheading 4802.57.1000, HTSUSA, as "Writing and cover paper," and classified the three notebooks under subheading 4820.10.2020, HTSUSA, as "Memorandum pads, letter pads and similar articles." CBP further determined that the notebooks were eligible for preferential tariff treatment under NAFTA because they met the required tariff shift from heading 4802 to heading 4820 of General Note 12(t). However, CBP determined that the filler paper did not similarly meet the required tariff shift or satisfy any other

General Note 12 provisions, and therefore did not qualify for preferential tariff treatment under NAFTA. In NY N063779, CBP ruled that each of the four subject products qualifies as “a good of a NAFTA country” for marking purposes.

In your June 18, 2009 letter, you assert that the filler paper was improperly classified in heading 4802, HTSUSA, and that it is properly classified in heading 4811, specifically in subheading 4811.90.90 as “[o]ther paper, paperboard, cellulose wadding and webs of cellulose fibers.” You further assert that CBP’s erroneous classification of the filler paper resulted in the improper denial of eligibility for preferential tariff treatment of the filler paper under NAFTA. You also contend that the three notebooks were improperly classified in subheading 4820.10.2020, and that their proper classification is subheading 4820.10.2050, HTSUSA. You do not contest CBP’s determinations that the notebooks are eligible for preferential tariff treatment under NAFTA and that each of the four subject products is “a good of a NAFTA country” for marking purposes, although you request revocation of NY N063779 in which the latter determination was made.

ISSUE:

- I. Whether the filler paper is properly classified in subheading 4802.57.1000, HTSUSA, as writing paper, or in subheading 4811.90.9080, HTSUSA, as other paper, and whether the notebooks are properly classified in subheading 4820.10.2020, HTSUSA, as memorandum pads, letter pads, or similar articles, in subheading 4820.10.2030, HTSUSA, as sewn composition books with dimensions of 152.4–381 mm x 222.5–381, in subheading 4820.10.2040, HTSUSA, as other notebooks with dimensions of 152.4–381 mm x 222.5–381, or in subheading 4820.10.2060, HTSUSA, as other notebooks.¹
- II. Whether the filler paper is eligible for preferential tariff treatment under NAFTA.

LAW AND ANALYSIS:

To determine whether the filler paper is eligible for preferential tariff treatment under NAFTA, we must first ascertain the proper classifications of the filler paper at the time of its entry into Mexico and at the time of its subsequent entry into the U.S. Accordingly, we initially address classification of the filler paper and notebooks under the HTSUSA.

I. Classification

Merchandise imported into the United States is classified under the HTSUSA. Tariff classification is governed by the principles set forth in the

¹ We note that subheading 4811.90.9050 no longer exists, and that subheading 4811.90.9080 has covered goods formerly classifiable in subheading 4811.90.9050 since the latter’s elimination from the HTSUSA in 2011. We therefore consider whether the filler paper is classifiable in subheading 4811.90.9080. Similarly, subheading 4820.10.2050 was replaced by subheading 4820.10.2060 in 2010, and we therefore consider whether the notebooks are classifiable in the latter provision. Also, as discussed more fully below, the other two subheadings under consideration for classification of the notebooks, subheadings 4820.10.2030 and 4820.10.2040, were added to the HTSUSA in 2010 after you requested this reconsideration.

General Rules of Interpretation (GRIs) and, in the absence of special language or context which requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUSA and are to be considered statutory provisions of law for all purposes.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the heading and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and, *mutatis mutandis*, to GRIs 1 through 5.

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 HTSUSA 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 HTSUSA. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The 2015 HTSUSA provisions under consideration are as follows:

- 4802** Uncoated paper and paperboard, of a kind used for writing, printing or other graphic purposes, and non perforated punch-cards and punch tape paper, in rolls or rectangular (including square) sheets, of any size, other than paper of heading 4801 or 4803; hand-made paper and paperboard:
- Other paper and paperboard, not containing fibers obtained by a mechanical or chemi-mechanical process or of which not more than 10 percent by weight of the total fiber content consists of such fibers:
- 4802.57 Other, weighing 40 g/m² or more but not more than 150 g/m²:
- 4802.57.1000 Writing and cover paper
- 4811** Paper, paperboard, cellulose wadding and webs of cellulose fibers, coated, impregnated, covered, surface-colored, surface-decorated or printed, in rolls or rectangular (including square) sheets, of any size, other than goods of the kind described in heading 4803, 4809, or 4810:
- 4811.90 Other paper, paperboard, cellulose wadding and webs of cellulose fibers:
- 4811.90.90 Other:
- 4811.90.9080 Other
- 4820** Registers, account books, notebooks, order books, receipt books, letter pads, memorandum pads, diaries and similar articles, exercise books, blotting pads, binders (looseleaf or other), folders, file covers, manifold business forms, interleaved carbon sets and other articles of stationery, of paper or paperboard; albums for samples or for collections and book covers (including cover boards and book jackets) of paper or paperboard:

4820.10	Registers, account books, notebooks, order books, receipt books, letter pads, memorandum pads, diaries and similar articles:
4820.10.20	Diaries, notebooks and address books, bound; memorandum pads, letter pads, letter pads and similar articles:
4820.10.2020	Memorandum pads, letter pads and similar articles
4820.10.2030	Sewn composition books with dimensions of 152.4- 381 mm (6" - 15"), inclusive (small side) X 222.5-381 mm (8.75" -15"), inclusive (large side)
4820.10.2040	Other note books with dimensions of 152.4-381 mm (6" - 15"), inclusive (small side) X 222.5-381 mm (8.75" -15"), inclusive (large side)
4820.10.2060	Other

As a preliminary matter, we agree with CBP's determination in NY N057699 that the subject products are classifiable in subheading 4802.55.1000, HTSUSA, at the time of their entry into Mexico. Subheading 4802.55.1000, HTSUSA, provides for "[u]ncoated paper and paperboard, of a kind used for writing...in rolls or rectangular (including square) sheets, of any size, other than paper of heading 4801 or 4803; hand-made paper and paperboard: Weighing 40 g/m² or more but not more than 150 g/m², in rolls: Other paper and paperboard, not containing fibers obtained by a mechanical or chemi-mechanical process or of which not more than 10 percent by weight of the total fiber content consists of such fibers: Of a width exceeding 15 cm: Writing and cover paper." Note 3 to Chapter 48 of the HTSUS states as follows:

Subject to the provisions of note 7, headings 4801 to 4805 include paper and paperboard which have been subjected to calendering, supercalendering, glazing or similar finishing, false water-marking or surface sizing, and also paper, paperboard, cellulose wadding and webs of cellulose fibers, colored or marbled throughout the mass by any method. Except where heading 4803 otherwise requires, these headings do not apply to paper, paperboard, cellulose wadding or webs of cellulose fibers which have been otherwise processed.

Additionally, Note 5 to Chapter 48 of the HTSUSA states as follows:

For the purposes of heading 4802, the expressions "paper and paperboard, of a kind used for writing, printing or other graphic purposes" and "nonperforated punch-cards and punch tape paper" mean paper and paperboard made mainly from bleached pulp or from pulp obtained by a mechanical or chemi-mechanical process and satisfying any of the following criteria:

For paper or paperboard weighing not more than 150 g/m²:

...

(c) Containing more than 3 percent ash and having a brightness of 60 percent or more...

According to your submissions, all of the instant products remain incorporated in jumbo paper rolls at the time of their entry into Mexico. The jumbo rolls are uncoated, designated as writing paper, and contain no fibers obtained by a mechanical or chemi-mechanical process. They weigh between 40 g/m² and 150 g/m² and measure between 100 and 102 cm in width. In accordance with Note 5(c) to Chapter 48, they are white in color, contain less than 3 percent ash, and have a brightness of 60 percent or more. Thus, at the time of their arrival in Mexico, they are not excluded from heading 4802 by operation of Note 3 to Chapter 48. Accordingly, they are, at that time, classifiable under subheading 4802.55.1000.

While in Mexico, the paper rolls have been imprinted with lines and margin rulings and cut to size. In addition, the filler paper has been three-hole punched, the paper comprising the composition notebooks has been sewn and bound with spine tape, the paper comprising the spiral notebooks has been perforated, three-hole punched and bound with wire, and the paper comprising the wireless notebooks has been perforated, three-hole punched, and bound with glue. None of this additional processing is described by either heading 4802 or Note 3 to Chapter 48, the latter of which explicitly excludes from headings 4801 through 4805 products that have undergone processes beyond those enumerated in the note. Accordingly, all of the products are effectively excluded from heading 4802 and must be classified elsewhere. While this determination is not in dispute with regard to the three notebooks, which CBP classified under heading 4820 in NY N057699, it renders the classification of the filler paper under subheading 4802.57.10, HTSUSA, in that case incorrect.

As stated above, you assert in your June 18, 2009 letter that the filler paper is instead properly classified in heading 4811. This heading covers, among other things, paper in rectangular sheets. The General EN to Chapter 48 provides, in pertinent part, as follows:

This Chapter covers:

(I) Paper... of all kinds, in rolls or sheets:

...

(B) Headings 48.06 to 48.11 relate to...paper, paperboard or cellulose wadding and webs of cellulose fibres which have been subjected to various treatments, such as coating, design printing, *ruling*, impregnating, corrugation, creping, embossing, and *perforation*.

(Emphasis added). Additionally, EN 48.11 provides that “[p]aper and paperboard are classified in this heading only if they are in strips or rolls or in rectangular (including square sheets, of any size.” Consistent with these ENs, CBP has repeatedly classified rectangular filler paper that has been ruled, perforated, or three-hole punched in heading 4811, specifically in subheading 4811.90.90. See NY N248171, dated November 27, 2013; NY N233367, dated October 17, 2012; NY N113475, dated July 30, 2010; NY N021510, dated February 6, 2008; NY N021508, dated February 6, 2008; NY L82778, dated March 15, 2005; and NY J81599, dated March 10, 2003. As in these previous rulings, the instant filler paper is in rectangular form, measuring either 20.3 centimeters by 26.7 centimeters or 21.6 centimeters by 27.9 centimeters, and has been imprinted with lines and margin rulings and

three-hole punched. Accordingly, we agree with your assertion that it is properly classified in subheading 4811.90.9080, HTSUSA.

You also assert in your letter that, within subheading 4820.10.20, the subject composition notebooks, spiral notebooks, and wireless notebooks qualify as “Diaries, notebooks and address books, bound; memorandum pads, letter pads and similar articles: Other,” which, as of 2010, is described by subheading 4820.10.2060. As support for your contention, you cite several rulings in which CBP classified notepads and notebooks in subheading 4820.10.2050, the predecessor to subheading 4820.10.2060. *See* Headquarters Ruling Letter (HQ) 965595, dated August 5, 2002; NY N004628, dated January 18, 2007; NY M87370, dated November 14, 2006; and NY M83981, dated June 16, 2006. However, in 2010, following the filing of your letter, subheading 4820.10.20 was revised at the 10-digit level, resulting in the additions of subheading 4820.10.2030, which covers “Sewn composition books with dimensions of 152.4–381 mm (6” - 15”), inclusive (small side) X 222.5–381 mm (8.75” -15”), inclusive (large side),” and subheading 4820.10.2040, which covers “Other note books with dimensions of 152.4–381 mm (6” - 15”), inclusive (small side) X 222.5–381 mm (8.75” -15”), inclusive (large side).” In the wake of these revisions, CBP has consistently classified sewn composition journals in subheading 4820.10.2030 while classifying spiral and other non-sewn notebooks in subheading 4820.10.2040. *See* NY N255460, dated August 19, 2014; NY N254683, dated July 11, 2014; NY N252384, dated May 5, 2014; NY N246920, dated November 1, 2013; and NY N140787, dated February 2, 2011.

Consequently, while we agree that the notebooks qualified as “Diaries, notebooks and address books, bound; memorandum pads, letter pads and similar articles: Other” at the time your letter was filed, they are now described instead by the terms of subheadings 4820.10.2030 and 4820.10.2040. Specifically, the composition notebooks are properly classified in subheading 4820.10.2030, as they are sewn and boast dimensions of 240 millimeters by 190 millimeters. The spiral notebooks and wireless notebooks are properly classified in subheading 4820.10.2040 because they are not sewn and, similar to the composition notebooks, are of dimensions falling within the measurement ranges described by the subheading.

II. NAFTA Eligibility

General Note 12, HTSUSA, incorporates Article 401 of the NAFTA into the HTSUSA. GN 12(a)(ii), HTSUSA, provides, in pertinent part, that:

Goods that originate in the territory of a NAFTA party under the terms of subdivision (b) of this note and that qualify to be marked as goods of Mexico under the terms of the marking rules set forth in regulations issued by the Secretary of the Treasury (without regard to whether the goods are marked), and goods enumerated in subdivision (u) of this note, when such goods are imported into the customs territory of the United States and are entered under a subheading for which a rate of duty appears in the “Special” subcolumn followed by the symbol “MX” in parentheses, are eligible for such duty rate, in accordance with section 201 of the North American Free Trade Agreement Implementation Act.

Accordingly, the subject goods will be eligible for the “Special” “MX” rate of duty provided that: (A) They qualify as NAFTA-originating under General Note 12(b), HTSUSA; and (B) they qualify for marking as goods of Mexico under the NAFTA Marking Rules set forth in Part 102 of the Code of Federal Regulations (19 C.F.R. § 102).

A. NAFTA-Originating under General Note 12(b)

GN 12(b), HTSUSA, provides, in pertinent part, as follows:

For the purposes of this note, goods imported into the Customs territory of the United States are eligible for the tariff treatment and quantitative limitations set forth in the tariff schedule as “*goods originating in the territory of a NAFTA party*” only if—

- (i) they are goods wholly obtained or produced entirely in the territory of Canada, Mexico and/or the United States; or
- (ii) they have been transformed in the territory of Canada, Mexico and/or the United States so that—
 - (A) except as provided in subdivision (f) of this note, each of the non-originating materials used in the production of such goods undergoes a change in tariff classification described in subdivisions (r), (s) and (t) of this note or the rules set forth therein, or
 - (B) the goods otherwise satisfy the applicable requirements of subdivisions (r), (s) and (t) where no change in tariff classification is required, and the goods satisfy all other requirements of this note; or
- (iii) they are goods produced entirely in the territory of Canada, Mexico and/or the United States exclusively from originating materials.

Because the jumbo paper rolls from which the subject products were cut were produced in Taiwan, they cannot be considered “goods wholly obtained or produced entirely in the territory of Canada, Mexico and/or the United States,” and consequently do not satisfy the requirements of General Note 12(b)(i). Therefore, we must determine whether the non-originating materials undergo an enumerated tariff shift or otherwise satisfy one of the definitions of “goods originating in the territory of a NAFTA party” provided by GN 12(b)(ii). GN 12(t) lists the following applicable changes in relation to heading 4811:

Chapter 48

- 3A. (A) A change to paper or paperboard in strips or rolls of a width not exceeding 15 cm of heading 4811 from strips or rolls of a width exceeding 15 cm of heading 4811, floor coverings on a base of paper or paperboard of heading 4811 or any other heading, except from headings 4817 through 4823;
- (B) A change to paper or paperboard in rectangular (including square) sheets with the larger dimension not exceeding 36 cm or the other dimension not exceeding 15 cm in the unfolded state of heading 4811 from...any other heading, except headings 4817 through 4832.

...

6. A change to headings 4817 through 4822 from any heading outside that group, except from heading 4823.

As discussed above, the subject filler paper enters Mexico as a product of heading 4802, but leaves the country and subsequently enters the U.S. as a product of heading 4811. Accordingly, we agree with your assertion that the filler paper is covered by GN 12(b)(ii)(A), insofar as it undergoes a change in tariff classification enumerated in GN 12(t) while in the territory of Mexico. We also note that CBP correctly determined the subject notebooks to be within the scope of GN 12(b)(ii)(A) because they underwent a change from heading 4802 to goods of heading 4820 while in Mexico, although this determination is not under dispute.

B. Country of Origin Marking as Goods of Mexico

GN 12(a)(ii) also requires, as a condition for preferential tariff treatment, that the subject NAFTA-originating merchandise qualify for marking as goods of Mexico under the NAFTA Marking Rules. Marking of imports is governed by section 304 of the Tariff Act of 1930, as amended (19 U.S.C. §1304), which mandates that, unless excepted, every article of foreign origin (or its container) imported into the U.S. 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 manner as to indicate to the ultimate purchaser the English name of the country of origin of the article.

Part 134, CBP Regulations (19 C.F.R. Part 134) implements the requirements of and exceptions to 19 U.S.C. §1304. 19 C.F.R. §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 this part; however, for a good of a NAFTA country, the NAFTA Marking Rules will determine the country of origin.

Section 134.1(j) provides that the “NAFTA Marking Rules” are the rules promulgated for purposes of determining whether a good is a good of a NAFTA country. Section 134.1(g) defines a “good of a NAFTA country” as an article for which the country of origin is Canada, Mexico or the United States, as determined under the NAFTA Marking Rules, which are explicated in 19 C.F.R. Part 102. Section 102.11 sets forth the required hierarchy for determining country of origin for marking purposes:

The following rules shall apply for purposes of determining the country of origin of imported goods other than textile and apparel products covered by § 102.21.

(a) The country of origin of a good is the country in which:

- (1) The good is wholly obtained or produced;
- (2) The good is produced exclusively from domestic materials; or
- (3) Each foreign material incorporated in that good undergoes an applicable change in tariff classification set out in § 102.20 and satisfies any other applicable requirements of that section, and all other applicable requirements of these rules are satisfied.

As discussed above, the subject goods are neither wholly obtained or produced in Mexico nor produced solely from materials originating from Mexico. Consequently, to qualify for marking as goods of Mexico, they must undergo changes in classification enumerated in 19 C.F.R. §102.20. Similar to GN 12(t), 19 C.F.R. §102.20(j) describes shifts to heading 4811 from all headings other than headings 4817 to 4823 and shifts to heading 4820 from any other heading.² As previously established, all of the subject goods undergo such shifts while in Mexico, insofar as the filler paper shifts from heading 4802 to heading 4811 and the notebooks shift from heading 4802 to heading 4820. Therefore, Mexico is the country of origin for all of the subject goods and the goods must be marked accordingly.

In your June 18, 2009 letter requesting revocation of NY N063779, you correctly assert that the filler paper is a “product of Mexico” pursuant to 19 C.F.R. §102. Yet, this assertion is completely consistent with CBP’s conclusion in NY N063779 that “the imported lined paper notebooks and filler paper are goods of Mexico for marking purposes.” Therefore, we affirm NY N063779.

HOLDING:

By application of GRI 1, the subject filler paper is classified under heading 4811, HTSUSA, specifically under subheading 4811.90.9080, HTSUSA, which provides for “Paper, paperboard, cellulose wadding and webs of cellulose fibers, coated, impregnated, covered, surface-colored, surface-decorated or printed, in rolls or rectangular (including square) sheets, of any size, other than goods of the kind described in heading 4803, 4809 or 4810: Other paper, paperboard, cellulose wadding and webs of cellulose fibers: Other: Other.” The column one, general rate of duty is free.

By application of GRIs 1 and 6, the subject composition notebooks are classified under heading 4820, HTSUSA, specifically under subheading 4820.10.2030, HTSUSA, which provides for “Registers, account books, notebooks, order books, receipt books, letter pads, memorandum pads, diaries and similar articles, exercise books, blotting pads, binders (looseleaf or other), folders, file covers, manifold business forms, interleaved carbon set: Registers, account books, notebooks, order books, receipt books, letter pads, memorandum pads, diaries and similar articles: Diaries, notebooks and address books, bound; memorandum pads, letter pads and similar articles: Sewn composition books with dimension of 152.4–381 mm (6” - 15”) inclusive

² 19 C.F.R. 102.20(j) provides, in relevant part, as follows:

...
A change to paper or paperboard in strips or rolls of a width not exceeding 15 cm of heading 4811 from strips or rolls of a width exceeding 15 cm of heading 4811 or any other heading, except from heading 4817 through 4823;

A change to paper or paperboard in rectangular (including square) sheets with the larger dimension not exceeding 36 cm or the other dimension not exceeding 15 cm in the unfolded state of heading 4811 from strips or rolls of a width exceeding 15 cm of heading 4811, paper or paperboard in rectangular (including square) sheets with the larger dimension exceeding 36 cm and the other dimension exceeding 15 cm in the unfolded state of heading 4811 or any other heading, except from heading 4817 through 4823...

...
A change to heading 4817 through 4822 from any other heading, including another heading within that group, except for a change to heading 4818 from sanitary towels and tampons, napkin and napkin liners for babies, and similar sanitary articles, of paper pulp, paper, cellulose wadding, or webs of cellulose fibers, of heading 9619...

(smaller side) x 222.5–381 mm (8.75" - 15"), inclusive (large side)." The column one, general rate of duty is free.

By application of GRIs 1 and 6, the subject spiral notebooks and wireless notebooks are classified under heading 4820, HTSUS, specifically under subheading 4820.10.2040, HTSUSA, which provides for "Registers, account books, notebooks, order books, receipt books, letter pads, memorandum pads, diaries and similar articles, exercise books, blotting pads, binders (looseleaf or other), folders, file covers, manifold business forms, interleaved carbon set: Registers, account books, notebooks, order books, receipt books, letter pads, memorandum pads, diaries and similar articles: Diaries, notebooks and address books, bound; memorandum pads, letter pads and similar articles: Other note books with dimension of 152.4–381 mm (6" - 15") inclusive (smaller side) x 222.5–381 mm (8.75" - 15"), inclusive (large side)." The column one, general rate of duty is free.

Because they satisfy General Note 12, HTSUSA, and 19 C.F.R. Parts 134 and 102, the subject filler paper, composition notebooks, spiral notebooks, and wireless notebooks are eligible for preferential tariff treatment under NAFTA, and should be marked as goods of Mexico.

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

EFFECT ON OTHER RULINGS:

New York Ruling Letter N057699 will be MODIFIED in accordance with the above analysis.

Sincerely,

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division



GENERAL NOTICE

19 CFR PART 177

REVOCAION OF TWO RULING LETTERS, PROPOSED MODIFICATION OF ONE RULING LETTER, AND REVOCAION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF CAT TOYS

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

ACTION: Notice of revocation of two rulings and modification of one ruling letter and revocation of treatment relating to the classification of cat toys.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementa-

tion Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (“CBP”) is revoking two rulings concerning the classification of the “Play-N-Squeak “Tail Spin” cat toy and the “Crazy Mouse” cat toy, as well as modifying one ruling concerning the classification of the “Cat Catch” cat toy, under the Harmonized Tariff Schedule of the United States (“HTSUS”). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed revocation was published on April 22, 2015, in Volume 49, No. 16, of the CUSTOMS BULLETIN. No comments were received in response to this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after September 28, 2015.

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

SUPPLEMENTARY INFORMATION:

Background

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

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), a notice was published in the CUSTOMS BULLETIN,

Volume 49, No. 16, on April 22, 2015, proposing to revoke CBP Ruling Letters NY N056253 (April 20, 2009) and NY D83727 (November 18, 1998) and modify CBP Ruling Letter NY M87177 (October 27, 2006), and any treatment accorded to substantially identical transactions. No comments were received in response to this notice.

As stated in the proposed notice, this revocation and modification will cover any rulings on this issue that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this Notice should have advised CBP during this notice period.

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

In NY N056253, NY D83727, and NY M87177, CBP ruled that cat toys are to be classified under HTSUS heading 8543, which provides for "Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof..." The referenced rulings are incorrect because as machines with a primarily mechanical function the cat toys ruled upon therein do not meet the description of an "electrical machine" of heading 8543 and thus more appropriately fall within the description of machines classified under heading 8479. As machines that are not otherwise classifiable anywhere else within the HTSUS and are not excluded from either Section XVI in general or Chapter 84 specifically, the cat toys ruled upon in NY N056253, NY D83727, and NY M87177 are properly classifiable under HTSUS heading 8479 as machines "having individual functions, not specified or included elsewhere in [Chapter 84]; parts thereof..."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking N056253 and NY D83727 and any other ruling not specifically identified, as well as modifying NY M87177 and any other appropriate ruling not identified, to reflect the proper classification of cat toys pursuant to the analysis set forth in Proposed Headquarters Ruling Letter H259644 (Attached). Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

Dated: July 1, 2015

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

Attachment

HQ H259644

July 1, 2015

OT:RR:CTF:TCM H259644 ALS

CATEGORY: Classification

TARIFF NO.: 8479.89.98

Ms. MARY COMPTON
CHB MANAGER
GLOBAL TRANSPORTATION SERVICES, INC.
18209 80TH AVE SOUTH, SUITE A,
KENT, WASHINGTON 98032

RE: Revocation of CBP Rulings NY N056253 and NY D83727; Modification of CBP Ruling NY M87177; Classification of Cat Toys

DEAR Ms. COMPTON:

In a letter to U.S. Customs and Border Protection (CBP) dated March 24, 2009, your company requested a tariff classification ruling under the Harmonized Tariff Schedule of HTSUS for the Play-N-Squeak “Tail Spin” cat toy.

In CBP Ruling NY N056253 (April 20, 2009), CBP classified the Play-N-Squeak “Tail Spin” cat toy under the Harmonized Tariff Schedule of the United States (HTSUS) subheading 8543.70.9650 as an electrical apparatus with individual functions. We have reviewed NY N056253 and find the ruling to be incorrect.

For the reasons set forth below, we hereby revoke NY N056253 as well as another ruling with a substantially similar cat toy, CBP Ruling NY D83727 (November 16, 1998). We also hereby modify CBP Ruling NY M87177 (October 27, 2006). We also find both of those rulings to be incorrect with respect to the similar cat toys classified therein.¹

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625 (c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), a notice was published in the CUSTOMS BULLETIN, Volume 49, No. 16, on April 22, 2015, proposing to revoke CBP Ruling Letters NY N056253 (April 20, 2009) and NY D83727 (November 18, 1998) and modify CBP Ruling Letter NY M87177 (October 27, 2006), and any treatment accorded to substantially identical transactions. No comments were received in response to the notice.

FACTS:

In NY N056253, CBP described the Play-N-Squeak “Tail Spin” cat toy, in pertinent part, as follows:

The merchandise subject to this ruling is the Play-N-Squeak “Tail Spin” cat toy. This item is comprised of a plastic housing in the shape of a tree stump. It measures approximately 4 ½ inches in height x 4 ½ inches in

¹ The “Crazy Mouse” cat toy was classified under the 1998 Supplement 1 edition of the HTSUS, under which subheading 8543.89.96 read as follows: “Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof : Other: Other.....” The “Crazy Mouse” cat toy was described in NY D83727 as follows: ...the “Crazy Mouse” is a battery operated representation of a mouse and is intended as a toy for use by a cat. When activated, the mouse moves back and forth in a circular motion by means of three built-in plastic wheels on its underside.

width. On the side of the tree stump is a small branch which contains an “On/Off” button. There are two openings located on the side of the tree stump. One opening contains a textile plush “mouse” which is suspended by a small spring; the other opening contains a simulated mouse tail that moves via a small electronic motor which is incorporated within this item. When the toy is activated, this device emits an electronic mouse squeak, while the artificial tail randomly emerges from the tree stump, enticing the cat to chase the tail and play with the mouse. In addition, this item features a sisal top for cats to scratch on. The toy operates on two “AA” batteries and contains replaceable mouse tail material. You suggest that the correct classification of this item is in subheading 6307.90.7500, HTSUS, which provides for toys for pets, of textile materials. This item is a composite good composed of textile, plastic, and electrical components. The textile materials do not impart the essential character. The electrical components impart the essential character. General Rule of Interpretation 3(b), HTSUS, noted.

ISSUE:

Is the mechanical function of the subject cat toy a primary function and therefore classifiable under HTSUS chapter 84 or is it subsidiary to the electrical function and therefore classifiable under HTSUS chapter 85?

LAW AND ANALYSIS:

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

8543	Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof:
8543.70	Other machines and apparatus:
8543.70.96	Other
8479	Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof:
8479.89	Other:
8479.89.98	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

² Note 5 to Chapter 95 of the HTSUS specifically excludes “pet toys” from classification in that chapter.

generally indicative of the proper interpretation of these headings. See T.D. 89.80, 54 Fed. Reg. 35127, 35128 (August 23, 1989). The ENs to heading 84.79 state that this heading is restricted to machinery having individual functions which:

- (a) Is not excluded from this Chapter by the operation of any Section or Chapter Note, and
- (b) Is not covered more specifically by a heading in any other Chapter of the Nomenclature, and
- (c) Cannot be classified in any other particular heading of this Chapter since:
 - (i) No other heading covers it by reference to its method of functioning, description or type, and
 - (ii) No other heading covers it by reference to its use or to the industry in which it is employed, or
 - (iii) It could fall equally well into two (or more) other such headings (general purpose machines).

The EN for heading 8543 specifically states that “the heading also includes electrical goods incorporating mechanical features **provided** that such features are subsidiary to the electrical function of the machine or appliance.” (**Emphasis** in original.)

The cat toy at issue herein and each case noted above have moving parts that work when given power from its battery source. The mechanical function of each cat toy is the movement of a featured part, whether it be the simulated mouse tail of the “Tail Spin,” the wand with a feather at its end of the “Cat Catch, or the replica mouse itself that comprises the “Crazy Mouse.” It is the moving part that the cat chases. The electrical function in each case, supplying power to the moving parts, actually supports the mechanical function of each toy, not the other way around. In fact, the articles noted in the exceptions listed in the EN for 8543 bear no resemblance to the cat toys at issue here. Thus, the mechanical functions in each case are not subsidiary to the electrical functions, thereby disqualifying each cat toy from being classified under heading 8543.

As machinery that is not otherwise classifiable anywhere else within the HTSUS and is not excluded from either Section XVI in general or Chapter 84 specifically, the Play-N-Squeak “Tail Spin” is properly classifiable under HTSUS subheading 8479.89.98 as an apparatus “having individual functions, not specified or included elsewhere in [Chapter 84]... Other: Other.” Likewise, the “Crazy Mouse” cat toy of NY D83727 and the “Cat Catch” cat toy of NY M87177 are also properly classifiable under HTSUS subheading 8479.89.98.

HOLDING:

The subject Play-N-Squeak “Tail Spin” cat toy is properly classified under HTSUS subheading 8479.89.98 as machines “having individual functions, not specified or included elsewhere in [Chapter 84];... Other: Other.” The general column 1 rate of duty is 2.5% *ad valorem*.

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

EFFECT ON OTHER RULINGS:

CBP Ruling NY N056253 (April 20, 2009) is hereby REVOKED.

CBP Ruling NY D83727 (November 16, 2008) is hereby REVOKED.

CBP Ruling NY M87177 (October 27, 2006) is hereby MODIFIED only with respect to the tariff classification of the “Cat Catch” cat toy.

Sincerely,

LEVA K. O’ROURKE

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

cc: Legal Department
Wal-Mart, Inc.
702 SW 8th Street
Bentonville, AR 72716–0215

Ms. Cathy Walsh
Delmar International, Inc.
1 Cross Island Plaza #115
Rosedale, NY 11422



GENERAL NOTICE
19 C.F.R. PART 177

**PROPOSED MODIFICATION OF SIX RULING LETTERS
AND REVOCATION OF TREATMENT RELATING TO
PREFERENTIAL TARIFF TREATMENT AND COUNTRY OF
ORIGIN MARKING UNDER THE NAFTA FOR CERTAIN
PREPARED NUTS**

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

ACTION: Notice of proposed modification of six ruling letters and revocation of treatment relating to preferential tariff treatment and country of origin marking under the North American Free Trade Agreement (“NAFTA”) for certain prepared nuts.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (“CBP”) intends to modify six ruling letters relating to preferential tariff treatment and country of origin marking under the NAFTA for certain prepared nuts. Similarly, CBP proposes to revoke any treatment

previously accorded by it to substantially identical transactions. Comments are invited on the correctness of the intended actions.

DATES: Comments must be received on or before August 28, 2015.

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

FOR FURTHER INFORMATION CONTACT: Antonio J. Rivera, Valuation and Special Programs Branch, at (202) 325-0226.

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, this notice advises interested parties that CBP intends to modify six ruling letters relating to preferential tariff treatment and country of origin marking under the NAFTA for certain prepared nuts. Although in this notice CBP is specifically referring to the modification of New York Ruling

Letter (NY) E87234, dated October 1, 1999, (Attachment A); NY F88926, dated January 13, 2000, (Attachment B); NY H84143, dated August 6, 2001, (Attachment C); NY H82352, dated August 10, 2001, (Attachment D); NY R02589, dated September 23, 2005, (Attachment E); and, NY N228118, dated August 8, 2012, (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 (19 U.S.C. § 1625 (c)(2)), as amended by section 623 of Title VI, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved with 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 E87234, CBP determined, in relevant part, that various raw nuts of unspecified origins imported into Canada, where they were roasted and blanched or salted, qualified for preferential tariff treatment under the NAFTA when imported into the United States. In NY F88926 and NY H84143, CBP determined, in relevant part, that raw macadamia nuts of Australian origin imported into Canada, where they were roasted and blanched or salted, qualified for preferential tariff treatment under the NAFTA, and were eligible to be marked as goods of Canada when imported into the United States. In NY H82352, CBP determined, in relevant part, that various raw nuts of U.S., Canadian, Indian and Brazilian origin imported into Canada, where they were roasted, salted and mixed with oil qualified for preferential tariff treatment under the NAFTA. In NY R02589, CBP determined, in relevant part, that raw cashew nuts from non-NAFTA countries imported into Canada, where they were roasted and salted and mixed with peanuts of U.S. origin, qualified for preferential tariff treatment under the NAFTA when the mixture was imported into the United States. Further, CBP determined that raw, non-originating cashews and raw, in-shell peanuts of U.S. origin, which were roasted and mixed together in Canada, were eligible to be marked as goods of

Canada; while raw, non-originating cashews and raw, shelled peanuts of U.S. origin were eligible to be marked as products of the United States. In NY N228118, CBP determined, in relevant part, that raw cashew nuts from various non-NAFTA countries imported into Canada, where they were heated, polished, cleaned, roasted (with or without oil) and salted, qualified for preferential tariff treatment under the NAFTA.

Based on our recent review of NY E87234, NYF88926, NY H84143, NY H82352, NY R02589, and NY N228118, it is now CBP's position that the prepared nuts do not qualify for preferential tariff treatment under the NAFTA and, in applicable cases, do not qualify to be marked as a good of a NAFTA country.

Pursuant to 19 U.S.C. §1625(c)(1), CBP intends to modify NY E87234, NYF88926, NY H84143, NY H82352, NY R02589, and NY N228118, and any other ruling not specifically identified that is contrary to the determination set forth in this notice to reflect the proper requirements for prepared nuts to qualify for preferential tariff treatment under the NAFTA and to be marked as a good of a NAFTA country, pursuant to the analysis set forth in proposed Headquarters Ruling Letters (HQ) H243329 (Attachment G), HQ H256782 (Attachment H), HQ H256783 (Attachment I), HQ H256785 (Attachment J), HQ H256784 (Attachment K), and HQ H256781 (Attachment L). Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions that are contrary to the determination set forth in this notice. Before taking this action, consideration will be given to any written comments timely received.

Dated: July 9, 2015

MONIKA R. BRENNER
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

[ATTACHMENT A]

NY E87234

October 1, 1999

CLA-2-20:RR:NC:2:231 E87234

CATEGORY: Classification

TARIFF NO.: 2008.19.8500

Ms. CAROL HAGYARD
A.N. DERINGER, INC.
1010 NIAGARA STREET
BUFFALO, NY 14213

RE: The tariff classification and status under the North American Free Trade Agreement (NAFTA) of a mixture of roasted and salted nuts from Canada; Article 509

DEAR Ms. HAGYARD:

In your letter, dated September 17, 1999, on behalf of your client, John Vince Foods, Downsview, Ontario, you have requested a ruling on the status of mixtures of nuts from Canada under the NAFTA.

The merchandise is a snack product that consists of a mixture of nuts packed in a can. The ingredients are blanched, extra large Virginia peanuts, unblanched, jumbo runner peanuts, fancy, whole cashews, almonds, Brazil nuts, blanched filberts, and pecans that have been roasted separately in peanut oil and/or partially hydrogenated soybean oil and lightly salted. Jumbo runner peanuts or medium Virginia peanuts may be used if extra large Virginia peanuts are not available.

In your correspondence you indicate that raw nuts will be imported into Canada and roasted, blanched, and/or salted at the John Vince Food plant.

The applicable tariff provision for the mixture of nuts will be 2008.19.8500, Harmonized Tariff Schedule of the United States (HTS), which provides for fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included, nuts, peanuts (ground-nuts) and other seeds, whether or not mixed together, other, including mixtures, other, including mixtures, mixtures. The general rate of duty will be 23.3 percent ad valorem.

Each of the non-originating materials used to make the mixture of nuts has satisfied the changes in tariff classification required under HTSUSA General Note 12(t)/20.4. Upon compliance with all applicable laws, regulations, and agreements under NAFTA, articles from Canada classifiable in subheading 2008.19.8500, HTS, will be subject to a free rate of duty.

This ruling is being issued under the provisions of Part 181 of the Customs Regulations (19 CFR 181).

This ruling letter is binding only as to the party to whom it is issued and may be relied on only by that party.

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 Thomas Brady at (212) 637-7064.

Sincerely,

ROBERT B. SWIERUPSKI,

Director

National Commodity Specialist Division

[ATTACHMENT B]

NY F88926

January 13, 2000

CLA-2-20:RR:NC:2:231 F88926

CATEGORY: Classification and marking

TARIFF NO.: 2008.19.9010

Ms CECELIA CASTELLANOS
WESTERN OVERSEAS CORPORATION
1855 CORONADO AVENUE
LONG BEACH, CA 90804

RE: The tariff classification and country of origin marking under the North American Free Trade Agreement (NAFTA) of macadamia nut kernels of Australian origin that are roasted and salted in Canada and exported to the US; Article 509

DEAR Ms. CASTELLANOS:

In your letter, dated June 20, 2000, on behalf of your client, Macadamia Processing Company Limited, Lismore, Australia, you requested a ruling on the tariff classification and country of origin marking of macadamia nut kernels of Australian origin that are roasted and salted in Canada and exported to the United States under the NAFTA.

The merchandise is comprised of raw macadamia nut kernels of Australian origin that are exported in bulk from Australia to Canada for roasting and salting. The nuts will then be shipped to the United States in bulk vacuum packaging of 5 or 10 pound bags. The nuts will be sold commercially in the United States to institutions preparing food; they are not for retail sale as imported.

In your letter you ask whether the process of roasting and salting qualify the nuts as “nuts of Canadian origin” for country of origin marking purposes, and whether they are subject to NAFTA preference for duty purposes.

The applicable subheading for macadamia nuts will be 2008.19.9010, Harmonized Tariff Schedule of the United States (HTS), which provides for fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included, nuts, peanuts (ground-nuts) and other seeds, whether or not mixed together, other, including mixtures, other, including mixtures, other, macadamia nuts. The general rate of duty will be 17.9 percent ad valorem.

Each of the non-originating materials has satisfied the changes in tariff classification required under HTSUSA General Note 12(t)/20.4. This product will be entitled to a free rate of duty under the NAFTA upon compliance with all applicable laws, regulations, and agreements.

The marking rules used for determining whether a good is a good of a NAFTA country are contained in Part 102, Customs Regulations. Part 102 of the Customs Regulations sets forth the “Rules of Origin” for the purposes of determining whether a good is a good of a NAFTA country for marking purposes. Section 102.11 articulates the required hierarchy for determining country of origin for marking purposes.

Section 102.11(a)(3) states that the country of origin of a good is the country in which “each foreign material incorporated in that good undergoes an applicable change in tariff classification set out in Section 102.20 and satisfies

any other applicable requirements of that section, and all other applicable requirements of these rules are satisfied.” Section 102.20(d) articulates the tariff shifts that are required for merchandise that is classifiable in chapter 20, HTS.

Applying the NAFTA Marking Rules set forth in Part 102 of the Customs Regulations to the facts of this case, we find that for marking purposes, these goods are of Canadian origin. A tariff shift has occurred, as per CR 102.20(d).

Accordingly, raw macadamia nut kernels of Australian origin that are roasted and salted in Canada and exported to the United States, are products of Canada for the purposes of country of origin marking.

This ruling is being issued under the provisions of Part 181 of the Customs Regulations (19 CFR 181).

This ruling letter is binding only as to the party to whom it is issued and may be relied on only by that party.

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 Thomas Brady at (212) 637-7064.

Sincerely,

ROBERT B. SWIERUPSKI,

Director

National Commodity Specialist Division

[ATTACHMENT C]

NY H84143

August 6, 2001

CLA-2-20:RR:NC:2:231 H84143

CATEGORY: Classification and marking

TARIFF NO.: 2008.19.9010

MR. RODNEY RALSTON
TRANS-BORDER CUSTOMS SERVICES, INC.
ONE TRANS-BORDER DRIVE
P.O. BOX 800
CHAMPLAIN, NY 12919

RE: The tariff classification and country of origin marking under the North American Free Trade Agreement (NAFTA) of macadamia nut kernels of Australian origin that are roasted and salted in Canada and exported to the US; Article 509

DEAR MR. RALSTON:

In your letter, dated July 20, 2001, on behalf of your client, Papco Foods, Inc., St-Laurent, Québec, you requested a ruling on the tariff classification and country of origin marking of macadamia nut kernels of Australian origin that are roasted and salted in Canada and exported to the United States under the NAFTA.

The merchandise is comprised of raw macadamia nut kernels of Australian origin that are exported from Australia to Canada for roasting and salting. The nuts will then be shipped to the United States in bags of 1 or 2 pounds or in bulk bags of 5 or 10 pounds.

In your letter you ask whether the process of roasting and salting qualify the nuts as “nuts of Canadian origin” for country of origin marking purposes, and whether they are subject to NAFTA preference for duty purposes.

The applicable subheading for macadamia nuts will be 2008.19.9010, Harmonized Tariff Schedule of the United States (HTS), which provides for fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included, nuts, peanuts (ground-nuts) and other seeds, whether or not mixed together, other, including mixtures, other, including mixtures, other, macadamia nuts. The general rate of duty will be 17.9 percent ad valorem.

Each of the non-originating materials has satisfied the changes in tariff classification required under HTSUSA General Note 12(t)/20.4. This product will be entitled to a free rate of duty under the NAFTA upon compliance with all applicable laws, regulations, and agreements.

The marking rules used for determining whether a good is a good of a NAFTA country are contained in Part 102, Customs Regulations. Part 102 of the Customs Regulations sets forth the “Rules of Origin” for the purposes of determining whether a good is a good of a NAFTA country for marking purposes. Section 102.11 articulates the required hierarchy for determining country of origin for marking purposes.

Section 102.11(a)(3) states that the country of origin of a good is the country in which “each foreign material incorporated in that good undergoes an applicable change in tariff classification set out in Section 102.20 and satisfies any other applicable requirements of that section, and all other applicable

requirements of these rules are satisfied.” Section 102.20(d) articulates the tariff shifts that are required for merchandise that is classifiable in chapter 20, HTS.

Applying the NAFTA Marking Rules set forth in Part 102 of the Customs Regulations to the facts of this case, we find that for marking purposes, these goods are of Canadian origin. A tariff shift has occurred, as per CR 102.20(d).

Accordingly, raw macadamia nut kernels of Australian origin that are roasted and salted in Canada and exported to the United States, are products of Canada for the purposes of country of origin marking.

This ruling is being issued under the provisions of Part 181 of the Customs Regulations (19 CFR 181).

This ruling letter is binding only as to the party to whom it is issued and may be relied on only by that party.

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 Thomas Brady at (212) 637-7064.

Sincerely,

ROBERT B. SWIERUPSKI,

Director

National Commodity Specialist Division

[ATTACHMENT D]

NY H82352

August 10, 2001

CLA-2-20:RR:NC:2:231 H82352

CATEGORY: Classification

TARIFF NO.: 2008.19.8500

MR. STEVE DECASTRO
ALL-WAYS FORWARDING INTERNATIONAL, INC.
701 NEWARK AVENUE, SUITE 300
ELIZABETH, NJ 07208

RE: The tariff classification and status under the North American Free Trade Agreement (NAFTA) of mixtures of roasted and salted nuts from Canada; Article 509

DEAR MR. DECASTRO:

In your letter, dated June 11, 2001, on behalf of your client, Star Snacks, Jersey City, NJ, you have requested a ruling on the status of mixtures of nuts from Canada under the NAFTA.

The merchandise is described as 16 ounce, retail pack tins of "Mixed Nuts," consisting of 26.4 percent by weight of peanuts and 21.55 percent red skin peanuts (country of origin, Canada or the U.S.A.), 16.46 percent cashews (origin, India), 13.21 percent Brazil nuts (origin, Brazil) and 11.97 percent unbleached almonds, 5.98 percent unbleached filberts and 4.49 percent pecans (origin, all U.S.A.).

In your correspondence you indicate that the country of exportation will be Canada. The condition of the nuts when they are imported into Canada is sometimes raw and at other times roasted. The nuts are brought into the country of exportation both in bags and boxes. When the nuts enter Canada in a raw condition, they are roasted, salted, and mixed with other ingredients (salt, oil, and other nuts). When the nuts enter Canada in a roasted condition, Star Snacks will re-salt, re-oil and pack the product in its final export container.

The applicable subheading for these retail packed "Mixed Nuts" will be 2008.19.8500, Harmonized Tariff Schedule of the United States (HTS), which provides for fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included, nuts, peanuts (ground-nuts) and other seeds, whether or not mixed together, other, including mixtures, other, including mixtures, mixtures. The general rate of duty will be 22.4 percent ad valorem.

Regarding the issue of NAFTA origination, your ruling request states that the nuts, when imported into the country of exportation, will sometimes be raw, and at other times roasted. The criteria for origination are a chapter shift. General Note 12(t)/20.4 states, "A change to subheadings 2008.19 through 2008.99 from any other chapter."

The nuts are:

peanuts
from Canada or the U.S.A.

almonds, pecans, filberts
from the USA

cashews
from India

Brazil nuts
from Brazil

Accordingly, if the cashews and Brazil nuts are imported raw into Canada, then each of the non-originating materials used to make the mixture of nuts has satisfied the changes in tariff classification required under HTSUSA General Note 12(t)/20.4. Upon compliance with all applicable laws, regulations, and agreements under the NAFTA, articles from Canada classifiable in subheading 2008.19.8500, HTS, will be subject to a free rate of duty.

If the cashews and/or Brazil nuts are imported roasted into Canada, then the merchandise does not qualify for preferential treatment under the NAFTA because one or more of the non-originating materials (the cashews and/or Brazil nuts) used in the production of the goods will not undergo the change in tariff classification required by General Note 12(t)/20.4. Under this scenario, the mixture of nuts will not be considered to be eligible products for preferential duty treatment under the NAFTA regulations.

Additional requirements may be imposed on these products by the Food and Drug Administration. You may contact the FDA at

Food and Drug Administration Waterview Corp. Cntr.

10 Waterview Boulevard, 3rd Floor Parsippany, NJ 07054

This ruling is being issued under the provisions of Part 181 of the Customs Regulations (19 CFR 181).

This ruling is binding only as to the party to whom it is issued and may be relied on only by that party.

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 Thomas Brady at 212-637-7064.

Sincerely,

ROBERT B. SWIERUPSKI,

Director

National Commodity Specialist Division

[ATTACHMENT E]

NY R02589

September 23, 2005

CLA-2-20:RR:NC:2:231 R02589

CATEGORY: Classification

TARIFF NO.: 2008.19.8500

Ms. SHERI G. LAWSON
WILLSON INTERNATIONAL, INC.
250 COOPER AVENUE, SUITE 102
TONOWANDA, NY 14150

RE: The tariff classification, country of origin marking and status under the North American Free Trade Agreement (NAFTA), of Mixed Roasted and Salted Nuts from Canada; Article 509

DEAR Ms. LAWSON:

In your letter dated September 19, 2005, you requested a ruling on the status of mixed roasted and salted nuts from Canada under the NAFTA on behalf of your client, John Vince Foods of Ontario, Canada.

The product in question, called "Classic Mix," is said to consist of 50 percent by weight of roasted and salted cashews and 50 percent of roasted and salted peanuts. The cashews are imported into Canada as raw, shelled nuts, and are the product of Brazil, Indonesia or other offshore countries. The peanuts are of U.S. origin, and are imported into Canada either blanched and shelled under tariff heading 2008.11, HTS, or as raw, in-shell peanuts (heading 1202.10).

You state that, in Canada, the cashews and peanuts are oil roasted and salted individually. The roasted nuts are then layered onto a mixing table and, as the mixing table is emptied, the product is mixed as it drops into a tote. The mixed product is then packaged into see-through plastic containers of 500 grams (17.64 ounces), net, which are then packed for export into the United States.

The applicable tariff provision for this "Classic Mix" of cashews and peanuts will be 2008.19.8500, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included: nuts, peanuts (ground-nuts) and other seeds, whether or not mixed together: Other, including mixtures: mixtures. The general rate of duty will be 22.4 percent ad valorem.

General Note 12(b), HTSUS, sets forth the criteria for determining whether a good is originating under the NAFTA. General Note 12(b), HTSUS, (19 U.S.C. § 1202) states, in pertinent part, that

For the purposes of this note, goods imported into the customs territory of the United States are eligible for the tariff treatment and quantitative limitations set forth in the tariff schedule as "goods originating in the territory of a NAFTA party" only if—

- (i) they are goods wholly obtained or produced entirely in the territory of Canada, Mexico and/or the United States; or
- (ii) they have been transformed in the territory of Canada, Mexico and/or the United States so that—

(A) except as provided in subdivision (f) of this note, each of the non-originating materials used in the production of such goods undergoes a change in tariff classification described in subdivisions (r), (s) and (t) of this note or the rules set forth therein, or

(B) the goods otherwise satisfy the applicable requirements of subdivisions (r), (s) and (t) of this note or the rules set forth therein, or

(iii) they are goods produced entirely in the territory of Canada, Mexico and/or the United States exclusively from originating materials; or

Based on the facts provided, the goods described above qualify as originating goods, because they will meet the requirements of HTSUSA General Note 12(b)(iii). General Note 12(a)(i), HTSUS, requires, however, that, in order to be eligible for NAFTA preferential treatment, such goods must also qualify to be marked as goods of Canada under the terms of the marking rules set forth in regulations issued by the Secretary of the Treasury.

The marking statute, section 304, 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 U.S. 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 U.S. the English name of the country of origin of the article. Part 134, Customs Regulations (19 CFR Part 134) implements the country of origin marking requirements and exceptions of 19 U.S.C. 1304.

The country of origin marking requirements for a “good of a NAFTA country” are also determined in accordance with Annex 311 of the North American Free Trade Agreement (“NAFTA”), as implemented by section 207 of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat 2057) (December 8, 1993) and the appropriate Customs Regulations. The Marking Rules used for determining whether a good is a good of a NAFTA country are contained in Part 102, Customs Regulations. The marking requirements of these goods are set forth in Part 134, Customs Regulations.

Section 134.1(b) of the regulations, defines “country of origin” as the country of manufacture, production, or growth of any article of foreign origin entering the U.S. 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 this part; however, for a good of a NAFTA country, the NAFTA Marking Rules will determine the country of origin. (Emphasis added).

Section 134.1(j) of the regulations, provides that the “NAFTA Marking Rules” are the rules promulgated for purposes of determining whether a good is a good of a NAFTA country. Section 134.1(g) of the regulations, defines a “good of a NAFTA country” as an article for which the country of origin is Canada, Mexico or the United States as determined under the NAFTA Marking Rules. Section 134.45 (a)(2) of the regulations, provides that a “good of a NAFTA country” may be marked with the name of the country of origin in English, French or Spanish.

You state that the imported mixture of roasted cashews and roasted peanuts are processed in Canada prior to being imported into the U.S. Since Canada is defined under 19 CFR 134.1(g), as a NAFTA country, we must first

apply the NAFTA Marking Rules in order to determine whether the imported mixture is a “good of a NAFTA country”, and thus subject to the NAFTA marking requirements.

Part 102 of the regulations, sets forth the “NAFTA Marking Rules” for purposes of determining whether a good is a good of a NAFTA country for marking purposes. Section 102.11 of the regulations, sets forth the required hierarchy for determining country of origin for marking purposes.

Applying the NAFTA Marking Rules set forth in Part 102 of the regulations to the facts of this case, we find two results. When the “Classic Mix” is processed from raw, shelled cashews of foreign origin and raw, in-shell peanuts of U.S. origin, that product is a good of Canada for marking purposes. When the “Classic Mix” is processed from raw, shelled cashews of foreign origin and blanched and shelled peanuts of U.S. origin, that product is a good of the United States for marking purposes.

Accordingly, under the first set of facts, the “Classic Mix” will be subject to the marking regulations in 19 U.S.C. § 1304, and must be marked as a “Product of Canada.” Under the second set of facts, as U.S. goods, the “Classic Mix” is not subject to the marking regulations in 19 U.S.C. § 1304, since it would not be considered a foreign good. The Federal Trade Commission (rather than the Bureau of Customs and Border Protection) regulates the marking of American goods.

For duty purposes, Part 102.19(b) of the regulations provides that, when goods, whose country of origin is determined to be the United States, are returned, after having been advanced in value or improved in condition in another NAFTA country, the country of origin of such good for Customs duty purposes is the last NAFTA country in which that good was advanced in value or improved in condition before its return to the United States. Accordingly, under either set of facts, the “Classic Mix” of roasted and salted cashews and peanuts will be entitled to a Free rate of duty under the NAFTA upon compliance with all applicable laws, regulations, and agreements.

This ruling is being issued under the provisions of Part 181 of the Customs Regulations (19 C.F.R. 181).

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 Thomas P. Brady at 646-733-3030.

Sincerely,

ROBERT B. SWIERUPSKI,
Director

National Commodity Specialist Division

[ATTACHMENT F]

NY N228118

August 8, 2012

CLA-2-20:OT:RR:NC:N2:231

CATEGORY: Classification

TARIFF NO.: 2008.19.1040

MR. KEVIN J. SULLIVAN
BAKER & MCKENZIE LLP
815 CONNECTICUT AVE., NW
WASHINGTON, DC 20006-4078

RE: The tariff classification and status under the North American Free Trade Agreement (NAFTA), of roasted and salted cashews from Canada; Article 509

DEAR MR. SULLIVAN:

In your letter dated July 26, 2012, you requested a ruling on the status of roasted, salted cashews from Canada under the NAFTA. Your letter was submitted on behalf of your client, Harvest Manor Farms, LLC (El Paso, TX).

You have outlined a scenario in which raw, shelled cashews will initially be imported into Canada from various suppliers from non-NAFTA countries. In Canada, the nuts will first be inspected and subjected to a heat process intended to bring them to an ambient temperature to control breakage during subsequent processing. After heating, the cashews will be re-inspected and then polished and cleaned by being passed through a high-efficiency aspirator. The cashews will then be placed into either an oil or dry roaster. After roasting, the nuts will undergo a salting operation. After salting, the cashews will be inspected again and then packed, either whole or halved, in retail containers of various types and sizes. They will then be imported into the United States. You state that the ingredients of the finished, imported merchandise will be cashews, sea salt and peanut oil (from the roaster).

The applicable tariff provision for the roasted, salted cashews will be 2008.19.1040, Harmonized Tariff Schedule of the United States (HTSUS), which provides for fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included: nuts, peanuts (ground-nuts) and other seeds, whether or not mixed together: other, including mixtures: Brazil nuts and cashews: cashews. The general 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/>.

General Note 12(a)(i), HTSUS, requires, for NAFTA eligibility, that goods produced in Canada must originate in the territory of a NAFTA party, under the terms of GN 12, and that they qualify to be marked as goods of Canada under the terms of the marking rules for NAFTA goods.

General Note 12(b), HTSUS, sets forth the criteria for determining whether a good is originating under the NAFTA. General Note 12(b), HTSUS, (19 U.S.C. § 1202) states, in pertinent part, that

For the purposes of this note, goods imported into the customs territory of the United States are eligible for the tariff treatment and quantitative limitations set forth in the tariff schedule as “goods originating in the territory of a NAFTA party” only if—

(i) they are goods wholly obtained or produced entirely in the territory of Canada, Mexico and/or the United States; or

(ii) they have been transformed in the territory of Canada, Mexico and/or the United States so that—

(A) except as provided in subdivision (f) of this note, each of the non-originating materials used in the production of such goods undergoes a change in tariff classification described in subdivisions (r), (s) and (t) of this note or the rules set forth therein, or

(B) the goods otherwise satisfy the applicable requirements of subdivisions (r), (s) and (t) where no change in tariff classification is required, and the goods satisfy all other requirements of this note; or

(iii) they are goods produced entirely in the territory of Canada, Mexico and/or the United States exclusively from originating materials; or ...

Based on the facts provided, the goods described above will meet the requirements of HTSUS General Note 12(b)(ii)(A), via GN 12(t)20.4. (GN 12(s)(ii), which sets forth an exception for products that merely undergo roasting or other specified processing, is not triggered here because the nuts at issue additionally undergo a salting process after roasting.) Similarly, the goods qualify to be marked as goods of Canada under the NAFTA marking rules (19 CFR 102.11(a)(3), via §102.20 (d)).

In light of the foregoing, the imported roasted, salted cashew nuts are originating goods under the NAFTA and will qualify for NAFTA preferential treatment.

This merchandise is subject to The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (The Bioterrorism Act), which is regulated by the Food and Drug Administration (FDA). Information on the Bioterrorism Act can be obtained by calling FDA at 301-575-0156, or at the Web site www.fda.gov/oc/bioterrorism/bioact.html.

This ruling is being issued under the provisions of Part 181 of the Customs Regulations (19 C.F.R. 181).

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 Nathan Rosenstein at (646) 733-3030.

Sincerely,

THOMAS J. RUSSO

Director

National Commodity Specialist Division

[ATTACHMENT G]

HQ H243329

OT:RR:CTF:VS H243329 AJR

CATEGORY: NAFTA

Ms. CAROL HAGYARD
A.N. DERINGER, INC.
173 WEST SERVICE ROAD
CHAMPLAIN, NY 12919

RE: Modification of NY E87234; NAFTA; GN 12, HTSUS; Mixture of Roasted and Salted Nuts from Canada

DEAR Ms. HAGYARD:

This is in reference to New York Ruling Letter (“NY”) E87234, dated October 1, 1999, issued to you on behalf of your client, John Vince Foods of Downsview, Ontario. At issue was the tariff classification of mixed nuts and their eligibility for preferential tariff treatment under the North American Free Trade Agreement (“NAFTA”). In NY E87234, U.S. Customs and Border Protection (“CBP”) determined, in relevant part, that various raw nuts of unspecified origins imported into Canada, where they were roasted and blanched or salted, qualified for preferential tariff treatment under the NAFTA when imported into the United States; however, the decision failed to consider whether the nuts qualified to be marked as a product of Canada. It is now our position that the nuts do not qualify for preferential tariff treatment under the NAFTA. For the reasons described in this ruling, we hereby modify NY E87234.

The tariff classification of the roasted and blanched or salted nut mixture under the Harmonized Tariff Schedule of the United States (“HTSUS”) when imported from Canada is unaffected.

FACTS:

NY E87234 stated, in relevant part:

The merchandise is a snack product that consists of a mixture of nuts packed in a can. The ingredients are blanched, extra large Virginia peanuts, unblanched, jumbo runner peanuts, fancy, whole cashews, almonds, Brazil nuts, blanched filberts, and pecans that have been roasted separately in peanut oil and/or partially hydrogenated soybean oil and lightly salted. Jumbo runner peanuts or medium Virginia peanuts may be used if extra large Virginia peanuts are not available.

In your correspondence you indicate that raw nuts will be imported into Canada and roasted, blanched, and/or salted at the John Vince Food plant.

CBP found that each of the non-originating nuts used to make the nut mixture, classified in subheading 2008.19.85, HTSUS, satisfied the changes in tariff classification required under General Note (“GN”) 12(t)/20.4, HTSUS, and that, upon compliance with all applicable laws, regulations, and agreements under the NAFTA, the nut mixture would be subject to a free tariff rate when imported into the United States.

ISSUE:

Whether the nut mixture described in NY E87234 qualifies for preferential tariff treatment under the NAFTA?

LAW AND ANALYSIS:

Pursuant to GN 12, HTSUS, for an article to be eligible for NAFTA preference, two requirements must be satisfied. First, the article in question must be “originating” under the terms of GN 12, HTSUS, and second, the article must qualify to be marked as a good of a NAFTA country under the NAFTA Marking Rules contained in 19 CFR § 102.20.

With regard to the first requirement, GN 12(b), HTSUS, provides, in pertinent part:

For the purposes of this note, goods imported into the customs territory of the United States are eligible for the tariff treatment and quantitative limitations set forth in the tariff schedule as “goods originating in the territory of a NAFTA party” only if –

...

ii) they have been transformed in the territory of Canada, Mexico and/or the United States so that—

(A) except as provided in subdivision (f) of this note, each of the non-originating materials used in the production of such goods undergoes a change in tariff classification described in subdivision (r), (s) and (t) of this note or the rules set forth therein, or

(B) the goods otherwise satisfy the applicable requirements of subdivision (r), (s) and (t) where no change in tariff classification is required, and the goods satisfy all other requirements of this note [.]

Raw nuts are classified under various headings of Chapter 8, HTSUS. In understanding the language of 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 Harmonized System at the international level. *See* T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989). The ENs to Chapter 8, HTSUS, explain that nuts prepared according to Chapter 20, HTSUS, are excluded from Chapter 8, HTSUS. Mixed nut preparations are classified under subheading 2008.19, HTSUS. The ENs to heading 2008, HTSUS, explain that this heading includes oil-roasted nuts whether or not containing or coated with salt. In this case, various types of raw nuts were imported from unspecified countries into Canada, where they were roasted and blanched and/or salted, and thus correctly classified under subheading 2008.19.85, HTSUS.

The applicable rule in subdivision (t) provides for “a change to subheadings 2008.19 through 2008.99 from any other chapter.” *See* GN 12(t)/20.4, HTSUS. However, GN 12(s), Exceptions to Change in Tariff Classification Rules, HTSUS, provides, in relevant part:

(ii) Fruit, nut and vegetable preparations of chapter 20 that have been prepared or preserved merely by freezing, by packing (including canning) in water, brine or natural juices, or by roasting, either dry or in oil (including processing incidental to freezing, packing, or roasting), shall be treated as an originating good only if the fresh good were wholly produced or obtained entirely in the territory of one or more NAFTA parties.

Accordingly, though the non-originating nuts appear to undergo the requisite tariff shift from Chapter 8, HTSUS, to subheading 2008.19.85, HTSUS, if the above exception applies, then the nuts do qualify for preferential tariff treatment under the NAFTA.

As provided in relevant part by GN 12(s)(ii), HTSUS, when nut preparations are prepared “merely” by roasting or processing “incidental” to roasting, then the origin of the nuts in their “fresh” state determines the origin of the good. The “fresh” state refers to the state of the nuts before they were roasted or processed in a manner incidental to roasting. Thus, for such nut preparations to be originating, the “fresh” nuts used to make the good must be wholly obtained or produced entirely in the territory of one or more of NAFTA parties (Mexico, Canada, or the United States). That is, non-originating nuts that, while in a NAFTA territory, are merely roasted, or processed in a manner incidental to roasting, will not be treated as originating nuts.

The term “merely” is not specifically defined in GN 12, HTSUS, but per its dictionary definition means “only (what is referred to) and nothing more.” Read in the context of GN 12, HTSUS, the term “merely” means that the processes listed in GN 12(s)(ii), HTSUS, by themselves, are insufficient to qualify non-originating nuts for preferential tariff treatment under the NAFTA, despite changing tariff classifications per GN 12(b)(ii), HTSUS, and GN 12(t)/20.4, HTSUS. Thus, we find that the purpose of GN 12(s)(ii), HTSUS, is to ensure that goods undergo sufficient processing in a NAFTA country, beyond the listed processes, in order to be considered originating for purposes of GN 12(b)(ii), HTSUS.

The term “incidental” is also not specifically defined in GN 12, HTSUS, but per its dictionary definition means “occurring or liable to occur in fortuitous or subordinate conjunction with something else of which it forms no essential part.” Applying this definition to GN 12(s)(ii), HTSUS, the term “incidental” indicates a process that may happen with or as a result of roasting, but is secondary to, or of lesser importance than, the process of roasting.

We find that “salting” is precisely the type of lesser process contemplated by the note as incidental. Salting often occurs in connection not only with roasting, as in this case, but also with canning or freezing. It is the roasting, canning, or freezing processes which are the means by which the products are principally prepared. By contrast, salting has far less consequences to the essential character of the product. Moreover, the addition of salt like other flavors, spices, or other ingredients is a relatively simple process and does not require a prescribed amount to be added.

Given that roasting by itself would not be sufficient to make a nut an originating good per GN 12 (s)(ii), HTSUS, it would defeat the purpose of such note to conclude that “salting” would provide otherwise. Furthermore, the ENs to Chapter 20, HTSUS, state, in relevant part:

This heading covers fruits, nuts and other edible parts of plants, whether whole, in pieces or crushed, including mixtures thereof, prepared or preserved otherwise than by any of the processes specified in other Chapters or in the preceding headings of this Chapter.

It includes, *inter alia*:

- (1) Almonds, ground-nuts, areca (or betel) nuts and other nuts, dry-roasted, oil roasted or fat-roasted, whether or not containing or coated with vegetable oil, salt, flavours, spices or other additives.

...

(9) Fruit, nuts, fruit-peel and other edible parts of plants (other than vegetables), preserved by sugar and put in syrup (e.g. marrons glacés or giner), whatever the packing.

Moreover, while the ENs to Chapter 20, HTSUS, mention “salt,” the references to “dry-roasted, oil-roasted or fat-roasted” and “preserved by sugar and put in syrup” indicate the principal processes of preparation or preservation that would change the classification of nuts from Chapter 8, HTSUS, to Chapter 20, HTSUS. The fact that “salt” is mentioned with reference to the types of roasting, but is not specifically mentioned as a process of preparation or preservation, suggests that “salting” is something that may happen with or as a result of roasting nuts, but whether the nuts are salted, or not, is not essential to the preparation; what is essential to the preparation is the roasting. For all of the foregoing reasons, we find that for purposes of GN 12(s)(ii), HTSUS, the term “processing incidental to freezing, packing, or roasting,” includes the process of “salting.”

This interpretation of GN 12(s)(ii), HTSUS, is further supported by Headquarters Ruling Letter (“HQ”) H243328, dated August 19, 2013, which considered “salting” to be a process incidental to roasting with regard to a provision from the United States-Korea Free Trade Agreement (“UKFTA”) that is parallel to GN 12(s)(ii), HTSUS. HQ H243328 affirms the decision in HQ H240383, dated May 3, 2013, determining the origin of the nuts from their “fresh” state on the basis that “salting and roasting [...] qualify as ‘processing incidental’ to roasting.”

Accordingly, we find that salting is a process incidental to roasting and does not render the product originating. Rather, the origin of the product is determined by the origin of the “fresh” state per GN 12(s)(ii), HTSUS.

Given the foregoing, the roasted, blanched and/or salted mixed nuts may not be treated as originating because they do not meet the requirements of GN 12(s)(ii), HTSUS; that is, they were not wholly obtained or produced entirely in Mexico, Canada, or the United States as fresh nuts. Therefore, the prepared mixed nuts imported from Canada do not qualify for preferential tariff treatment under the NAFTA.

HOLDING:

NY E87234 is modified to reflect that, by application of GN 12(s)(ii), HTSUS, the prepared nut mixture imported from Canada is not eligible for preferential tariff treatment under the NAFTA. The tariff classification of the prepared nut mixture, subheading 2008.19.85, HTSUS, is unchanged.

EFFECT ON OTHER RULINGS:

NY E87234, dated October 1, 1999, is hereby 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

[ATTACHMENT H]

HQ H256782

OT:RR:CTF:VS H256782 AJR

CATEGORY: NAFTA

Ms. CECELIA CASTELLANOS
WESTERN OVERSEAS CORPORATION
10731 WALKER STREET
CYPRESS, CA 90630-4757

RE: Modification of NY F88926; NAFTA; GN 12, HTSUS; 19 C.F.R. § 102.20 - Country of Origin Marking; Macadamia Nuts Roasted and Salted in Canada

DEAR Ms. CASTELLANOS:

This is in reference to New York Ruling Letter (“NY”) F88926, dated January 13, 2000, issued to you on behalf of your client, Macadamia Processing Company Limited of Lismore, Australia. At issue was the tariff classification of macadamia nuts, their eligibility for preferential tariff treatment under the North American Free Trade Agreement (“NAFTA”), and their country of origin marking. In NY F88926, U.S. Customs and Border Protection (“CBP”) determined, in relevant part, that raw macadamia nuts of Australian origin imported into Canada, where they were roasted and blanched or salted, qualified for preferential tariff treatment under the NAFTA when imported into the United States. In addition, CBP found that the prepared nuts qualified to be marked as goods of Canada. It is now our position that the nuts do not qualify for preferential tariff treatment under the NAFTA, and do not qualify to be marked as goods of Canada. For the reasons described in this ruling, we hereby modify NY F88926.

The tariff classification of the roasted and salted macadamia nuts under subheading 2008.19.9010 of the Harmonized Tariff Schedule of the United States (“HTSUS”), when imported from Canada, is unaffected.

FACTS:

NY F88926 stated, in relevant part:

The merchandise is comprised of raw macadamia nut kernels of Australian origin that are exported in bulk from Australia to Canada for roasting and salting. The nuts will then be shipped to the United States in bulk vacuum packaging of 5 or 10 pound bags. The nuts will be sold commercially in the United States to institutions preparing food; they are not for retail sale as imported.

CBP found that the non-originating macadamia nuts satisfied the changes in tariff classification required under General Note (“GN”) 12(t)/20.4, HTSUS, and that, upon compliance with all applicable laws, regulations, and agreements under the NAFTA, the nuts would be subject to a free tariff rate when imported into the United States. CBP also found that the nuts qualified to be marked as goods of Canada under the NAFTA Marking Rules (19 CFR §§ 102.11(a)(3) and 102.20(d)).

ISSUE:

Whether the roasted and salted macadamia nuts described in NY F88926 qualify for preferential tariff treatment under the NAFTA, and whether they may be marked as goods of Canada?

LAW AND ANALYSIS:

Pursuant to GN 12, HTSUS, for an article to be eligible for NAFTA preference, two requirements must be satisfied. First, the article in question must be “originating” under the terms of GN 12, HTSUS, and second, the article must qualify to be marked as a good of a NAFTA country under the NAFTA Marking Rules contained in 19 CFR § 102.20.

With regard to the first requirement, GN 12(b), HTSUS, provides, in pertinent part:

For the purposes of this note, goods imported into the customs territory of the United States are eligible for the tariff treatment and quantitative limitations set forth in the tariff schedule as “goods originating in the territory of a NAFTA party” only if –

....

ii) they have been transformed in the territory of Canada, Mexico and/or the United States so that—

(A) except as provided in subdivision (f) of this note, each of the non-originating materials used in the production of such goods undergoes a change in tariff classification described in subdivision (r), (s) and (t) of this note or the rules set forth therein, or

(B) the goods otherwise satisfy the applicable requirements of subdivision (r), (s) and (t) where no change in tariff classification is required, and the goods satisfy all other requirements of this note [.]

Raw macadamia nuts are classified in subheading 0802.90, HTSUS. In understanding the language of 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 Harmonized System at the international level. *See* T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989). The ENs to Chapter 8, HTSUS, explain that nuts prepared according to Chapter 20, HTSUS, are excluded from Chapter 8, HTSUS. Roasted and salted macadamia nuts are classified under subheading 2008.19.9010, HTSUS. The ENs to heading 2008, HTSUS, explain that this heading includes oil-roasted nuts whether or not containing or coated with salt. In this case, raw macadamia nuts were imported from Australia into Canada, where they were roasted and salted, and thus correctly classified under subheading 2008.19.9010, HTSUS.

The applicable rule in subdivision (t) provides for “a change to subheadings 2008.19 through 2008.99 from any other chapter.” *See* GN 12(t)/20.4, HTSUS. However, GN 12(s), Exceptions to Change in Tariff Classification Rules, HTSUS, provides, in relevant part:

(ii) Fruit, nut and vegetable preparations of chapter 20 that have been prepared or preserved merely by freezing, by packing (including canning) in water, brine or natural juices, or by roasting, either dry or in oil (including processing incidental to freezing, packing, or roasting), shall be treated as an originating good only if the fresh good were wholly produced or obtained entirely in the territory of one or more NAFTA parties.

Accordingly, though the non-originating nuts appear to undergo the requisite tariff shift from Chapter 8, HTSUS, to subheading 2008.19.9010, HTSUS, if the above exception applies, then the nuts do qualify for preferential tariff treatment under the NAFTA.

As provided in relevant part by GN 12(s)(ii), HTSUS, when nut preparations are prepared “merely” by roasting or processing “incidental” to roasting, then the origin of the nuts in their “fresh” state determines the origin of the good. The “fresh” state refers to the state of the nuts before they were roasted or processed in a manner incidental to roasting. Thus, for such nut preparations to be originating, the “fresh” nuts used to make the good must be wholly obtained or produced entirely in the territory of one or more of NAFTA parties (Mexico, Canada, or the United States). That is, non-originating nuts that, while in a NAFTA territory, are merely roasted, or processed in a manner incidental to roasting, will not be treated as originating nuts.

The term “merely” is not specifically defined in GN 12, HTSUS, but per its dictionary definition means “only (what is referred to) and nothing more.” Read in the context of GN 12, HTSUS, the term “merely” means that the processes listed in GN 12(s)(ii), HTSUS, by themselves, are insufficient to qualify non-originating nuts for preferential tariff treatment under the NAFTA, despite changing tariff classifications per GN 12(b)(ii), HTSUS, and GN 12(t)/20.4, HTSUS. Thus, we find that the purpose of GN 12(s)(ii), HTSUS, is to ensure that goods undergo sufficient processing in a NAFTA country, beyond the listed processes, in order to be considered originating for purposes of GN 12(b)(ii), HTSUS.

The term “incidental” is also not specifically defined in GN 12, HTSUS, but per its dictionary definition means “occurring or liable to occur in fortuitous or subordinate conjunction with something else of which it forms no essential part.” Applying this definition to GN 12(s)(ii), HTSUS, the term “incidental” indicates a process that may happen with or as a result of roasting, but is secondary to, or of lesser importance than, the process of roasting.

We find that “salting” is precisely the type of lesser process contemplated by the note as incidental. Salting often occurs in connection not only with roasting, as in this case, but also with canning or freezing. It is the roasting, canning, or freezing processes which are the means by which the products are principally prepared. By contrast, salting has far less consequences to the essential character of the product. Moreover, the addition of salt like other flavors, spices, or other ingredients is a relatively simple process and does not require a prescribed amount to be added.

Given that roasting by itself would not be sufficient to make a nut an originating good per GN 12 (s)(ii), HTSUS, it would defeat the purpose of such note to conclude that “salting” would provide otherwise. Furthermore, the ENs to Chapter 20, HTSUS, state, in relevant part:

This heading covers fruits, nuts and other edible parts of plants, whether whole, in pieces or crushed, including mixtures thereof, prepared or preserved otherwise than by any of the processes specified in other Chapters or in the preceding headings of this Chapter.

It includes, *inter alia*:

- (1) Almonds, ground-nuts, areca (or betel) nuts and other nuts, dry-roasted, oil roasted or fat-roasted, whether or not containing or coated with vegetable oil, salt, flavours, spices or other additives.

...

(9) Fruit, nuts, fruit-peel and other edible parts of plants (other than vegetables), preserved by sugar and put in syrup (e.g. marrons glacés or giner), whatever the packing.

Moreover, while the ENs to Chapter 20, HTSUS, mention “salt,” the references to “dry-roasted, oil-roasted or fat-roasted” and “preserved by sugar and put in syrup” indicate the principal processes of preparation or preservation that would change the classification of nuts from Chapter 8, HTSUS, to Chapter 20, HTSUS. The fact that “salt” is mentioned with reference to the types of roasting, but is not specifically mentioned as a process of preparation or preservation, suggests that “salting” is something that may happen with or as a result of roasting nuts, but whether the nuts are salted, or not, is not essential to the preparation; what is essential to the preparation is the roasting. For all of the foregoing reasons, we find that for purposes of GN 12(s)(ii), HTSUS, the term “processing incidental to freezing, packing, or roasting,” includes the process of “salting.”

This interpretation of GN 12(s)(ii), HTSUS, is further supported by Headquarters Ruling Letter (“HQ”) H243328, dated August 19, 2013, which considered “salting” to be a process incidental to roasting with regard to a provision from the United States-Korea Free Trade Agreement (“UKFTA”) that is parallel to GN 12(s)(ii), HTSUS. HQ H243328 affirms the decision in HQ H240383, dated May 3, 2013, determining the origin of the nuts from their “fresh” state on the basis that “salting and roasting [...] qualify as ‘processing incidental’ to roasting.”

Accordingly, we find that salting is a process incidental to roasting and does not render the product originating. Rather, the origin of the product is determined by the origin of the “fresh” state per GN 12(s)(ii), HTSUS.

Given the foregoing, the roasted and salted macadamia nuts may not be treated as originating because they do not meet the requirements of GN 12(s)(ii), HTSUS; that is, they were not wholly obtained or produced entirely in Mexico, Canada, or the United States as fresh nuts. Therefore, the prepared macadamia nuts imported from Canada do not qualify for preferential tariff treatment under the NAFTA.

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 Part 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:

[T]he 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 [the marking laws and regulations]; however, for a good of a NAFTA country, the NAFTA Marking Rules will determine the country of origin.

Part 102, CBP Regulations (19 CFR Part 102), sets forth the NAFTA Rules of Origin for country of origin marking purposes. As the macadamia nuts were grown in Australia, Section 102.11(a)(1) and (2) do not apply. Section 102.11(a)(3) provides:

The country of origin of a good is the country in which ... each foreign material incorporated in that good undergoes an applicable change in tariff classification set out in § 102.20 and satisfies any other applicable requirements of that section, and all other applicable requirements of these rules are satisfied.

“Foreign material means a material whose country of origin as determined under these rules is not the same as the country in which the good is produced.” 19 CFR § 102.1(e).

Under the provisions of 19 CFR § 102.20, the tariff shift rule for subheading 2008.19, HTSUS, provides as follows:

A change to subheading 2008.19 through 2008.99 from any other chapter, provided that the change is not the result of mere blanching of nuts.

However, the note from Chapter 20, HTSUS, provides:

Notwithstanding the specific rules of this chapter, fruit, nut and vegetable preparations of Chapter 20 that have been prepared or preserved merely by freezing, by packing (including canning) in water, brine or natural juices, or by roasting, either dry or in oil (including processing incidental to freezing, packing or roasting), shall be treated as a good of the country in which the fresh good was produced.

Based on the note from Chapter 20, HTSUS, the country of origin of the macadamia nuts is not determined by 19 CFR § 102.11(a) (incorporating 19 CFR § 102.20), and the next step in the country of origin marking determination is provided in 19 CFR § 102.11(b), which states:

Except for a good that is specifically described in the Harmonized System as a set, or is classified as a set pursuant to General Rule of Interpretation 3, where the country of origin cannot be determined under paragraph (a) of this section:

- (1) The country of origin of the good is the country or countries of origin of the single material that imparts the essential character of the good...

“Material’ means a good that is incorporated into another good as a result of production with respect to that other good, and includes parts, ingredients, subassemblies, and components.” 19 CFR § 102.1 (1).

“For purposes of identifying the material that imparts the essential character to a good under §102.11, the only materials that shall be taken into consideration are those domestic or foreign materials that are classified in a tariff provision from which a change in tariff classification is not allowed under the §102.20 specific rule or other requirements applicable to the good.” 19 CFR § 102.18(b)(1).

Pursuant to 19 CFR § 102.11(b) (incorporating 19 CFR § 102.18(b)(1)), we find that the single material that imparts the essential character of the finished good is the macadamia nuts. Therefore, the prepared macadamia

nuts may not be marked as goods of Canada, but rather must be marked to indicate that they are products of Australia.

HOLDING:

NY F88926 is modified to reflect that, by application of GN 12(s)(ii), HTSUS, the prepared macadamia nuts imported from Canada are not eligible for preferential tariff treatment under the NAFTA. In addition, by application of the note from Chapter 20, HTSUS, 19 CFR § 102.11(a) and (b), 19 CFR § 102.18(b) (1), and 19 CFR § 102.20, the prepared macadamia nuts may not be marked as goods of Canada, but rather must be marked to indicate that they are products of Australia. The tariff classification of the prepared macadamia nuts is unchanged.

EFFECT ON OTHER RULINGS:

NY F88926, dated January 13, 2000, is hereby 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

[ATTACHMENT I]

HQ H256783

OT:RR:CTF:VS H256783 AJR

CATEGORY: NAFTA

MR. RODNEY RALSTON
TRANS-BORDER CUSTOMS SERVICES, INC.
ONE TRANS-BORDER DRIVE
P.O. BOX 800
CHAMPLAIN, NY 12919

RE: Modification of NY H84143; NAFTA; GN 12, HTSUS; 19 C.F.R. § 102.20 - Country of Origin Marking; Macadamia Nuts Roasted and Salted in Canada

DEAR MR. RALSTON:

This is in reference to New York Ruling Letter (“NY”) H84143, dated August 6, 2001, issued to you on behalf of your client, Papco Foods, Inc., of St. Laurent, Quebec. At issue was the tariff classification of macadamia nuts, their eligibility for preferential tariff treatment under the North American Free Trade Agreement (“NAFTA”), and their county of origin marking. In NY H84143, U.S. Customs and Border Protection (“CBP”) determined, in relevant part, that raw macadamia nuts of Australian origin imported into Canada, where they were roasted and blanched or salted, qualified for preferential tariff treatment under the NAFTA when imported into the United States. In addition, CBP found that the prepared nuts qualified to be marked as goods of Canada. It is now our position that the nuts do not qualify for preferential tariff treatment under the NAFTA, and do not qualify to be marked as goods of Canada. For the reasons described in this ruling, we hereby modify NY H84143.

The tariff classification of the roasted and salted macadamia nuts under subheading 2008.19.9010 of the Harmonized Tariff Schedule of the United States (“HTSUS”), when imported from Canada, is unaffected.

FACTS:

NY H84143 stated, in relevant part:

The merchandise is comprised of raw macadamia nut kernels of Australian origin that are exported in bulk from Australia to Canada for roasting and salting. The nuts will then be shipped to the United States in bags of 1 or 2 pounds or in bulk bags of 5 or 10 pound bags.

CBP found that the non-originating macadamia nuts satisfied the changes in tariff classification required under General Note (“GN”) 12(t)/20.4, HTSUS, and that, upon compliance with all applicable laws, regulations, and agreements under the NAFTA, the nuts would be subject to a free tariff rate when imported into the United States. CBP also found that the nuts qualified to be marked as goods of Canada under the NAFTA Marking Rules (19 CFR §§ 102.11(a)(3) and 102.20(d)).

ISSUE:

Whether the roasted and salted macadamia nuts described in NY H84143 qualify for preferential tariff treatment under the NAFTA, and whether they may be marked as goods of Canada?

LAW AND ANALYSIS:

Pursuant to GN 12, HTSUS, for an article to be eligible for NAFTA preference, two requirements must be satisfied. First, the article in question must be “originating” under the terms of GN 12, HTSUS, and second, the article must qualify to be marked as a good of a NAFTA country under the NAFTA Marking Rules contained in 19 CFR § 102.20.

With regard to the first requirement, GN 12(b), HTSUS, provides, in pertinent part:

For the purposes of this note, goods imported into the customs territory of the United States are eligible for the tariff treatment and quantitative limitations set forth in the tariff schedule as “goods originating in the territory of a NAFTA party” only if –

....

ii) they have been transformed in the territory of Canada, Mexico and/or the United States so that—

(A) except as provided in subdivision (f) of this note, each of the non-originating materials used in the production of such goods undergoes a change in tariff classification described in subdivision (r), (s) and (t) of this note or the rules set forth therein, or

(B) the goods otherwise satisfy the applicable requirements of subdivision (r), (s) and (t) where no change in tariff classification is required, and the goods satisfy all other requirements of this note [.]

Raw macadamia nuts are classified in subheading 0802.90, HTSUS. In understanding the language of 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 Harmonized System at the international level. *See* T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989). The ENs to Chapter 8, HTSUS, explain that nuts prepared according to Chapter 20, HTSUS, are excluded from Chapter 8, HTSUS. Roasted and salted macadamia nuts are classified under subheading 2008.19.9010, HTSUS. The ENs to heading 2008, HTSUS, explain that this heading includes oil-roasted nuts whether or not containing or coated with salt. In this case, raw macadamia nuts were imported from Australia into Canada, where they were roasted and salted, and thus correctly classified under subheading 2008.19.9010, HTSUS.

The applicable rule in subdivision (t) provides for “a change to subheadings 2008.19 through 2008.99 from any other chapter.” *See* GN 12(t)/20.4, HTSUS. However, GN 12(s), Exceptions to Change in Tariff Classification Rules, HTSUS, provides, in relevant part:

(ii) Fruit, nut and vegetable preparations of chapter 20 that have been prepared or preserved merely by freezing, by packing (including canning) in water, brine or natural juices, or by roasting, either dry or in oil (including processing incidental to freezing, packing, or roasting), shall be treated as an originating good only if the fresh good were wholly produced or obtained entirely in the territory of one or more NAFTA parties.

Accordingly, though the non-originating nuts appear to undergo the requisite tariff shift from Chapter 8, HTSUS, to subheading 2008.19.9010, HTSUS, if the above exception applies, then the nuts do qualify for preferential tariff treatment under the NAFTA.

As provided in relevant part by GN 12(s)(ii), HTSUS, when nut preparations are prepared “merely” by roasting or processing “incidental” to roasting, then the origin of the nuts in their “fresh” state determines the origin of the good. The “fresh” state refers to the state of the nuts before they were roasted or processed in a manner incidental to roasting. Thus, for such nut preparations to be originating, the “fresh” nuts used to make the good must be wholly obtained or produced entirely in the territory of one or more of NAFTA parties (Mexico, Canada, or the United States). That is, non-originating nuts that, while in a NAFTA territory, are merely roasted, or processed in a manner incidental to roasting, will not be treated as originating nuts.

The term “merely” is not specifically defined in GN 12, HTSUS, but per its dictionary definition means “only (what is referred to) and nothing more.” Read in the context of GN 12, HTSUS, the term “merely” means that the processes listed in GN 12(s)(ii), HTSUS, by themselves, are insufficient to qualify non-originating nuts for preferential tariff treatment under the NAFTA, despite changing tariff classifications per GN 12(b)(ii), HTSUS, and GN 12(t)/20.4, HTSUS. Thus, we find that the purpose of GN 12(s)(ii), HTSUS, is to ensure that goods undergo sufficient processing in a NAFTA country, beyond the listed processes, in order to be considered originating for purposes of GN 12(b)(ii), HTSUS.

The term “incidental” is also not specifically defined in GN 12, HTSUS, but per its dictionary definition means “occurring or liable to occur in fortuitous or subordinate conjunction with something else of which it forms no essential part.” Applying this definition to GN 12(s)(ii), HTSUS, the term “incidental” indicates a process that may happen with or as a result of roasting, but is secondary to, or of lesser importance than, the process of roasting.

We find that “salting” is precisely the type of lesser process contemplated by the note as incidental. Salting often occurs in connection not only with roasting, as in this case, but also with canning or freezing. It is the roasting, canning, or freezing processes which are the means by which the products are principally prepared. By contrast, salting has far less consequences to the essential character of the product. Moreover, the addition of salt like other flavors, spices, or other ingredients is a relatively simple process and does not require a prescribed amount to be added.

Given that roasting by itself would not be sufficient to make a nut an originating good per GN 12 (s)(ii), HTSUS, it would defeat the purpose of such note to conclude that “salting” would provide otherwise. Furthermore, the ENs to Chapter 20, HTSUS, state, in relevant part:

This heading covers fruits, nuts and other edible parts of plants, whether whole, in pieces or crushed, including mixtures thereof, prepared or preserved otherwise than by any of the processes specified in other Chapters or in the preceding headings of this Chapter.

It includes, *inter alia*:

- (1) Almonds, ground-nuts, areca (or betel) nuts and other nuts, dry-roasted, oil roasted or fat-roasted, whether or not containing or coated with vegetable oil, salt, flavours, spices or other additives.

...

(9) Fruit, nuts, fruit-peel and other edible parts of plants (other than vegetables), preserved by sugar and put in syrup (e.g. marrons glacés or giner), whatever the packing.

Moreover, while the ENs to Chapter 20, HTSUS, mention “salt,” the references to “dry-roasted, oil-roasted or fat-roasted” and “preserved by sugar and put in syrup” indicate the principal processes of preparation or preservation that would change the classification of nuts from Chapter 8, HTSUS, to Chapter 20, HTSUS. The fact that “salt” is mentioned with reference to the types of roasting, but is not specifically mentioned as a process of preparation or preservation, suggests that “salting” is something that may happen with or as a result of roasting nuts, but whether the nuts are salted, or not, is not essential to the preparation; what is essential to the preparation is the roasting. For all of the foregoing reasons, we find that for purposes of GN 12(s)(ii), HTSUS, the term “processing incidental to freezing, packing, or roasting,” includes the process of “salting.”

This interpretation of GN 12(s)(ii), HTSUS, is further supported by Headquarters Ruling Letter (“HQ”) H243328, dated August 19, 2013, which considered “salting” to be a process incidental to roasting with regard to a provision from the United States-Korea Free Trade Agreement (“UKFTA”) that is parallel to GN 12(s)(ii), HTSUS. HQ H243328 affirms the decision in HQ H240383, dated May 3, 2013, determining the origin of the nuts from their “fresh” state on the basis that “salting and roasting [...] qualify as ‘processing incidental’ to roasting.”

Accordingly, we find that salting is a process incidental to roasting and does not render the product originating. Rather, the origin of the product is determined by the origin of the “fresh” state per GN 12(s)(ii), HTSUS.

Given the foregoing, the roasted and salted macadamia nuts may not be treated as originating because they do not meet the requirements of GN 12(s)(ii), HTSUS; that is, they were not wholly obtained or produced entirely in Mexico, Canada, or the United States as fresh nuts. Therefore, the prepared macadamia nuts imported from Canada do not qualify for preferential tariff treatment under the NAFTA.

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 Part 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:

[T]he 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 [the marking laws and regulations]; however, for a good of a NAFTA country, the NAFTA Marking Rules will determine the country of origin.

Part 102, CBP Regulations (19 CFR Part 102), sets forth the NAFTA Rules of Origin for country of origin marking purposes. As the macadamia nuts were grown in Australia, Section 102.11(a)(1) and (2) do not apply. Section 102.11(a)(3) provides:

The country of origin of a good is the country in which ... each foreign material incorporated in that good undergoes an applicable change in tariff classification set out in § 102.20 and satisfies any other applicable requirements of that section, and all other applicable requirements of these rules are satisfied.

“Foreign material means a material whose country of origin as determined under these rules is not the same as the country in which the good is produced.” 19 CFR § 102.1(e).

Under the provisions of 19 CFR § 102.20, the tariff shift rule for subheading 2008.19, HTSUS, provides as follows:

A change to subheading 2008.19 through 2008.99 from any other chapter, provided that the change is not the result of mere blanching of nuts.

However, the note from Chapter 20, HTSUS, provides:

Notwithstanding the specific rules of this chapter, fruit, nut and vegetable preparations of Chapter 20 that have been prepared or preserved merely by freezing, by packing (including canning) in water, brine or natural juices, or by roasting, either dry or in oil (including processing incidental to freezing, packing or roasting), shall be treated as a good of the country in which the fresh good was produced.

Based on the note from Chapter 20, HTSUS, the country of origin of the macadamia nuts is not determined by 19 CFR § 102.11(a) (incorporating 19 CFR § 102.20), and the next step in the country of origin marking determination is provided in 19 CFR § 102.11(b), which states:

Except for a good that is specifically described in the Harmonized System as a set, or is classified as a set pursuant to General Rule of Interpretation 3, where the country of origin cannot be determined under paragraph (a) of this section:

- (1) The country of origin of the good is the country or countries of origin of the single material that imparts the essential character of the good...

“Material’ means a good that is incorporated into another good as a result of production with respect to that other good, and includes parts, ingredients, subassemblies, and components.” 19 CFR § 102.1 (1).

“For purposes of identifying the material that imparts the essential character to a good under §102.11, the only materials that shall be taken into consideration are those domestic or foreign materials that are classified in a tariff provision from which a change in tariff classification is not allowed under the §102.20 specific rule or other requirements applicable to the good.” 19 CFR § 102.18(b)(1).

Pursuant to 19 CFR § 102.11(b) (incorporating 19 CFR § 102.18(b)(1)), we find that the single material that imparts the essential character of the finished good is the macadamia nuts. Therefore, the prepared macadamia

nuts may not be marked as goods of Canada, but rather must be marked to indicate that they are products of Australia.

HOLDING:

NY H84143 is modified to reflect that, by application of GN 12(s)(ii), HTSUS, the prepared macadamia nuts imported from Canada are not eligible for preferential tariff treatment under the NAFTA. In addition, by application of the note from Chapter 20, HTSUS, 19 CFR § 102.11(a) and (b), 19 CFR § 102.18(b) (1), and 19 CFR § 102.20, the prepared macadamia nuts may not be marked as goods of Canada, but rather must be marked to indicate that they are products of Australia. The tariff classification of the prepared macadamia nuts is unchanged.

EFFECT ON OTHER RULINGS:

NY H84143, dated August 6, 2001, is hereby 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

[ATTACHMENT J]

HQ H256785

OT:RR:CTF:VS H256785 AJR

CATEGORY: NAFTA

MR. STEVE DECASTRO
ALL-WAYS FORWARDING INTERNATIONAL, INC.
701 NEWARK AVENUE, SUITE 300
ELIZABETH, NJ 07208

RE: Modification of NY H82352; NAFTA; GN 12, HTSUS - Duty Preference;
Mixed Nuts Roasted and Salted in Canada

DEAR MR. DECASTRO:

This is in reference to New York Ruling Letter (“NY”) H82352, dated August 10, 2001, issued to you on behalf of your client, Star Snacks, of Jersey City, New Jersey. At issue was the tariff classification of mixed nuts and their eligibility for preferential tariff treatment under the North American Free Trade Agreement (“NAFTA”). In NY H82352, U.S. Customs and Border Protection (“CBP”) determined, in relevant part, that various raw nuts of U.S., Canadian, Indian, and Brazilian origin imported into Canada, where they were roasted, salted, and mixed with other nuts, qualified for preferential tariff treatment under the NAFTA when imported into the United States; however, the decision failed to consider whether the nuts qualified to be marked as a product of Canada. It is now our position that the roasted and salted mixed nuts do not qualify for preferential tariff treatment under the NAFTA. For the reasons described in this ruling, we hereby modify NY H82352.

This modification does not affect CBP’s decision in NY H82352 that various roasted nuts imported into Canada, where they undergo a process similar to the raw nuts, do not qualify for preferential tariff treatment under the NAFTA. The tariff classification of the roasted and salted nuts under sub-heading 2008.19.85 under the Harmonized Tariff Schedule of the United States (“HTSUS”) when imported from Canada is also unaffected.

FACTS:

NY H82352 stated, in relevant part:

The merchandise is described as 16 ounce, retail pack tins of “Mixed Nuts,” consisting of 26.4 percent by weight of peanuts and 21.55 percent red skin peanuts (country of origin, Canada or the U.S.A.), 16.46 percent cashews (origin, India), 13.21 percent Brazil nuts (origin, Brazil) and 11.97 percent unbleached almonds, 5.98 percent unbleached filberts and 4.49 percent pecans (origin, all U.S.A.).

In your correspondence you indicate that the country of exportation will be Canada. The condition of the nuts when they are imported into Canada is sometimes raw and at other times roasted. The nuts are brought into the country of exportation both in bags and boxes. When the nuts enter Canada in a raw condition, they are roasted, salted, and mixed with other ingredients (salt, oil, and other nuts). When the nuts enter Canada in a roasted condition, Star Snacks will re-salt, re-oil and pack the product in its final export container.

CBP found that the non-originating nuts, when imported raw into Canada, satisfied the changes in tariff classification required under General Note

(“GN”) 12(t)/20.4, HTSUS, and that, upon compliance with all applicable laws, regulations, and agreements under the NAFTA, the nut mixture would be subject to a free tariff rate when imported into the United States.

ISSUE:

Whether the roasted and salted mixed nuts described in NY H82352 qualifies for preferential tariff treatment under the NAFTA?

LAW AND ANALYSIS:

Pursuant to GN 12, HTSUS, for an article to be eligible for NAFTA preference, two requirements must be satisfied. First, the article in question must be “originating” under the terms of GN 12, HTSUS, and second, the article must qualify to be marked as a good of a NAFTA country under the NAFTA Marking Rules contained in 19 CFR § 102.20.

With regard to the first requirement, GN 12(b), HTSUS, provides, in pertinent part:

For the purposes of this note, goods imported into the customs territory of the United States are eligible for the tariff treatment and quantitative limitations set forth in the tariff schedule as “goods originating in the territory of a NAFTA party” only if –

...

ii) they have been transformed in the territory of Canada, Mexico and/or the United States so that—

(A) except as provided in subdivision (f) of this note, each of the non-originating materials used in the production of such goods undergoes a change in tariff classification described in subdivision (r), (s) and (t) of this note or the rules set forth therein, or

(B) the goods otherwise satisfy the applicable requirements of subdivision (r), (s) and (t) where no change in tariff classification is required, and the goods satisfy all other requirements of this note [.]

Raw nuts are classified under various headings of Chapter 8, HTSUS. In understanding the language of 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 Harmonized System at the international level. *See* T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989). The ENs to Chapter 8, HTSUS, explain that nuts prepared according to Chapter 20, HTSUS, are excluded from Chapter 8, HTSUS. Mixed nut preparations are classified under subheading 2008.19, HTSUS. The ENs to heading 2008, HTSUS, explain that this heading includes oil-roasted nuts whether or not containing or coated with salt. In this case, various raw nuts were imported from non-NAFTA countries into Canada, where they were mixed with other nuts and oil, and roasted and salted, and thus correctly classified under subheading 2008.19.85, HTSUS.

The applicable rule in subdivision (t) provides for “a change to subheadings 2008.19 through 2008.99 from any other chapter.” *See* GN 12(t)/20.4, HTSUS. However, GN 12(s), Exceptions to Change in Tariff Classification Rules, HTSUS, provides, in relevant part:

(ii) Fruit, nut and vegetable preparations of chapter 20 that have been prepared or preserved merely by freezing, by packing (including canning) in water, brine or natural juices, or by roasting, either dry or in oil (including processing incidental to freezing, packing, or roasting), shall be treated as an originating good only if the fresh good were wholly produced or obtained entirely in the territory of one or more NAFTA parties.

Accordingly, though the non-originating nuts appear to undergo the requisite tariff shift from Chapter 8, HTSUS, to subheading 2008.19.85, HTSUS, if the above exception applies, then the nuts do qualify for preferential tariff treatment under the NAFTA.

As provided in relevant part by GN 12(s)(ii), HTSUS, when nut preparations are prepared “merely” by roasting or processing “incidental” to roasting, then the origin of the nuts in their “fresh” state determines the origin of the good. The “fresh” state refers to the state of the nuts before they were roasted or processed in a manner incidental to roasting. Thus, for such nut preparations to be originating, the “fresh” nuts used to make the good must be wholly obtained or produced entirely in the territory of one or more of NAFTA parties (Mexico, Canada, or the United States). That is, non-originating nuts that, while in a NAFTA territory, are merely roasted, or processed in a manner incidental to roasting, will not be treated as originating nuts.

The term “merely” is not specifically defined in GN 12, HTSUS, but per its dictionary definition means “only (what is referred to) and nothing more.” Read in the context of GN 12, HTSUS, the term “merely” means that the processes listed in GN 12(s)(ii), HTSUS, by themselves, are insufficient to qualify non-originating nuts for preferential tariff treatment under the NAFTA, despite changing tariff classifications per GN 12(b)(ii), HTSUS, and GN 12(t)/20.4, HTSUS. Thus, we find that the purpose of GN 12(s)(ii), HTSUS, is to ensure that goods undergo sufficient processing in a NAFTA country, beyond the listed processes, in order to be considered originating for purposes of GN 12(b)(ii), HTSUS.

The term “incidental” is also not specifically defined in GN 12, HTSUS, but per its dictionary definition means “occurring or liable to occur in fortuitous or subordinate conjunction with something else of which it forms no essential part.” Applying this definition to GN 12(s)(ii), HTSUS, the term “incidental” indicates a process that may happen with or as a result of roasting, but is secondary to, or of lesser importance than, the process of roasting.

We find that “salting” is precisely the type of lesser process contemplated by the note as incidental. Salting often occurs in connection not only with roasting, as in this case, but also with canning or freezing. It is the roasting, canning, or freezing processes which are the means by which the products are principally prepared. By contrast, salting has far less consequences to the essential character of the product. Moreover, the addition of salt like other flavors, spices, or other ingredients is a relatively simply process and does not require a prescribed amount to be added.

Given that roasting by itself would not be sufficient to make a nut an originating good per GN 12 (s)(ii), HTSUS, it would defeat the purpose of such note to conclude that “salting” would provide otherwise. Furthermore, the ENs to Chapter 20, HTSUS, state, in relevant part:

This heading covers fruits, nuts and other edible parts of plants, whether whole, in pieces or crushed, including mixtures thereof, prepared or preserved otherwise than by any of the processes specified in other Chapters or in the preceding headings of this Chapter.

It includes, inter alia:

(1) Almonds, ground-nuts, areca (or betel) nuts and other nuts, dry-roasted, oil roasted or fat-roasted, whether or not containing or coated with vegetable oil, salt, flavours, spices or other additives.

...

(9) Fruit, nuts, fruit-peel and other edible parts of plants (other than vegetables), preserved by sugar and put in syrup (e.g. marrons glacés or giner), whatever the packing.

Moreover, while the ENs to Chapter 20, HTSUS, mention “salt,” the references to “dry-roasted, oil-roasted or fat-roasted” and “preserved by sugar and put in syrup” indicate the principal processes of preparation or preservation that would change the classification of nuts from Chapter 8, HTSUS, to Chapter 20, HTSUS. The fact that “salt” is mentioned with reference to the types of roasting, but is not specifically mentioned as a process of preparation or preservation, suggests that “salting” is something that may happen with or as a result of roasting nuts, but whether the nuts are salted, or not, is not essential to the preparation; what is essential to the preparation is the roasting. For all of the foregoing reasons, we find that for purposes of GN 12(s)(ii), HTSUS, the term “processing incidental to freezing, packing, or roasting,” includes the process of “salting.”

This interpretation of GN 12(s)(ii), HTSUS, is further supported by Headquarters Ruling Letter (“HQ”) H243328, dated August 19, 2013, which considered “salting” to be a process incidental to roasting with regard to a provision from the United States-Korea Free Trade Agreement (“UKFTA”) that is parallel to GN 12(s)(ii), HTSUS. HQ H243328 affirms the decision in HQ H240383, dated May 3, 2013, determining the origin of the nuts from their “fresh” state on the basis that “salting and roasting [...] qualify as ‘processing incidental’ to roasting.”

Accordingly, we find that salting is a process incidental to roasting and does not render the product originating. Rather, the origin of the product is determined by the origin of the “fresh” state per GN 12(s)(ii), HTSUS.

Given the foregoing, the prepared mixed nuts may not be treated as originating because they do not meet the requirements of GN 12(s)(ii), HTSUS; that is, they were not wholly obtained or produced entirely in Mexico, Canada, or the United States as fresh nuts. Therefore, the prepared mixed nuts imported from Canada do not qualify for preferential tariff treatment under the NAFTA.

HOLDING:

NY H82352 is modified to reflect that, by application of GN 12(s)(ii), HTSUS, the prepared nut mixture imported from Canada is not eligible for preferential tariff treatment under the NAFTA. This modification does not change CBP’s decision in NY H82352 that various roasted nuts imported into Canada, where they undergo a process similar to the raw nuts, do not qualify for preferential tariff treatment under the NAFTA. The tariff classification of the prepared nut mixture, subheading 2008.19.85, HTSUS, is also unchanged.

EFFECT ON OTHER RULINGS:

NY H82352, dated August 10, 2001, is hereby 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

[ATTACHMENT K]

HQ H256784

OT:RR:CTF:VS H256784 AJR

CATEGORY: NAFTA

Ms. SHERI G. LAWSON
WILSON INTERNATIONAL, INC.
160 WALES AVENUE, SUITE 100
TONAWANDA, NY 14150

RE: Modification of NY R02589; NAFTA; GN 12, HTSUS; 19 C.F.R. § 102.20 - Country of Origin Marking; Mixed Nuts Roasted and Salted in Canada

DEAR Ms. LAWSON:

This is in reference to New York Ruling Letter (“NY”) R02589, dated September 23, 2005, issued to you on behalf of your client, John Vince Foods, Inc., of Ontario, Canada. At issue was the tariff classification of mixed nuts, their eligibility for preferential tariff treatment under the North American Free Trade Agreement (“NAFTA”), and their country of origin marking. In NY R02589, U.S. Customs and Border Protection (“CBP”) determined, in relevant part, that raw cashew nuts from various non-NAFTA countries imported into Canada, where they were roasted, salted, and then mixed with peanuts of U.S. origin, qualified for preferential tariff treatment under the NAFTA when imported into the United States. In addition, CBP found that the mixture of raw, non-originating cashews and raw, in-shell peanuts of U.S.-origin qualified to be marked as goods of Canada; while raw, non-originating cashews and raw, shelled peanuts of U.S.-origin qualified to be marked as goods of the United States. It is now our position that the mixed nuts do not qualify for preferential tariff treatment under the NAFTA, and do not qualify to be marked as goods of Canada or the United States. For the reasons described in this ruling, we hereby modify NY R02589.

The tariff classification of the roasted and salted mixed nuts under sub-heading 2008.19.85 of the Harmonized Tariff Schedule of the United States (“HTSUS”), when imported from Canada, is unaffected.

FACTS:

NY R02589 stated, in relevant part:

The product in question, called “Classic Mix,” is said to consist of 50 percent by weight of roasted and salted cashews and 50 percent of roasted and salted peanuts. The cashews are imported into Canada as raw, shelled nuts, and are the product of Brazil, Indonesia or other offshore countries. The peanuts are of U.S. origin, and are imported into Canada either blanched and shelled under tariff heading 2008.11, HTS, or as raw, in-shell peanuts (heading 1202.10).

You state that, in Canada, the cashews and peanuts are oil roasted and salted individually. The roasted nuts are then layered onto a mixing table and, as the mixing table is emptied, the product is mixed as it drops into a tote. The mixed product is then packaged into see-through plastic containers of 500 grams (17.64 ounces), net, which are then packed for export into the United States.

CBP found that the non-originating cashews satisfied the changes in tariff classification required under General Note (“GN”) 12(t)/20.4, HTSUS, and

that, upon compliance with all applicable laws, regulations, and agreements under the NAFTA, the roasted and salted mixed nuts would be subject to a free tariff rate when imported into the United States. CBP also found that the prepared nuts qualified to be marked as goods of Canada under the NAFTA Marking Rules (19 CFR §§ 102.11(a)(3) and 102.20(d)).

ISSUE:

Whether the roasted and salted mixed nuts described in NY R02589 qualify for preferential tariff treatment under the NAFTA, and whether they may be marked as goods of Canada?

LAW AND ANALYSIS:

Pursuant to GN 12, HTSUS, for an article to be eligible for NAFTA preference, two requirements must be satisfied. First, the article in question must be “originating” under the terms of GN 12, HTSUS, and second, the article must qualify to be marked as a good of a NAFTA country under the NAFTA Marking Rules contained in 19 CFR § 102.20.

With regard to the first requirement, GN 12(b), HTSUS, provides, in pertinent part:

For the purposes of this note, goods imported into the customs territory of the United States are eligible for the tariff treatment and quantitative limitations set forth in the tariff schedule as “goods originating in the territory of a NAFTA party” only if –

....

ii) they have been transformed in the territory of Canada, Mexico and/or the United States so that—

(A) except as provided in subdivision (f) of this note, each of the non-originating materials used in the production of such goods undergoes a change in tariff classification described in subdivision (r), (s) and (t) of this note or the rules set forth therein, or

(B) the goods otherwise satisfy the applicable requirements of subdivision (r), (s) and (t) where no change in tariff classification is required, and the goods satisfy all other requirements of this note [.]

Raw cashew nuts are classified in subheading 0801.32, HTSUS. In understanding the language of 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 Harmonized System at the international level. *See* T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989). The ENs to Chapter 8, HTSUS, explain that nuts prepared according to Chapter 20, HTSUS, are excluded from Chapter 8, HTSUS. Roasted and salted mixed nuts are classified under subheading 2008.19, HTSUS. The ENs to heading 2008, HTSUS, explain that this heading includes oil-roasted nuts whether or not containing or coated with salt. In this case, raw cashew nuts were imported from non-NAFTA countries into Canada, where they were roasted, salted, and then mixed with peanuts of U.S. origin, and thus correctly classified under subheading 2008.19.85, HTSUS.

The applicable rule in subdivision (t) provides for “a change to subheadings 2008.19 through 2008.99 from any other chapter.” See GN 12(t)/20.4, HTSUS. However, GN 12(s), Exceptions to Change in Tariff Classification Rules, HTSUS, provides, in relevant part:

(ii) Fruit, nut and vegetable preparations of chapter 20 that have been prepared or preserved merely by freezing, by packing (including canning) in water, brine or natural juices, or by roasting, either dry or in oil (including processing incidental to freezing, packing, or roasting), shall be treated as an originating good only if the fresh good were wholly produced or obtained entirely in the territory of one or more NAFTA parties.

Accordingly, though the non-originating nuts appear to undergo the requisite tariff shift from Chapter 8, HTSUS, to subheading 2008.19.85, HTSUS, if the above exception applies, then the nuts do qualify for preferential tariff treatment under the NAFTA.

As provided in relevant part by GN 12(s)(ii), HTSUS, when nut preparations are prepared “merely” by roasting or processing “incidental” to roasting, then the origin of the nuts in their “fresh” state determines the origin of the good. The “fresh” state refers to the state of the nuts before they were roasted or processed in a manner incidental to roasting. Thus, for such nut preparations to be originating, the “fresh” nuts used to make the good must be wholly obtained or produced entirely in the territory of one or more of NAFTA parties (Mexico, Canada, or the United States). That is, non-originating nuts that, while in a NAFTA territory, are merely roasted, or processed in a manner incidental to roasting, will not be treated as originating nuts.

The term “merely” is not specifically defined in GN 12, HTSUS, but per its dictionary definition means “only (what is referred to) and nothing more.” Read in the context of GN 12, HTSUS, the term “merely” means that the processes listed in GN 12(s)(ii), HTSUS, by themselves, are insufficient to qualify non-originating nuts for preferential tariff treatment under the NAFTA, despite changing tariff classifications per GN 12(b)(ii), HTSUS, and GN 12(t)/20.4, HTSUS. Thus, we find that the purpose of GN 12(s)(ii), HTSUS, is to ensure that goods undergo sufficient processing in a NAFTA country, beyond the listed processes, in order to be considered originating for purposes of GN 12(b)(ii), HTSUS.

The term “incidental” is also not specifically defined in GN 12, HTSUS, but per its dictionary definition means “occurring or liable to occur in fortuitous or subordinate conjunction with something else of which it forms no essential part.” Applying this definition to GN 12(s)(ii), HTSUS, the term “incidental” indicates a process that may happen with or as a result of roasting, but is secondary to, or of lesser importance than, the process of roasting.

We find that “salting” is precisely the type of lesser process contemplated by the note as incidental. Salting often occurs in connection not only with roasting, as in this case, but also with canning or freezing. It is the roasting, canning, or freezing processes which are the means by which the products are principally prepared. By contrast, salting has far less consequences to the essential character of the product. Moreover, the addition of salt like other flavors, spices, or other ingredients is a relatively simple process and does not require a prescribed amount to be added.

Given that roasting by itself would not be sufficient to make a nut an originating good per GN 12 (s)(ii), HTSUS, it would defeat the purpose of such

note to conclude that “salting” would provide otherwise. Furthermore, the ENs to Chapter 20, HTSUS, state, in relevant part:

This heading covers fruits, nuts and other edible parts of plants, whether whole, in pieces or crushed, including mixtures thereof, prepared or preserved otherwise than by any of the processes specified in other Chapters or in the preceding headings of this Chapter.

It includes, *inter alia*:

(1) Almonds, ground-nuts, areca (or betel) nuts and other nuts, dry-roasted, oil roasted or fat-roasted, whether or not containing or coated with vegetable oil, salt, flavours, spices or other additives.

...

(9) Fruit, nuts, fruit-peel and other edible parts of plants (other than vegetables), preserved by sugar and put in syrup (e.g. marrons glacés or giner), whatever the packing.

Moreover, while the ENs to Chapter 20, HTSUS, mention “salt,” the references to “dry-roasted, oil-roasted or fat-roasted” and “preserved by sugar and put in syrup” indicate the principal processes of preparation or preservation that would change the classification of nuts from Chapter 8, HTSUS, to Chapter 20, HTSUS. The fact that “salt” is mentioned with reference to the types of roasting, but is not specifically mentioned as a process of preparation or preservation, suggests that “salting” is something that may happen with or as a result of roasting nuts, but whether the nuts are salted, or not, is not essential to the preparation; what is essential to the preparation is the roasting. For all of the foregoing reasons, we find that for purposes of GN 12(s)(ii), HTSUS, the term “processing incidental to freezing, packing, or roasting,” includes the process of “salting.”

This interpretation of GN 12(s)(ii), HTSUS, is further supported by Headquarters Ruling Letter (“HQ”) H243328, dated August 19, 2013, which considered “salting” to be a process incidental to roasting with regard to a provision from the United States-Korea Free Trade Agreement (“UKFTA”) that is parallel to GN 12(s)(ii), HTSUS. HQ H243328 affirms the decision in HQ H240383, dated May 3, 2013, determining the origin of the nuts from their “fresh” state on the basis that “salting and roasting [...] qualify as ‘processing incidental’ to roasting.”

Accordingly, we find that salting is a process incidental to roasting and does not render the product originating. Rather, the origin of the product is determined by the origin of the “fresh” state per GN 12(s)(ii), HTSUS.

Given the foregoing, the roasted and salted mixed nuts may not be treated as originating because they do not meet the requirements of GN 12(s)(ii), HTSUS; that is, they were not wholly obtained or produced entirely in Mexico, Canada, or the United States as fresh nuts. Therefore, the mixed nuts imported from Canada do not qualify for preferential tariff treatment under the NAFTA.

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 Part 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:

[T]he 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 [the marking laws and regulations]; however, for a good of a NAFTA country, the NAFTA Marking Rules will determine the country of origin.

Part 102, CBP Regulations (19 CFR Part 102), sets forth the NAFTA Rules of Origin for country of origin marking purposes. As the cashew nuts were grown in non-NAFTA countries, Section 102.11(a)(1) and (2) do not apply. Section 102.11(a)(3) provides:

The country of origin of a good is the country in which ... each foreign material incorporated in that good undergoes an applicable change in tariff classification set out in § 102.20 and satisfies any other applicable requirements of that section, and all other applicable requirements of these rules are satisfied.

“Foreign material” means a material whose country of origin as determined under these rules is not the same as the country in which the good is produced.” 19 CFR § 102.1(e).

Under the provisions of 19 CFR § 102.20, the tariff shift rule for subheading 2008.19, HTSUS, provides as follows:

A change to subheading 2008.19 through 2008.99 from any other chapter, provided that the change is not the result of mere blanching of nuts.

However, the note from Chapter 20, HTSUS, provides:

Notwithstanding the specific rules of this chapter, fruit, nut and vegetable preparations of Chapter 20 that have been prepared or preserved merely by freezing, by packing (including canning) in water, brine or natural juices, or by roasting, either dry or in oil (including processing incidental to freezing, packing or roasting), shall be treated as a good of the country in which the fresh good was produced.

Based on the note from Chapter 20, HTSUS, the country of origin of the mixed nuts is not determined by 19 CFR § 102.11(a) (incorporating 19 CFR § 102.20), and the next step in the country of origin marking determination is provided in 19 CFR § 102.11(b), followed by 19 CFR § 102.11(c).

Section 102.11(b) states:

Except for a good that is specifically described in the Harmonized System as a set, or is classified as a set pursuant to General Rule of Interpretation 3, where the country of origin cannot be determined under paragraph (a) of this section:

- (1) The country of origin of the good is the country or countries of origin of the single material that imparts the essential character of the good...

Section 102.11(c) states:

Where the country of origin cannot be determined under paragraph (a) or (b) of this section and the good is specifically described in the Harmonized System as a set or mixture, or classified as a set, mixture or composite good pursuant to General Rule of Interpretation 3, the country of origin of the good is the country of countries of origin of all materials that merit equal consideration for determining the essential character of the good.

“Material’ means a good that is incorporated into another good as a result of production with respect to that other good, and includes parts, ingredients, subassemblies, and components.” 19 CFR § 102.1 (1).

“For purposes of identifying the material that imparts the essential character to a good under §102.11, the only materials that shall be taken into consideration are those domestic or foreign materials that are classified in a tariff provision from which a change in tariff classification is not allowed under the §102.20 specific rule or other requirements applicable to the good.” 19 CFR § 102.18(b)(1).

In this case, the mixed nuts are classified under 2008.19.85, HTSUS, which describes the product as a mixture. Pursuant to 19 CFR § 102.11(c) (incorporating 19 CFR § 102.18(b)(1)), we find that the cashew nuts and peanuts both merit equal consideration for determining the essential character of the finished good. Therefore, the prepared nut mixture may not be marked as a product of Canada, but rather must be marked to indicate that it is a product of Brazil, Indonesia, the United States, and the other offshore countries where the cashew nuts and peanuts originate. However, to the extent it is marked as a “Product of the United States,” that is within the purview of the Federal Trade Commission.

HOLDING:

NY R02589 is modified to reflect that, by application of GN 12(s)(ii), HTSUS, the prepared nut mixture imported from Canada is not eligible for preferential tariff treatment under the NAFTA. In addition, by application of the note from Chapter 20, HTSUS, 19 CFR § 102.11(a) - (c), 19 CFR § 102.18(b)(1), and 19 CFR § 102.20, the prepared nut mixture may not be marked as a good of Canada, but rather must be marked to indicate that it is a product of Brazil, Indonesia, the United States, and the other offshore countries where the cashew nuts and peanuts originate. The tariff classification of the prepared nuts is unchanged.

EFFECT ON OTHER RULINGS:

NY R02589, dated September 23, 2005, is hereby 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

[ATTACHMENT L]

HQ H256781

OT:RR:CTF:VS H256781 AJR

CATEGORY: NAFTA

MR. KEVIN J. SULLIVAN
BAKER & MCKENZIE, LLP
815 CONNECTICUT AVENUE, NW
WASHINGTON, DC 20006-4078

RE: Modification of NY N228118; NAFTA; GN 12, HTSUS; 19 C.F.R. § 102.20 – Country of Origin Marking; Cashew Nuts Roasted and Salted in Canada

DEAR MR. SULLIVAN:

This is in reference to New York Ruling Letter (“NY”) N228118, dated August 8, 2012, issued to you on behalf of your client, Harvest Manor Farms, LLC, of Texas. At issue was the tariff classification of cashew nuts, their eligibility for preferential tariff treatment under the North American Free Trade Agreement (“NAFTA”), and their country of origin marking. In NY N228118, U.S. Customs and Border Protection (“CBP”) determined, in relevant part, that raw cashew nuts from various non-NAFTA countries imported into Canada, where they were heated, polished, cleaned, roasted (with or without oil) and salted, qualified for preferential tariff treatment under the NAFTA when imported into the United States. In addition, CBP found that the prepared nuts qualified to be marked as goods of Canada. It is now our position that the nuts do not qualify for preferential tariff treatment under the NAFTA, and do not qualify to be marked as goods of Canada. For the reasons described in this ruling, we hereby modify NY N228118.

The tariff classification of the roasted and salted nuts under subheading 2008.19.1040 of the Harmonized Tariff Schedule of the United States (“HTSUS”), when imported from Canada, is unaffected.

FACTS:

NY N228118 stated, in relevant part:

[R]aw, shelled cashews will initially be imported into Canada from various suppliers from non-NAFTA countries. In Canada, the nuts will first be inspected and subjected to a heat process intended to bring them to an ambient temperature to control breakage during subsequent processing. After heating, the cashews will be re-inspected and then polished and cleaned by being passed through a high-efficiency aspirator. The cashews will then be placed into either an oil or dry roaster. After roasting, the nuts will undergo a salting operation. After salting, the cashews will be inspected again and then packed, either whole or halved, in retail containers of various types and sizes. They will then be imported into the United States. You state that the ingredients of the finished, imported merchandise will be cashews, sea salt and peanut oil (from the roaster).

CBP found that the non-originating nuts satisfied the changes in tariff classification required under General Note (“GN”) 12(t)/20.4, HTSUS, and that, upon compliance with all applicable laws, regulations, and agreements under the NAFTA, the nuts would be subject to a free tariff rate when imported into the United States. In reaching its decision, CBP stated that “GN 12(s)(ii), which sets forth an exception for products that merely undergo

roasting or other specified processing, is not triggered here because the nuts at issue additionally undergo a salting process after roasting.” CBP also found that the prepared nuts qualified to be marked as goods of Canada under the NAFTA Marking Rules (19 CFR §§ 102.11(a) (3) and 102.20(d)).

ISSUE:

Whether the roasted and salted cashew nuts described in NY N228118 qualify for preferential tariff treatment under the NAFTA, and whether they may be marked as goods of Canada?

LAW AND ANALYSIS:

Pursuant to GN 12, HTSUS, for an article to be eligible for NAFTA preference, two requirements must be satisfied. First, the article in question must be “originating” under the terms of GN 12, HTSUS, and second, the article must qualify to be marked as a good of a NAFTA country under the NAFTA Marking Rules contained in 19 CFR § 102.20.

With regard to the first requirement, GN 12(b), HTSUS, provides, in pertinent part:

For the purposes of this note, goods imported into the customs territory of the United States are eligible for the tariff treatment and quantitative limitations set forth in the tariff schedule as “*goods originating in the territory of a NAFTA party*” only if –

....

ii) they have been transformed in the territory of Canada, Mexico and/or the United States so that—

(A) except as provided in subdivision (f) of this note, each of the non-originating materials used in the production of such goods undergoes a change in tariff classification described in subdivision (r), (s) and (t) of this note or the rules set forth therein, or

(B) the goods otherwise satisfy the applicable requirements of subdivision (r), (s) and (t) where no change in tariff classification is required, and the goods satisfy all other requirements of this note [.]

Raw cashew nuts are classified in subheading 0801.32, HTSUS. In understanding the language of 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 Harmonized System at the international level. *See* T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989). The ENs to Chapter 8, HTSUS, explain that nuts prepared according to Chapter 20, HTSUS, are excluded from Chapter 8, HTSUS. Roasted and salted cashew nuts are classified under subheading 2008.19, HTSUS. The ENs to heading 2008, HTSUS, explain that this heading includes oil-roasted nuts whether or not containing or coated with salt. In this case, raw cashew nuts were imported from non-NAFTA countries into Canada, where they were heated, polished, cleaned, roasted, and salted, and thus correctly classified under subheading 2008.19.1040, HTSUS.

The applicable rule in subdivision (t) provides for “a change to subheadings

2008.19 through 2008.99 from any other chapter.” See GN 12(t)/20.4, HTSUS. However, GN 12(s), Exceptions to Change in Tariff Classification Rules, HTSUS, provides, in relevant part:

(ii) Fruit, nut and vegetable preparations of chapter 20 that have been prepared or preserved merely by freezing, by packing (including canning) in water, brine or natural juices, or by roasting, either dry or in oil (including processing incidental to freezing, packing, or roasting), shall be treated as an originating good only if the fresh good were wholly produced or obtained entirely in the territory of one or more NAFTA parties.

Accordingly, though the non-originating nuts appear to undergo the requisite tariff shift from Chapter 8, HTSUS, to subheading 2008.19.1040, HTSUS, if the above exception applies, then the nuts do qualify for preferential tariff treatment under the NAFTA.

As provided in relevant part by GN 12(s)(ii), HTSUS, when nut preparations are prepared “merely” by roasting or processing “incidental” to roasting, then the origin of the nuts in their “fresh” state determines the origin of the good. The “fresh” state refers to the state of the nuts before they were roasted or processed in a manner incidental to roasting. Thus, for such nut preparations to be originating, the “fresh” nuts used to make the good must be wholly obtained or produced entirely in the territory of one or more of NAFTA parties (Mexico, Canada, or the United States). That is, non-originating nuts that, while in a NAFTA territory, are merely roasted, or processed in a manner incidental to roasting, will not be treated as originating nuts.

The term “merely” is not specifically defined in GN 12, HTSUS, but per its dictionary definition means “only (what is referred to) and nothing more.”¹ Read in the context of GN 12, HTSUS, the term “merely” means that the processes listed in GN 12(s)(ii), HTSUS, by themselves, are insufficient to qualify non-originating nuts for preferential tariff treatment under the NAFTA, despite changing tariff classifications per GN 12(b)(ii), HTSUS, and GN 12 (t)/20.4, HTSUS. Thus, we find that the purpose of GN 12(s)(ii), HTSUS, is to ensure that goods undergo sufficient processing in a NAFTA country, beyond the listed processes, in order to be considered originating for purposes of GN 12(b)(ii), HTSUS.

The term “incidental” is also not specifically defined in GN 12, HTSUS, but per its dictionary definition means “occurring or liable to occur in fortuitous or subordinate conjunction with something else of which it forms no essential part.”² Applying this definition to GN 12(s)(ii), HTSUS, the term “incidental” indicates a process that may happen with or as a result of roasting, but is secondary to, or of lesser importance than, the process of roasting.

We find that “salting” is precisely the type of lesser process contemplated by the note as incidental. Salting often occurs in connection not only with roasting, as in this case, but also with canning or freezing. It is the roasting, canning, or freezing processes which are the means by which the products are principally prepared. By contrast, salting has far less consequences to the essential character of the product. Moreover, the addition of salt like other

¹ “Merely” defined by *Oxford English Dictionary* at <http://www.oed.com/view/Entry/116740?rskey=jcbGqY&result=2#eid>.

² “Incidental” defined by the *Oxford English Dictionary* at <http://www.oed.com/view/Entry/93467?redirectedFrom=incidental#eid>.

flavors, spices, or other ingredients is a relatively simple process and does not require a prescribed amount to be added.

Given that roasting by itself would not be sufficient to make a nut an originating good per GN 12 (s)(ii), HTSUS, it would defeat the purpose of such note to conclude that “salting” would provide otherwise. Furthermore, the ENs to Chapter 20, HTSUS, state, in relevant part:

This heading covers fruits, nuts and other edible parts of plants, whether whole, in pieces or crushed, including mixtures thereof, prepared or preserved otherwise than by any of the processes specified in other Chapters or in the preceding headings of this Chapter.

It includes, *inter alia*:

(1) Almonds, ground-nuts, areca (or betel) nuts and other nuts, dry-roasted, oil roasted or fat-roasted, whether or not containing or coated with vegetable oil, salt, flavours, spices or other additives.

...

(9) Fruit, nuts, fruit-peel and other edible parts of plants (other than vegetables), preserved by sugar and put in syrup (e.g. *marrons glacés* or giner), whatever the packing.

Moreover, while the ENs to Chapter 20, HTSUS, mention “salt,” the references to “dry-roasted, oil-roasted or fat-roasted” and “preserved by sugar and put in syrup” indicate the principal processes of preparation or preservation that would change the classification of nuts from Chapter 8, HTSUS, to Chapter 20, HTSUS. The fact that “salt” is mentioned with reference to the types of roasting, but is not specifically mentioned as a process of preparation or preservation, suggests that “salting” is something that may happen with or as a result of roasting nuts, but whether the nuts are salted, or not, is not essential to the preparation; what is essential to the preparation is the roasting. For all of the foregoing reasons, we find that for purposes of GN 12(s)(ii), HTSUS, the term “processing incidental to freezing, packing, or roasting,” includes the process of “salting.”

This interpretation of GN 12(s)(ii), HTSUS, is further supported by Headquarters Ruling Letter (“HQ”) H243328, dated August 19, 2013, which considered “salting” to be a process incidental to roasting with regard to a provision from the United States-Korea Free Trade Agreement (“UKFTA”) that is parallel to GN 12(s)(ii), HTSUS. HQ H243328 affirms the decision in HQ H240383, dated May 3, 2013, determining the origin of the nuts from their “fresh” state on the basis that “salting and roasting [...] qualify as ‘processing incidental’ to roasting.”³

Accordingly, we find that salting is a process incidental to roasting and does not render the product originating. Rather, the origin of the product is determined by the origin of the “fresh” state per GN 12(s)(ii), HTSUS.

Given the foregoing, the roasted and salted cashew nuts may not be treated as originating because they do not meet the requirements of GN 12(s)(ii), HTSUS; that is, they were not wholly obtained or produced entirely in Mexico, Canada, or the United States as fresh nuts. Therefore, the prepared cashew nuts imported from Canada do not qualify for preferential tariff treatment under the NAFTA.

³ We find that the absence of “merely” from the UKFTA provision does not affect the interpretation of “incidental” in HQ H243328 and HQ H240383.

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, in such a manner should influence his will.” *United States v. Friedlaender & Co.*, 27 CCPA 297, 302, C.A.D. 104 (1940). Part 134, CBP Regulations (19 CFR Part 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:

[T]he 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 [the marking laws and regulations]; however, for a good of a NAFTA country, the NAFTA Marking Rules will determine the country of origin.

Part 102, CBP Regulations (19 CFR Part 102), sets forth the NAFTA Rules of Origin for country of origin marking purposes. As the cashew nuts were grown in non-NAFTA countries, Section 102.11(a)(1) and (2) do not apply. Section 102.11(a)(3) provides:

The country of origin of a good is the country in which ... each foreign material incorporated in that good undergoes an applicable change in tariff classification set out in § 102.20 and satisfies any other applicable requirements of that section, and all other applicable requirements of these rules are satisfied.

“Foreign material” means a material whose country of origin as determined under these rules is not the same as the country in which the good is produced.” 19 CFR § 102.1(e).

Under the provisions of 19 CFR § 102.20, the tariff shift rule for subheading 2008.19, HTSUS, provides as follows:

A change to subheading 2008.19 through 2008.99 from any other chapter, provided that the change is not the result of mere blanching of nuts.

However, the note from Chapter 20, HTSUS, provides:

Notwithstanding the specific rules of this chapter, fruit, nut and vegetable preparations of Chapter 20 that have been prepared or preserved merely by freezing, by packing (including canning) in water, brine or natural juices, or by roasting, either dry or in oil (including processing incidental to freezing, packing or roasting), shall be treated as a good of the country in which the fresh good was produced.

Based on the note from Chapter 20, HTSUS, the country of origin of the cashew nuts is not determined by 19 CFR § 102.11(a) (incorporating 19 CFR § 102.20), and the next step in the country of origin marking determination is provided in 19 CFR § 102.11(b), which states:

Except for a good that is specifically described in the Harmonized System as a set, or is classified as a set pursuant to General Rule of Interpretation 3, where the country of origin cannot be determined under paragraph (a) of this section:

(1) The country of origin of the good is the country or countries of origin of the single material that imparts the essential character of the good...

“Material’ means a good that is incorporated into another good as a result of production with respect to that other good, and includes parts, ingredients, subassemblies, and components.” 19 CFR § 102.1 (1).

“For purposes of identifying the material that imparts the essential character to a good under §102.11, the only materials that shall be taken into consideration are those domestic or foreign materials that are classified in a tariff provision from which a change in tariff classification is not allowed under the §102.20 specific rule or other requirements applicable to the good.” 19 CFR § 102.18(b)(1).

Pursuant to 19 CFR § 102.11(b) (incorporating 19 CFR § 102.18(b)(1)), we find that the single material that imparts the essential character of the finished good is the cashew nuts. Therefore, the prepared nuts may not be marked as goods of Canada, but rather must be marked to indicate that they are products of the non-NAFTA countries from where they originate.

HOLDING:

NY N228118 is modified to reflect that, by application of GN 12(s)(ii), HTSUS, the roasted and salted cashew nuts imported from Canada are not eligible for preferential tariff treatment under the NAFTA. In addition, by application of the note from Chapter 20, HTSUS, 19 CFR § 102.11(a) and (b), 19 CFR § 102.18 (b)(1), and 19 CFR § 102.20, the prepared cashew nuts may not be marked as goods of Canada, but rather must be marked to indicate that they are products of the non-NAFTA countries from where they originate. The tariff classification of the prepared cashew nuts is unchanged.

EFFECT ON OTHER RULINGS:

NY N228118, dated August 8, 2012, is hereby 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

GENERAL NOTICE**19 CFR PART 177****MODIFICATION OF ONE RULING LETTER AND
REVOCACTION OF TREATMENT RELATING TO THE
ELIGIBILITY OF PHEROMONE LURES FOR
PREFERENTIAL TREATMENT UNDER DR-CAFTA**

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

ACTION: Modification of one ruling letter and revocation of treatment relating to the eligibility of pheromone lures for preferential treatment under DR-CAFTA.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP is modifying one ruling letter concerning the eligibility of pheromone lures for preference under DR-CAFTA. Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the Customs Bulletin, Vol. 49, No. 5, on February 4, 2015. CBP received one comment in response to this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after September 28, 2015.

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), notice proposing to modify NY N233747, dated October 24, 2012, was published on February 4, 2015, in Volume 49, Number 5, of the Customs Bulletin. CBP received one comment in response to this notice.

Although in this notice CBP is specifically referring to NY N233747, 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 have advised CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the notice period. An importer's failure to have advised 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.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying NY N233747 in order to reflect the proper reasoning behind the DR-CAFTA preference granted to this merchandise, pursuant to the analysis set forth in Headquarters Ruling Letter ("HQ") H237563, set forth as an attachment to this document. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: June 30, 2015

MONIKA R. BRENNER

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

HQ H237563

June 30, 2015

CLA-2 OT:RR:CTF:TCM H237563 TNA

CATEGORY: Classification

JENNIFER R. DIAZ, Esq.
BECKER & POLIAKOFF
121 ALHAMBRA PLAZA, 10TH FLOOR
CORAL GABLES, FL 33134

RE: Reconsideration of NY N233747; Classification and DR-CAFTA Preference of Various Pest Lures from Costa Rica

DEAR Ms. DIAZ:

This letter is in reference to your request, dated January 7, 2013, of reconsideration of NY N233747, issued to you on October 24, 2012, on behalf of Marketing Arm International, Inc., concerning the tariff classification of pheromone lures that incorporate ingredients from the United States, Costa Rica, and the Netherlands and whether they are eligible for preferential treatment under the Dominican Republic- Central America-United States Free Trade Agreement (DR-CAFTA). In that ruling, U.S. Customs and Border Protection (“CBP”) classified the subject pheromone lures under subheading 3808.91.50, Harmonized Tariff Schedule of the United States (“HTSUS”), as “Insecticides, rodenticides, fungicides, herbicides, antisprouting products and plant-growth regulators, disinfectants and similar products, put up in forms or packings for retail sale or as preparations or articles (for example, sulfur-treated bands, wicks and candles, and flypapers): Other: Insecticides: Other: Other.” CBP also found that the merchandise did not qualify for preference under DR-CAFTA. We have reviewed NY N233747 and found it to be partially incorrect. For the reasons set forth below, we hereby modify NY N233747. We note that this modification does not address the classification of the subject pheromone lures and is limited to their eligibility for preference under DR-CAFTA.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to modify NY N233747 was published on February 4, 2015, in Vol. 49, No. 5, of the Customs Bulletin. CBP received one comment in response to this notice, which is addressed in the ruling.

FACTS:

The subject merchandise consists of four types of pheromone dispensers, used as traps for certain types of insects, specifically beet army worm, cotton pink bollworm, fall army worm, and the insect armyworm. These products are enclosed inside rubber septa and packed in an impermeable aluminum pack. They consist of various chemical compounds that function as attractants for the particular target pest.

The first product, Spodoptera sunia pheromone lure, is a mating disruption pheromone for the armyworm. It consists of two active ingredients: (Z,E)-9,12-tetradecadienyl acetate (CAS-30507-70-1) and (Z)-9-Tetradecenyl acetate (CAS-16725-53-4), as well as a third ingredient, n-hexane. The product is enclosed inside a rubber septum measuring approximately 1.5 cm in length and packed in an impermeable aluminum pack. It is intended for use as an attractant for Spodoptera sunia (armyworm). You state that the supplier of

the rubber septa and the active ingredients are all U.S. companies, and that the supplier of the n-hexane is a Costa Rican company.

The second product, *Spodoptera exigua* pheromone lure, is a mating disruption pheromone for the beet armyworm. It consists of two active ingredients: (Z)-9, E-12-tetradecadienyl acetate (CAS-31654-77-0) and Z-9-tetradecenol (CAS-35153-15-2). It also contains potassium hydroxide, methanol and n-hexane. The product is enclosed inside a rubber septum measuring approximately 1.5 cm in length and packed in an impermeable aluminum pack. It is intended for use as an attractant for *Spodoptera exigua* (beet armyworm). You state that the supplier of the rubber septa, the active ingredients, the potassium hydroxide and the methanol are U.S. companies, and the supplier of the n-hexane is a Costa Rican company.

The third product, *Spodoptera frugiperda* pheromone lure, is a mating disruption pheromone for the fall armyworm. It consists of three active ingredients: Z-7-Dodecenyl acetate (CAS-14959-86-5), (Z)-11-Hexadecenyl acetate (CAS-34010-21-4) and Z-9-Tetradecenyl acetate (CAS-16725-53-4). It also contains n-hexane. The product is blister packed inside a plastic sleeve measuring approximately 4 cm in length and packed in an impermeable aluminum pack. It is intended for use as an attractant for *Spodoptera frugiperda* (fall armyworm). You state that the suppliers of the active ingredients are U.S. companies, and the supplier of the n-hexane is a Costa Rican company.

The last product is Gossyplure Pheromone Dispenser, a mating disruption pheromone for the pink bollworm. It consists of two active ingredients: Z-7, E-11-Hexadecadienyl Acetate (CAS 50933-33-0); and Z-7, Z-11-Hexadecadienyl Acetate (CAS 50933-33-0). It also contains n-hexane. It is packaged in rubber septa and is intended for use as an attractant for the pink bollworm. It is stated that the supplier of the rubber septa and the active ingredients are U.S. companies; however, one invoice indicated that origin of the n-hexane is a Costa Rican company. According to the supplier, this product's active ingredients are purchased in the Netherlands.

Pheromones are natural substances that are produced by special glands in the abdomen of insects and it attracts the opposite gender of the same species. Insects produce pheromones for various purposes such as attracting a mate, marking foraging routes, and signaling alarm. Pheromone traps such as the subject merchandise slowly releases synthetic attractants that helps detect a single species of insect.

In NY N233747, CBP determined that the subject pheromone lures were not eligible for preferential treatment under DR-CAFTA. This conclusion was based on the fact that the FTA had not been updated to reflect the most recent technical updates that had been made to the HTSUS. As a result, NY N233747 reasoned that subheading 3808.91, the subheading in which the subject merchandise was classified, was not named in the applicable DR-CAFTA's tariff shift rule, and the merchandise was therefore ineligible for preference.

ISSUE:

Are the subject pheromone lures eligible for preferential treatment under DR-CAFTA?

LAW AND ANALYSIS:

General Note 29, HTSUS, incorporates Article 401 of the DR-CAFTA into the HTSUS. General Note 29 (b) provides, in pertinent part, that:

For the purposes of this note, subject to the provisions of subdivisions (c), (d), (m) and (n) thereof, a good imported into the customs territory of the United States is eligible for treatment as an originating good under the terms of this note if—

(i) they are goods wholly obtained or produced entirely in the territory of one of the parties to the Agreement; or

(ii) the good was produced entirely in the territory of one or more of the parties to the Agreement, and—

(A) each of the nonoriginating materials used in the production of the good undergoes an applicable change in tariff classification specified in subdivision (n) of this note; or

(B) the good otherwise satisfies any applicable regional value content or other requirements specified in subdivision (n) of this note; and the good satisfies all other applicable requirements of this note; or

(iii) the good was produced entirely in the territory of one or more of the parties to the Agreement exclusively from originating materials.

In addition, 19 C.F.R. §10.616 states, in pertinent part, the following:

(a) Verification. A claim for preferential tariff treatment made under § 10.583(b) or § 10.591 of this subpart, including any statements or other information submitted to CBP in support of the claim, will be subject to such verification as the port director deems necessary. In the event that the port director is provided with insufficient information to verify or substantiate the claim, or the exporter or producer fails to consent to a verification visit, the port director may deny the claim for preferential treatment.

As an initial matter in our analysis, the following is noted on page 2 of the General Notes (GN) of the HTSUS (2012) (Rev. 1):

[COMPILER'S NOTE: Two sets of changes to the Harmonized System have caused rules of origin for some free trade agreements to be inconsistent with the tariff schedule chapters. First, the rules of origin provisions for various United States free trade agreements have NOT been updated since major changes to the HTS were proclaimed effective on February 3, 2007, and will therefore contain tariff numbers that do not exist in the chapters of the HTS; these outdated rules are included in terms of HS 2002. However, the rules for the North American Free Trade Agreement, the United States-Australia Free Trade Agreement, the United States-Singapore Free Trade Agreement, the United States-Chile Free Trade Agreement, the United States-Bahrain Free Trade Agreement, and the United States-Korea Free Trade Agreement have been updated, and the pertinent general notes do reflect proclaimed rectifications. See Presidential Proclamation 8097, which modified the HTS to reflect World Customs Organization changes to the Harmonized Commodity Description and Coding System and was effective as of Feb. 3,

2007; proclaimed modifications appear on the Web site of the United States International Trade Commission, www.usitc.gov.

Second, for the second set of HS changes, the rules of origin for the United States-Chile Free Trade Agreement have been updated, as shown in the change record for this edition, to reflect the modifications to the HTS made by Presidential Proclamation 8771 of December 29, 2011 and effective as of February 3, 2012. This proclamation modified the HTS to reflect the WCO changes to the Harmonized System recommended to be effective in 2012. In addition, the rules of origin for the United States-Korea Free Trade Agreement were updated effective on and after January 1, 2014, pursuant to Presidential Proclamation xxxx. No other rules of origin provisions have been updated since the 2012 Harmonized System update, and these provisions may reflect HTS numbers as in effect in 2002 or 2007.

Contact officials of U.S. Customs and Border Protection in order to ascertain whether affected goods qualify for FTA treatment. A ruling on an individual shipment may be necessary.]

Accordingly, because the DR-CAFTA rules of origin have not been updated to reflect the 2007 or the 2012 changes to the Harmonized System, the pre-2007 classifications for the goods at issue must be used in order to ascertain the eligibility under the DR-CAFTA.

Therefore, under the terms of the Compiler's Note, while the DR-CAFTA rules have not yet been updated to reflect the technical updates to the HTSUS, and the updated subheading is not listed in the appropriate tariff shift rule, this alone is not a reason to deny preferential tariff treatment under the FTA, as determined in NY N233747. The change in subheading in which the subject merchandise is classified is not the result of a substantive change, but merely a change in the tariff number of the subheading because of the technical updates to the HTSUS. We now find that a denial of preference on this basis was unwarranted, and we re-examine whether the subject merchandise is entitled to duty-free treatment under the DR-CAFTA.

The relevant DR-CAFTA tariff shift rule states:

A change to subheadings 3808.10 through 3808.90 from any other subheading, provided that 50 percent by weight of the active ingredient or ingredients is originating.

It is not in dispute that the subject merchandise was classified in subheading 3808.10.50 under the pre-2007 HTSUS. Thus, contrary to the reasoning of NY N233747, the subject merchandise will meet this tariff shift rule if sufficient documentation is provided to show that 50 percent by weight of the active ingredient or ingredients is originating. If the merchandise was eligible prior to the 2007 technical updates, the technical updates themselves are not a bar to preference.

Your claim for DR-CAFTA preference is based on these goods being wholly obtained or produced in the U.S. and Costa Rica. When this request for reconsideration was first filed, no certificates of origin for the materials were submitted. However, CBP has allowed DR-CAFTA preference claims if the information needed to base a claim for preference is verified in documentation submitted by the importer, such as purchase orders, commercial invoices, proof of payment, shipping documents, etc., in addition to certificates

of origin. *See, e.g.*, HQ H196456, dated May 16, 2012; HQ H192596, dated February 14, 2012; and HQ H198036, dated February 27, 2012.

In the present case, the first product, *Spodoptera sunia*, contains three ingredients: (Z,E)-9,12-tetradecadienyl acetate, (Z)-9-Tetradecenyl acetate, and n-hexane, enclosed inside a rubber septum. The first two ingredients are the active ingredients. The submitted invoices include an invoice from the U.S. supplier for the Z-9-Tetradecenyl acetate. They also include invoices from both the Costa Rican supplier and the U.S. supplier for the (Z,E)-9,12-tetradecadienyl acetate. These invoices show sales of the materials between Costa Rican and U.S. companies, but these materials could have been produced anywhere and there is no indication on the invoices that the materials were produced in the U.S. and/or Costa Rica. Thus, these invoices do not definitively establish that any of the ingredients were manufactured or produced in Costa Rica or the U.S. As counsel for the importer, you submitted a comment after the proposed ruling was published in the Customs Bulletin. You submit the importer's certification that the *Spodoptera sunia* was made in the United States, and a certificate of origin showing that the Z-9-Tetradecenyl acetate was made in the United States.

The second product, *Spodoptera exigua*, consists of five ingredients: (Z)-9, E-12-tetradecadienyl acetate, Z-9-tetradecenol, potassium hydroxide, methanol and n-hexane, all enclosed inside a rubber septum. The first two are the active ingredients. Among the submitted invoices are invoices from both the Costa Rican supplier and the U.S. supplier for the (Z)-9, E-12-tetradecadienyl acetate and potassium hydroxide. An invoice was also submitted from the Costa Rican supplier for the methanol. These invoices show sales of the materials between Costa Rican and U.S. companies, but these materials could have been produced anywhere and there is no indication on the invoices that the materials were produced in the U.S. and/or Costa Rica. Thus, these invoices do not definitively establish that any of the ingredients were manufactured or produced in Costa Rica or the U.S. As counsel for the importer, you submitted a comment after the proposed ruling was published in the Customs Bulletin. You submit the importer's certification that the *Spodoptera exigua* was made in the United States, and a certificate of origin showing that Z-9-Tetradecenyl acetate was made in the United States. We note that Z-9-Tetradecenyl acetate is not among the *Spodoptera exigua*'s ingredients.

The third product, *Spodoptera frugiperda*, consists of four ingredients: Z-7-Dodecenyl acetate, (Z)-11-Hexadecenyl acetate, Z-9-Tetradecenyl acetate, and n-hexane. The first three are the active ingredients. The submitted invoices show that the Z-7-Dodecenyl acetate, Z-9-Tetradecenyl acetate and (Z)-11-Hexadecenyl acetate were supplied by U.S. suppliers, and that the rubber septum was supplied by the Costa Rican supplier. However, one invoice, from a U.S. supplier for the (Z)-11-Hexadecenyl acetate and sold to the Costa Rican supplier, indicates that the country of origin of this ingredient is Japan. As counsel for the importer, you submitted a comment after the proposed ruling was published in the Customs Bulletin. You submit the importer's certification that the *Spodoptera frugiperda* was made in the United States, and a certificate of origin showing that the Z-9-Tetradecenyl acetate was made in the United States.

The last product at issue, Gossyplure Pheromone Dispenser contains three ingredients: Z-7, E-11-Hexadecadienyl Acetate, Z-7, Z-11-Hexadecadienyl Acetate, and n-hexane. The first two are the active ingredients. The submitted invoices show that the country of origin of the Z-7, E-11-Hexadecadienyl

Acetate and Z-7, Z-11-Hexadecadienyl Acetate is the Netherlands, and you acknowledge this origin. As a result, the Gossyplure Pheromone Dispenser cannot receive preferential treatment under DR-CAFTA.

We also note that the tariff shift rule for heading 3808, HTSUS, where the subject goods are classified, requires that at least 50 percent by weight of the active ingredient or ingredients is originating. Once more, we note that the active ingredient in the Gossyplure Pheromone Dispenser is wholly obtained from the Netherlands and is therefore non-originating. The invoices submitted for the other three products at issue show only the sale of ingredients used to make the pheromones lures. Most of these invoices do not substantiate the origin of the ingredients; the only exception is the invoice for the subject *Spodoptera frugiperda* pheromone lure that states that its country of origin is Japan. These invoices also do not specify the percentage by weight of any originating ingredients. Accordingly, should the port choose to verify the DR-CAFTA claims for the lures for which Certificates of Origin were submitted, and provided that the importer can substantiate information regarding the weight, the goods may receive preferential tariff treatment under DR-CAFTA, if the Port Director is satisfied with the validity of these documents.

HOLDING:

The fact that the rules of origin for DR-CAFTA have not been updated is not a bar to the eligibility of the subject merchandise for preference.

Based on the information presented, however, the Gossyplure Pheromone Dispenser is not eligible for preferential treatment under DR-CAFTA. The eligibility of the remaining products, their eligibility depends on the determination of the Port Director based on certificates of origin presented at the time of entry as specified in 19 C.F.R. §10.616.

EFFECT ON OTHER RULINGS:

NY N233747, dated October 24, 2012, is MODIFIED with respect to the reason for denial of DR-CAFTA preference for the subject merchandise.

Sincerely,

MONIKA R. BRENNER

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**REVOCATION OF RULING LETTERS AND REVOCATION
OF TREATMENT RELATING TO THE TARIFF
CLASSIFICATION OF AUTOMOBILE SEAT COVERS**

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

ACTION: Notice of revocation of ten ruling letters and revocation of treatment relating to the classification of automobile seat covers.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that CBP is revoking New York Ruling Letters (NY) 815572, dated October 13, 1995; NY 816444, dated November 14, 1995; NY 817886, dated January 25, 1996; NY A88713, dated October 30, 1996; NY C85587, dated April 2, 1998; NY D87669, dated February 19, 1999; NY E83615, dated July 20, 1999; NY I88761, dated December 10, 2002; NY K80213, dated November 12, 2003; and NY N015530, dated August 28, 2007, concerning the tariff classification of automobile seat covers under the Harmonized Tariff Schedule of the United States (HTSUS). Notice proposing to revoke 815572, NY 816444, NY 817886, NY A88713, NY C85587, NY D87669, NY E83615, NY I88761, NY K80213, and NY N015530 was published on May 20, 2015, in Volume 49, Number 20, of the *Customs Bulletin*. No comments were received in response to this Notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after September 28, 2015.

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 amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility**.” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations.

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke 815572, NY 816444, NY 817886, NY A88713, NY C85587, NY D87669, NY E83615, NY I88761, NY K80213, and NY N015530 was published on May 20, 2015, in Volume 49, Number 20, of the *Customs Bulletin*.

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

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

In NY 815572, NY 816444, and NY 817886, NY A88713, NY C85587, NY D87669, NY E83615, NY I88761, and NY K80213, CBP classified various automobile seat covers in heading 6304, HTSUS, as other furnishing articles. In NY N015530, CBP classified an automobile seat cover in heading 6307, HTSUS, as an "other" made up article of textile.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY 815572, NY 816444, and NY 817886, NY A88713, NY C85587, NY D87669, NY E83615, NY I88761, and NY K80213, and NY N015530, as well as any other ruling not specifically identified, to reflect the tariff classi-

fication of the subject merchandise according to the analysis contained in Headquarters Ruling Letter (HQ) H249319, which is attached to this document. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

Dated: July 8, 2015

Sincerely,

JACINTO JUAREZ

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachments

HQ H249319

July 8, 2015

CLA-2 RR:CTF:TCM H249319 CKG

CATEGORY: Classification

TARIFF NO: 8708.99.81

SANDRA TOVAR
CST, INC.
500 LANIER AVE. W, SUITE 901
FAYETTEVILLE, GA 30214

RE: Revocation of New York Ruling Letters (NY) 815572, NY 816444, NY 817886, NY A88713, NY C85587, NY D87669, NY E83615, NY I88761, NY K80213, and NY N015530; classification of automobile seat covers

DEAR Ms. TOVAR:

This is in reference to New York Ruling Letters (NY) 815572, dated October 13, 1995; (NY) 816444, dated November 14, 1995; NY 817886, dated January 25, 1996; NY A88713, dated October 30, 1996; NY C85587, dated April 2, 1998; NY D87669, dated February 19, 1999; NY E83615, dated July 20, 1999; NY I88761, dated December 10, 2002; NY K80213, dated November 12, 2003; and NY N015530, dated August 28, 2007. In NY 815572, NY 816444, and NY 817886, NY A88713, NY C85587, NY D87669, NY E83615, NY I88761, and NY K80213, CBP classified various automobile seat covers in heading 6304, HTSUS, as other furnishing articles. In NY N015530, CBP classified an automobile seat cover in heading 6307, HTSUS, as an “other” made up article of textile. For the reasons set forth below, we have determined that the classification of these seat covers in headings 6304 and 6307, HTSUS, was incorrect.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke 815572, NY 816444, NY 817886, NY A88713, NY C85587, NY D87669, NY E83615, NY I88761, NY K80213, and NY N015530 was published on May 20, 2015, in Volume 49, Number 20, of the *Customs Bulletin*. No comments were received in response to this Notice.

FACTS:

The subject merchandise consists of various universal fit, after-market automotive seat covers, designed to fit over most bucket seats and bench seats of automobiles, trucks, sport utility vehicles and vans. The seat covers are knit or woven and made from synthetic or cotton fabric. The merchandise is marketed for fashion, fun, style, protection, upgrade and comfort.

ISSUE:

Whether the subject merchandise is classifiable as other furnishing articles under heading 6304, HTSUS, other made up textile articles under heading 6307, HTSUS, or as accessories of motor vehicles under heading 8708, HTSUS.

- (b) Parts of general use, as defined in note 2 to section XV, of base metal (section XV) or similar goods of plastics (chapter 39);
- (c) Articles of chapter 82 (tools);
- (d) Articles of heading 8306;
- (e) Machines or apparatus of headings 8401 to 8479, or parts thereof; articles of heading 8481 or 8482 or, provided they constitute integral parts of engines or motors, articles of heading 8483;
- (f) Electrical machinery or equipment (chapter 85);
- (g) Articles of chapter 90;
- (h) Articles of chapter 91;
- (ij) Arms (chapter 93);
- (k) Lamps or lighting fittings of heading 9405; or
- (l) Brushes of a kind used as parts of vehicles (heading 9603).

Note 3 to Section XVII provides:

3. References in chapters 86 to 88 to “parts” or “accessories” do not apply to parts or accessories which are not suitable for use solely or principally with the articles of those chapters. A part or accessory which answers to a description in two or more of the headings of those chapters is to be classified under that heading which corresponds to the principal use of that part or accessory.

* * *

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 follow, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89 -80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Part III of the General EN’s to Section XVII, HTSUS, provides, in pertinent part:

. . . these headings apply **only** to those parts or accessories which comply with **all three** of the following conditions:

- (a) They must not be excluded by the terms of Note 2 to this Section (see paragraph (A) below).

and

- (b) They must be suitable for use solely or principally with the articles of Chapters 86 to 88 (see paragraph (B) below).

and

- (c) They must not be more specifically included elsewhere in the Nomenclature (see paragraph (C) below).

(C) Parts and accessories covered more specifically elsewhere in the Nomenclature.

Parts and accessories, even if identifiable as for the articles of this Section, are **excluded** if they are covered more specifically by another heading elsewhere in the Nomenclature...

* * * * *

EN 87.08 provides:

This heading covers parts and accessories of the motor vehicles of headings 87.01 to 87.05, **provided** the parts and accessories fulfil **both** the following conditions :

(i) They must be identifiable as being suitable for use solely or principally with the above-mentioned vehicles;

and

(ii) They must not be excluded by the provisions of the Notes to Section XVII (see the corresponding General Explanatory Note).

Parts and accessories of this heading include:

(B) Parts of bodies and associated accessories, for example, floor boards, sides, front or rear panels, luggage compartments, etc.; doors and parts thereof; bonnets (hoods); framed windows, windows equipped with heating resistors and electrical connectors, window frames; running-boards; wings (fenders), mudguards; dashboards; radiator cowlings; number-plate brackets; bumpers and over-riders; steering column brackets; exterior luggage racks; visors; non-electric heating and defrosting appliances which use the heat produced by the engine of the vehicle; safety seat belts designed to be permanently fixed into motor vehicles for the protection of persons; floor mats (**other than** of textile material or unhardened vulcanised rubber), etc. Assemblies (including unit construction chassis-bodies) **not** yet having the character of incomplete bodies, e.g., not yet fitted with doors, wings (fenders), bonnets (hoods) and rear compartment covers, etc., are classified in this heading and not in heading 87.07.

* * * * *

Heading 6304, HTSUS, covers, in pertinent part, other furnishing articles. The ENs state that the heading includes “furnishing articles of textile materials ... for use in the home, public buildings, theatres, churches, etc., and similar articles used in ships, railway carriages, aircraft, trailer caravans, motor cars, etc.” These seat covers are “ejusdem generis” or “of the same kind” of articles as the exemplars, such as cushion covers and loose covers for furniture, listed in the EN. However, heading 6304, HTSUS, is a general heading or basket provision, as evidenced by the word “other.” See *The Item Company v U.S.*, 98 F. 3d 1294, 1296 (CAFC 1996). Classification of imported merchandise in a basket provision is only appropriate if there is no tariff category that covers the merchandise more specifically. See *EM Industries v. U.S.*, F. Supp. 1473, 1480 (1998) (“Basket’ or residual provisions of HTSUS headings . . . are intended as a broad catch-all to encompass the classification of articles for which there is no more specifically applicable subheading.”).

Heading 6307, HTSUS, covering other made up textile articles, is a similar basket provision. The EN to heading 6307, HTSUS, notes that the heading covers made up articles of any textile material which are **not included** more specifically in other headings of Section XI or elsewhere in the Nomenclature. These include, inter alia, loose covers for motor-cars and garment bags. As with heading 6304, HTSUS, classification in heading 6307, HTSUS, is precluded if the merchandise is covered more specifically in another tariff provision.

Heading 8708 provides for parts and accessories of motor vehicles of headings 8701 to 8705. “Accessory” is not defined in the HTSUS. This office has stated that the term “accessory” is generally understood to mean an article which is not necessary to enable the goods with which they are intended to function. They are of secondary importance, but must, however, contribute to the effectiveness of the principal article (e.g., facilitate the use or handling of the particular article, widen the range of its uses, or improve its operation). See Headquarters Ruling Letter (HQ) 958710, dated April 8, 1996; HQ 950166, dated November 8, 1991. We also employ the common and commercial meanings of the term “accessory”, as the courts did in *Rollerblade v. United States*, wherein the Court of International Trade derived from various dictionaries that an accessory must relate directly to the thing accessorized. See *Rollerblade, Inc. v. United States*, 116 F.Supp. 2d 1247 (CIT 2000), aff’d, 282 F.3d 1349 (Fed. Cir. 2002) (holding that inline roller skating protective gear is not an accessory because the protective gear does not directly act on or contact the roller skates in any way) (referred to herein as Rollerblade); See also HQ 966216, dated May 27, 2003. The instant seat covers act directly on seats of motor vehicles and contribute to their effectiveness by adding to the style of the interior of the motor vehicle, protecting the seats from wear and tear, etc. They are identifiable for use solely or principally with the motor vehicles of headings 8701 to 8705, HTSUS, because they are designed and principally used to fit bucket seats and bench seats of motor vehicles. They are also sold in automotive departments and stores and marketed primarily as automotive accessories. See e.g., <http://www.amazon.com/Seat-Covers-Accessories-Interior-Automotive/b?ie=UTF8&node=15736751>; http://www.walmart.com/browse/auto-tires/car-seat-covers/91083_1074769_1072095; http://www.amazon.com/FH-FB102112-Classic-Cloth-Covers-Black/dp/B001W9OP86/ref=sr_1_8?ie=UTF8&qid=1433947624&sr=8-8&keywords=car+seat+cover; http://www.amazon.com/Prime-Design-15pc-Monogram-Covers/dp/B00Q3CMPM0/ref=sr_1_17?ie=UTF8&qid=1433947733&sr=8-17-spons&keywords=car+seat+cover. Thus, they are accessories to the motor vehicle.

EN 87.08 and the General ENs to Section XVII state that parts and accessories of the motor vehicles of headings 8701 to 8705 should be identifiable as being suitable for use solely or principally with motor vehicles, must not be more specifically included elsewhere in the Nomenclature, and must not be excluded by Note 2 to Section XVI. The instant seat covers satisfy the requirements of EN 87.08 and the General ENs to Section XVII. They are not excluded by Section XVII, Note 2. They are used solely or principally with the motor vehicles of headings 8701 to 8705, HTSUS.

However, as indicated above, the instant merchandise may also be described as other furnishing articles of heading 6304, HTSUS, or as other made up textile articles of heading 6307, HTSUS. The instant goods are therefore prima facie classifiable under three different headings. GRI 3(a) provides that for goods which are prima facie classifiable under two or more headings, the heading which provides the most specific description shall be preferred to headings providing a more specific description.

Furthermore, Additional U.S. Rule of Interpretation 1(c), HTSUS, states that “a provision for parts of an article covers products solely or principally used as a part of such articles but a provision for “parts” or “parts and accessories” shall not prevail over a specific provision for such part or accessory.” However, headings 6304, HTSUS, and 6307, HTSUS, are general headings, or basket provisions. Classification of imported merchandise in a basket provision is only appropriate if there is no tariff category that covers the merchandise more specifically. As such, headings 6304, HTSUS, and 6307, HTSUS do not constitute a specific provision for the purposes of Additional U.S. Rule of Interpretation 1(c). *See* HQ 960950, dated January 16, 1998 (“It is an accepted rule of classification that a basket provision is not specific for tariff purposes. Subheading 4205.00.80, HTSUS, is not a specific provision because it is a basket provision. For this reason, it does not prevail over subheading 8708.99.80, HTSUS.”). *See also* HQ 965401, dated April 22, 2002; HQ W968461, dated February 22, 2010; and HQ 957811, dated July 19, 1995. As we have established that automobile accessories fit directly on automobile seats and are principally used with motor vehicles, they are more narrowly defined as automobile accessories than as other furnishing articles or as other made up articles of heading 6307, HTSUS. Heading 8708, HTSUS, therefore prevails over headings 6304, HTSUS and 6307, HTSUS. The merchandise is accordingly classified in heading 8708, HTSUS.

This conclusion is consistent with prior CBP rulings classifying other after-market automotive seat covers and similar articles as accessories under heading 8708, HTSUS. *See, e.g.*, HQ 965401, dated April 22, 2002; HQ 965189, dated April 22, 2002; NY E82884, dated June 10, 1999; NY F87411, dated June 2, 2000; NY G82562, dated October 12, 2000; NY G88267, dated March 19, 2001; NY L81220, dated December 15, 2004; NY L82024, dated January 8, 2005; and NY M84672, dated July 27, 2006. CBP has also classified automotive steering wheel covers under heading 8708, HTSUS. *See, e.g.*, NY 807787, dated March 17, 1995, and NY 863737, dated May 30, 1991, as well as other items for use with motor vehicles, such as a trash container designed to be strapped to a car seat, in HQ 950525, dated February 7, 1992, and a contoured car cover in HQ 089423, dated September 24, 1991. The instant merchandise is accordingly classified in heading 8708, HTSUS.

HOLDING:

By application of GRIs 3(a) and 6, the instant universal fit after-market automotive seat covers are classified in subheading 8708.99.81, HTSUS, which provides for “Parts and accessories of the motor vehicles of 8701 to 8705: other parts and accessories: other: other: other: other: other.” The 2015 column one, general rate of duty is 2.5% *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 online at <http://www.usitc.gov/tata/hts/>.

EFFECT ON OTHER RULINGS:

NY 815572, NY 816444, NY 817886, NY A88713, NY C85587, NY D87669, NY E83615, NY I88761, NY K80213, and NY N015530 are hereby revoked.

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

Sincerely,

JACINTO JUAREZ

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division



PROPOSED REVOCATION OF ONE RULING LETTER AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE CLASSIFICATION OF A TRIATHLON SHORT

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

ACTION: Notice of proposed revocation of one ruling letter and proposed revocation of treatment relating to the classification of a triathlon short.

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 proposes to revoke one ruling concerning the classification of a triathlon short under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical merchandise. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before August 28, 2015.

ADDRESSES: Written comments are to be addressed to the Bureau of Customs and Border Protection, Office of International Trade, Regulations & Rulings, Attention: Trade and Commercial Regulations Branch, 90 K Street, 10th Floor, NE, Washington, D.C. 20229-1177. Submitted comments may be inspected at the offices of Customs and Border Protection, 90 K Street, 10th Floor, NE, Washington, D.C. 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: Ann Segura, Tariff Classification and Marking Branch: (202) 325-0031.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP proposes to revoke one ruling pertaining to the classification of a triathlon short. Although in this notice, CBP is specifically referring to New York Ruling (NY) N007456, dated March 6, 2007 (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. This notice will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should 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 import-

er's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY N007456, dated March 6, 2007, CBP classified a woman's triathlon racing short in subheading 6104.63.2006, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for "Women's or girls' suits, ensembles, suit-type jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear), knitted or crocheted: Trousers, bib and brace overalls, breeches and shorts: Of synthetic fibers: Other: Other, Trousers and breeches: Women's: Containing 5 percent or more by weight of elastomeric yarn or rubber thread".

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to revoke NY N007456, and any other ruling not specifically identified, pursuant to the analysis set forth in Proposed Headquarters Ruling Letter H039658 (Attachment "B"). 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, we will give consideration to any written comments timely received.

Dated: July 10, 2015

Sincerely,

JACINTO JUAREZ

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N007456
CLA-2-61:RR:NC:WA:361
CATEGORY: CLASSIFICATION
TARIFF NO.: 6104.63.2006

Ms. REBEKKA MOEN
DASH AMERICA, INC.
D/B/A PEARL IZUMI USA, INC.
620 COMPTON STREET
BROOMFIELD, COLORADO 80020

RE: The tariff classification of a woman's triathlon racing short

DEAR Ms. MOEN:

In your letter dated February 21, 2007 you requested a classification ruling.

Style # 1557 (style name Micro Race Short) is described as a woman's triathlon racing short. The garment is a ladies' pull-on knit short. The main body is 90 percent nylon 10 percent spandex and the side panels are 87 percent polyester 13 percent spandex. The short features a full elasticized waistband with a drawstring, hemmed leg openings and a lightly padded crotch.

The submitted short is made in the U.S. However, the country of manufacture for the prospective importation has not yet been decided.

We are returning your sample.

You have recommended classification for the short under 6114.30.3070, as other garments due to certain specific features. The terms of heading 6104 are not limited, thus they include all forms of short. (see HQ 089405) While special articles of apparel used for certain sports are properly classified in heading 6114, this is a limited exception, as indicated in HQ 960833: The exemplars given in the EN, such as fencing clothing, jockeys' silks and ballet clothing, are generally worn only while engaging in that activity. The garment submitted is not so specialized that it is unsuitable for wear for other activities. The submitted short does not meet this exception.

The applicable subheading for the shorts covered by style 1557 will be 6104.63.2006, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Women's shorts (other than swimwear): Knitted or crocheted: Of synthetic fibers: other: other: shorts: women's. The duty rate will be 28.2% ad valorem.

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

Style 1557 falls within textile category 648. With the exception of certain products of China, quota/visa requirements are no longer applicable for merchandise, which is the product of World Trade Organization (WTO) member countries. The textile category number above applies to merchandise produced in non-WTO member-countries. Quota and visa requirements are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information on quota and visa requirements applicable to this merchandise, we suggest you check, close to the time of shipment, the "Textile Status Report for Absolute Quotas" which is available on our web site at www.cbp.gov. For current information

regarding possible textile safeguard actions on goods from China and related issues, we refer you to the web site of the Office of Textiles and Apparel of the Department of Commerce at otexa.ita.doc.gov.

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 Angela DeGaetano at 646-733-3052.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

[ATTACHMENT B]

HQ H039658

CLA-2 OT:RR:CTF:TCM H039658 AS

CATEGORY: Classification

TARIFF NO.: 6114.30.3070

Ms. JUDITH L. HAGGIN
1100 S.W. SIXTH AVE.
SUITE 1212
PORTLAND, OR 97204

RE: Revocation of NY N007456; Tariff Classification of Triathlon Shorts

DEAR Ms. HAGGIN:

This is in response to your letter to the National Commodity Specialist Division (NCSD), dated February 19, 2008, filed on behalf of your client, Dash America, Inc., requesting the reconsideration of New York Ruling Letter (NY) N007456, dated March 6, 2007, which classified a woman's triathlon racing short style #1557 in subheading 6104.63.2006, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for "Women's or girls' suits, ensembles, suit-type jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear), knitted or crocheted: Trousers, bib and brace overalls, breeches and shorts: Of synthetic fibers: Other: Other, Trousers and breeches: Women's: Containing 5 percent or more by weight of elastomeric yarn or rubber thread". The NCSD has forwarded your request to us for a direct reply.

Your request for reconsideration also includes a request for a ruling on a similar women's triathlon racing short style #0429. You explain that style #0429 is an updated version of style #1557 of the same name, "Women's Micro Race Shorts". This responds to your request for reconsideration. Samples of style #1557 and style #0429 have been forwarded by the NCSD to this office for examination. Both samples will be returned.

We have reviewed NY N007456 and found it to be incorrect. For the reasons set forth below, we hereby revoke NY N007456.

FACTS:

In NY N007456, the merchandise was described as follows:

Style #1557 (style name Micro Race Short) is described as a woman's triathlon racing short. The garment is a ladies' pull-on knit short. The main body is 90 percent nylon 10 percent spandex and the side panels are 87 percent polyester 13 percent spandex. The short features a full elasticized waistband with a drawstring, hemmed leg openings and a lightly padded crotch.

Additionally, from our examination of Style #1557, it has a 100 percent polyester multi-layer pad permanently sewn into the crotch/seat area of the shorts as part of the garment. The pad insert is visible when the shorts are worn, and the effects of the pad are clearly visible (it creates an unsightly bulge). You also refer to the pad insert as the "chamois insert". You state that the pad serves as a cushion and provides extra comfort while participating in the triathlon.

ISSUE:

What is the proper classification for the merchandise?

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 heading and legal notes do not otherwise require, the remaining GRIs may then be applied.

The HTSUS provisions under consideration are as follows:

- | | |
|--------------|---|
| 6104 | Women's or girls' suits, ensembles, suit-type jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear), knitted or crocheted: |
| | Trousers, bib and brace overalls, breeches and shorts: |
| 6104.63 | Of Synthetic fibers: |
| | Other: |
| 6104.63.20 | Other |
| | Trousers and breeches: |
| | Women's: |
| 6104.63.2006 | Containing 5 percent or more by weight of elastomeric yarn or rubber thread |
| 6114 | Other garments, knitted or crocheted: |
| 6114.30 | Of man-made fibers: |
| 6114.30.30 | Other |
| | Other: |
| 6114.30.3070 | Women's or girls' |

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

The ENs to heading 6114, HTSUS, state, in relevant part:

This heading covers knitted or crocheted garments which are not included more specifically in the preceding headings of this Chapter. The heading includes, *inter alia*:

* * *

(5) Special articles of apparel, whether or not incorporating incidentally protective components such as pads or padding in the elbow, knee or groin areas, used for certain sports or for dancing or gymnastics (e.g., fencing clothing, jockeys' silks, ballet skirts, leotards). However protective equipment for sports or games (e.e., fencing masks and breast plates, ice hockey pants, etc.) are **excluded (heading 95.06)**.

You have asserted that the subject merchandise should be classified in heading 6114, HTSUS, as “other” garments due to certain specific features said to be designed specifically for wear during all three triathlon events, swimming, bicycling, and running.

The terms of heading 6104, HTSUS, are not limited (other than swimwear), thus they include all forms of shorts. *See* HQ 089405, dated March 19, 1992. However, while special articles of apparel used for certain sports are properly classified in heading 6114, this is a limited exception. The Explanatory Notes for heading 6114, HTSUS, state that: “The heading includes, *inter alia*: (5) Special articles of apparel used for certain sports or for dancing or gymnastics (e.g., fencing clothing, jockey silks, ballet skirts, leotards).” *See* EN 61.14(5). In HQ 960833, dated October 5, 1998, CBP in particular noted: “The exemplars given in the EN, such as fencing clothing, jockeys’ silks and ballet clothing, are generally worn only while engaging in that activity.” CBP has consistently stated that for sports clothing to be classified in heading 6114, HTSUS, it must be limited to use in a particular sport, be designed for use in a particular sport, and be worn only while participating in the sport and not ordinarily worn at any other time. CBP has also considered the manner in which the garment is marketed and sold. *See* Headquarters Ruling Letters (HQ) 086973, dated April 30, 1990; 950846, dated April 8, 1992; 957469, dated November 7, 1995; and 960833, dated October 5, 1998.

The subject garment is specifically designed for the triathlon events that include swimming, bicycling and running. The instant garment includes a fully elasticized waist through which a drawstring is threaded, a feature found in swim trunks. It also includes a padded crotch and seat area, which is a feature found in cycle shorts. These features, along with the condition of the padding, demonstrate that the garment meets the needs of all three events, without unnecessarily impeding any one triathlon event. We agree that the chamois insert’s purpose is functional (i.e., to prevent chafing, to provide cushioning, and to absorb sweat), and that the design of the shorts is such that it renders them impractical for use as fashion shorts of heading 6104, HTSUS. Additionally, the chamois insert has been designed to be clearly visible on the outside of the garment, creating an unsightly and unseemly bulge such that the item would not be worn for casual wear. In addition, we note that the sample of Style #0429 is labeled for triathlon racing highlighting the “Quick drying UltraSensor Triathlon chamois”. The www.pearlizumi.com website also markets the item as a woman’s triathlon short.

In view of the foregoing, CBP finds that subject merchandise is classified in heading 6114, HTSUS.

This decision is consistent with NY N007592, dated March 27, 2007 (classifying men’s triathlon shorts in heading 6114, HTSUS); NY J88284, dated September 17, 2003; NY J88979, dated October 29, 2003; NY L81141, dated December 8, 2004; and N102306, dated May 20, 2010.

HOLDING:

By application of GRI’s 1 and 6, the woman’s triathlon racing short style #1557 is classified in heading 6114, HTSUS, specifically, subheading 6114.30.3070, HTSUSA, which provides for “Other garments, knitted or crocheted: Of man-made fibers: Other, Other: Women’s or girls’.” The column

one, general rate of duty is 14.9 percent *ad valorem*.

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

Style #1557 falls within textile category 659. With the exception of certain products of China, quota/visa requirements are no longer applicable for merchandise which is the product of World Trade Organization (WTO) member countries. The textile category number above applies to merchandise produced in non-WTO member-countries. Quota and visa requirements are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information on quota and visa requirements applicable to this merchandise, we suggest you check, close to the time of shipment, the "Textile Status Report for Absolute Quotas" which is available on our web site at www.cbp.gov. For current information regarding possible textile safeguard actions on goods from China and related issues, we refer you to the web site of the Office of Textiles and Apparel of the Department of Commerce at www.otexa.ita.doc.gov.

EFFECT ON OTHER RULINGS:

NY N007456, dated March 6, 2007, is REVOKED.

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 STYLE # 10162 "KALO"
FOOTWEAR**

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

ACTION: Notice of proposed revocation of a tariff classification ruling letter and proposed revocation of treatment relating to the classification of style # 10162 "Kalo" footwear.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), this notice advises interested parties that U.S. Customs and Border Protection ("CBP") proposes to revoke New York Ruling Letter ("NY") N212500, dated April 25, 2012, relating to the tariff classification of style # 10162 "Kalo" footwear 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 intended actions.

DATES: Comments must be received on or before August 28, 2015.

ADDRESSES: Written comments (preferably in triplicate) are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Office of Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K Street, NE, 10th Floor, Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs and Border Protection, 90 K Street, NE, 10th Floor, Washington, D.C. 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: Elif Eroglu, Valuation and Special Programs Branch: (202) 325-0277.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. § 1625(c)(1)), this notice advises interested parties that CBP proposes to revoke a ruling letter related to the tariff classification of style # 10162 "Kalo" footwear. Although in this notice, CBP is specifically referring to the proposed revocation of NY N212500 (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 additional 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 (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 its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY N212500, CBP determined that the subject style # 10162 "Kalo" footwear was classifiable under subheading 6404.19.3940 HTSUS, which provides for "[f]ootwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials: [f]ootwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials: [f]ootwear with outer soles of rubber or plastics: [o]ther: [f]ootwear with open toes or open heels; footwear of the slip-on type, that is held to the foot without the use of laces or buckles or other fasteners, the foregoing except footwear of subheading 6404.19.20 and except footwear having a foxing or foxing-like band wholly or almost wholly of rubber or plastics applied or molded at the sole and overlapping the upper: [o]ther: [o]ther: [o]ther: [f]or men." Based upon our analysis, we have determined that the subject style # 10162 "Kalo" footwear is properly classified under subheading 6404.19.1520, HTSUS, the provision for "[f]ootwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials: [f]ootwear with outer soles of rubber or plastics]: [o]ther: [f]ootwear having uppers of which over 50 percent of the external surface area (including any leather accessories or reinforcements such as those mentioned in note 4(a) to this chapter) is leather: [f]or men."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP intends to revoke NY N212500 and any other ruling not specifically identified, to reflect the proper classification of the style # 10162 "Kalo" footwear according to the analysis contained in proposed Headquarters Ruling Letter ("HQ") H219215, 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: July 10, 2015

IEVA K. O'ROURKE

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N212500

April 25, 2012

CLA-2-64:OT:RR:NC:N4:447

CATEGORY: Classification

TARIFF NO.: 6404.19.3940

MS. LUCILLE DE NOBREGA
OLUKAI
8955 RESEARCH DRIVE
IRVINE, CA 92618

RE: The tariff classification of footwear from China

DEAR MS. DE NOBREGA:

In your electronic ruling request submitted on February 23, 2012 and your follow up submission received on April 4, 2012, you requested a tariff classification ruling.

The submitted sample identified as style #10162 “Kalo,” is a pair of men’s open toe/heel flip-flop thong sandals with rubber or plastics outer soles. The two component V-shaped strap upper of each sandal, described as predominately leather (51.49%) in a “Test Report” by Intertek Testing Services, consist of three leather overlays stitched to a textile substrate. Two of these leather overlays which are lasted under and cemented to the sole, add structural strength to the textile upper and constitute external surface area. The remaining overlay is stitched to the center of the textile substrate (which is plausible upper material) and is considered an accessory or reinforcement. Consequently, this overlay is excluded from the external surface area measurement of the upper pursuant to Note 4(a) to Chapter 64, Harmonized Tariff Schedule of the United States (HTSUS). Therefore, we disagree with the findings of the “Test Report” and conclude that the constituent material having the greatest external surface area of the upper (no account being taken of accessories or reinforcements) is textile.

The applicable subheading for the men’s thong sandals, style #10162 “Kalo” will be 6404.19.3940, HTSUS, which provides for footwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials: footwear with outer soles of rubber or plastics: other: footwear with open toes or open heels; footwear that is more than 10 percent by weight of rubber or plastics; other: other: for men. The rate of duty will be 37.5 percent ad valorem.

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

The submitted sample is not marked with the country of origin. Therefore, if imported as is, it will not meet the country of origin marking requirements of 19 U.S.C. 1304. Accordingly, the footwear would be considered not legally marked under the provisions of 19 C.F.R. 134.11 which states, “every article of foreign origin (or its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit, in such manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article.”

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,

THOMAS J. RUSSO

Director

National Commodity Specialist Division

[ATTACHMENT B]

HQ H219215
OT:RR:CTF:TCM H219215 EE
CATEGORY: Classification
TARIFF NO.: 6404.19.1520

LUCILLE DE NOBREGA
OLUKAI
8955 RESEARCH DRIVE
IRVINE, CA 98618

RE: Tariff classification of style # 10162 “Kalo” footwear; Reconsideration of NY N212500

DEAR Ms. DE NOBREGA:

This letter is to inform you that U.S. Customs and Border Protection (“CBP”) has reconsidered New York Ruling Letter (“NY”) N212500 issued to you on April 25, 2012, concerning the tariff classification under the Harmonized Tariff Schedule of the United States (“HTSUS”) of style # 10162 “Kalo” footwear. We have reviewed that ruling and found it to be in error. Therefore, this ruling revokes NY N212500.

FACTS:

The footwear is described in NY N212500 as follows:

Style #10162 “Kalo,” is a pair of men’s open toe/heel flip-flop thong sandals with rubber or plastics outer soles. The two component V-shaped strap upper of each sandal, described as predominately leather (51.49%) in a “Test Report” by Intertek Testing Services, consist of three leather overlays stitched to a textile substrate. Two of these leather overlays which are lasted under and cemented to the sole, add structural strength to the textile upper and constitute external surface area. The remaining overlay is stitched to the center of the textile substrate (which is plausible upper material) and is considered an accessory or reinforcement. Consequently, this overlay is excluded from the external surface area measurement of the upper pursuant to Note 4(a) to Chapter 64, Harmonized Tariff Schedule of the United States (HTSUS). Therefore, we disagree with the findings of the “Test Report” and conclude that the constituent material having the greatest external surface area of the upper (no account being taken of accessories or reinforcements) is textile.

Style # 10162 “Kalo” was found to be classifiable under subheading 6404.19.3940, HTSUS, which provides for “[f]ootwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials: [f]ootwear with outer soles of rubber or plastics: [o]ther: [f]ootwear with open toes or open heels; footwear of the slip-on type, that is held to the foot without the use of laces or buckles or other fasteners, the foregoing except footwear of subheading 6404.19.20 and except footwear having a foxing or foxing-like band wholly or almost wholly of rubber or plastics applied or molded at the sole and overlapping the upper: [o]ther: [o]ther: [o]ther: [f]or men.”

ISSUE:

Whether the subject merchandise is classified as footwear in subheading 6404.19.39, HTSUS, or as footwear under subheading 6404.19.15, HTSUS?

LAW AND ANALYSIS:

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

The 2015 HTSUS provisions under consideration are:

6404 Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials:

Footwear with outer soles of rubber or plastics:

6404.19 Other:

6404.19.15 Footwear having uppers of which over 50 percent of the external surface area (including any leather accessories or reinforcements such as those mentioned in note 4(a) to this chapter) is leather..

* * *

Footwear with open toes or open heels; footwear of the slip-on type, that is held to the foot without the use of laces or buckles or other fasteners, the foregoing except footwear of subheading 6404.19.20 and except footwear having a foxing or foxing-like band wholly or almost wholly of rubber or plastics applied or molded at the sole and overlapping the upper:

Other:

6404.19.39 Other..

Chapter 64, Note 4, HTSUS, provides in relevant part:

- (a) The material of the upper shall be taken to be the constituent material having the greatest external surface area, no account being taken of accessories or reinforcements such as ankle patches, edging, ornamentation, buckles, tabs, eyelet stays or similar attachments.

General Explanatory Note (“EN”) D to Chapter 64 reads, in pertinent part, as follows¹:

For the purposes of the classification of footwear in this Chapter, the constituent material of the uppers must also be taken into account. The upper is the part of the shoe or boot above the sole. However, in certain

¹ The Harmonized Commodity Description and Coding System Explanatory Notes (EN’s) constitute the official interpretation of the Harmonized System. While not legally binding on the contracting parties, and therefore not dispositive, the EN’s provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the HTSUS. CBP believes the EN’s should always be consulted. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

footwear with plastic moulded soles or in shoes of the American Indian moccasin type, a single piece of material is used to form the sole and either the whole or part of the upper, thus making it difficult to identify the demarcation between the outer sole and the upper. In such cases, the upper shall be considered to be that portion of the shoe which covers the sides and top of the foot. The size of the uppers varies very much between the different types of footwear, from those covering the foot and the whole leg, including the thigh (for example, fishermen's boots), to those which consist simply of straps or thongs (for example, sandals).

If the upper consists of two or more materials, classification is determined by the constituent material which has the greatest external surface area, no account being taken of accessories or reinforcements such as ankle patches, protective or ornamental strips or edging, other ornamentation (e.g., tassels, pompons or braid), buckles, tabs, eyelet stays, laces or slide fasteners. The constituent material of any lining has no effect on classification.

In the instant case, the upper of the style # 10162 "Kalo" footwear consists of both textile and leather materials. As previously noted, two of the three leather overlays stitched to the sides of the upper are lasted under and cemented to the sole. In NY N212500, CBP determined that the third leather overlay, which is stitched to the center of the textile substrate, is an accessory or reinforcement. The Test Report by Intertek Testing Services indicated that the ESAU, including the leather component considered to be an accessory or reinforcement, consisted of 51.49% leather. Chapter 64, Note 4, HTSUS, provides that accessories or reinforcements are not considered when calculating the ESAU. Since the leather overlay attached to the center of the textile substrate, which was determined to be an accessory or reinforcement, is not considered when calculating the ESAU, the constituent material which provides the greatest ESAU is textile. Accordingly, the merchandise is considered to have uppers of textile materials and classifiable in heading 6404, HTSUS. However, in determining the applicable subheading, we find that the leather component considered to be an accessory or reinforcement is included in the ESAU requirement. Specifically, the merchandise is classified under subheading 6401.19.15, HTSUS, which provides for footwear having uppers of which over 50% of the external surface area is leather including any leather accessories or reinforcement such as those mentioned in Note 4(a) to Chapter 64.

HOLDING:

By application of GRI 1, the subject style # 10162 "Kalo" is classified in heading 6404, HTSUS, more specifically, it is classified in subheading 6404.19.1520, HTSUS, which provides for: "[f]ootwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials: [f]ootwear with outer soles of rubber or plastics]: [o]ther: [f]ootwear having uppers of which over 50 percent of the external surface area (including any leather accessories or reinforcements such as those mentioned in note 4(a) to this chapter) is leather: [f]or men." The 2015 column one, general rate of duty, is 10.5% *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY N212500, dated March 21, 2012, is hereby REVOKED.

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

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division