

U.S. Customs and Border Protection

CBP Decisions

19 CFR Part 4

CBP Dec. 08-27

COUNTRIES WHOSE PLEASURE VESSELS MAY BE ISSUED CRUISING LICENSES

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

ACTION: Final rule.

SUMMARY: This document amends the U.S. Customs and Border Protection (CBP) regulations relating to the list of foreign countries whose pleasure vessels may be issued U.S. cruising licenses. Pursuant to information provided by the British Embassy, the Department of State has recommended that CBP update the listing relating to the United Kingdom.

DATES: These amendments are effective on October 15, 2008. The changes reflected in these amendments became applicable on May 1, 2007.

FOR FURTHER INFORMATION CONTACT: Goli Gharib, Regulations and Rulings, Office of International Trade, (202) 572-8851.

SUPPLEMENTARY INFORMATION:

Background

Section 4.94(a) of the CBP regulations (19 CFR 4.94(a)), provides that U.S. documented vessels with a recreational endorsement, used exclusively for pleasure, not engaged in any trade, and not violating the customs or navigation laws of the United States, may proceed from port to port in the United States or to foreign ports without entering or clearing, as long as they have not visited hovering vessels. When returning from a foreign port or place, such pleasure vessels are required to report their arrival pursuant to § 4.2, CBP regulations (19 CFR 4.2).

Generally, foreign-flag yachts entering the United States are required to comply with the laws applicable to foreign vessels arriving at, departing from, and proceeding between ports of the United States. However, as provided in § 4.94(b), CBP regulations (19 CFR 4.94(b)), CBP may issue cruising licenses to pleasure vessels from certain countries if it is found that yachts of the United States are exempt from formal entry and clearance procedures (e.g., filing manifests, obtaining permits to proceed and paying entry and clearance fees) in those countries.

If a foreign-flag yacht is issued a cruising license, the yacht, for a stated period not to exceed one year, may arrive and depart from the United States and to cruise in specified waters of the United States without entering and clearing, without filing manifests and obtaining or delivering permits to proceed, and without the payment of entrance and clearance fees, or fees for receiving manifests and granting permits to proceed, duty on tonnage, tonnage tax, or light money. Upon arrival at each port in the United States, the master of a foreign-flag yacht with a cruising license must report the fact of arrival to the appropriate CBP office. A list of countries whose yachts are eligible for cruising licenses is set forth in § 4.94(b).

By an undated letter received on May 1, 2007, the Department of State informed the Chief, Cargo Security, Carriers and Immigration Branch, CBP, that the British Embassy has advised that the listing for Great Britain in § 4.94(b) requires updating. The Department of State recommends that the reference in § 4.94(b) for Great Britain be revised to read as follows:

United Kingdom and the Dependencies: the Anguilla Islands, the Isle of Man, the British Virgin Islands, the Cayman Islands, and the Turks and Caicos Islands.

Additionally, the Department of State recommends that Saint Vincent and the Grenadines; and Saint Kitts and Nevis (formerly the Federation of Saint Christopher and Nevis) be listed separately from the United Kingdom as they are now independent countries.

The Chief, Cargo Security, Carriers and Immigration Branch has found, based on the information provided, that the reciprocity required in § 4.94(b) has been established with respect to the above-referenced countries effective May 1, 2007. Accordingly, under the authority of 46 U.S.C. 60504, yachts from the above-referenced countries used only for pleasure may arrive at and depart from the ports of the United States and cruise in the waters of the United States without payment of any duties or fees. The list of countries in § 4.94(b) is being revised in this final rule document as discussed above. The authority to amend this section of the CBP regulations has been delegated to the Chief, Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade.

Inapplicability of Notice and Delayed Effective Date

Because these amendments merely implement a statutory requirement and confer a benefit upon the public, CBP has determined that notice and public procedure are unnecessary pursuant to section 553(b)(B) Of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)(B)). Further, for the same reasons, good cause exists for dispensing with a delayed effective date under section 553(d)(3) of the APA (5 U.S.C. 553(d)(3)).

Regulatory Flexibility Act and Executive Order 12866

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. This amendment does not meet the criteria for a “significant regulatory action” as specified in Executive Order 12866.

Signing Authority

This document is being issued by CBP in accordance with § 0.1(b)(1) of the CBP regulations (19 CFR 0.1(b)(1)).

List of Subjects in 19 CFR Part 4

Customs duties and inspection, Maritime carriers, Vessels, Yachts.

AMENDMENTS TO THE CBP REGULATIONS

For the reasons set forth above, part 4 of title 19 of the Code of Federal Regulations (19 CFR part 4) is amended as set forth below.

PART 4–VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority citation for part 4 and the specific authority for § 4.94 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624, 2071 note; 46 U.S.C. 501, 60105.

* * * * *

Section 4.94 also issued under 19 U.S.C. 1441; 46 U.S.C. 60504;

* * * * *

§ 4.94 [Amended]

2. In § 4.94, the list of countries in paragraph (b) is amended by removing the words “Great Britain (including Turks and Caicos Islands; St. Vincent (including the territorial waters of the Northern Grenadine Islands), the Cayman Islands, the St. Christopher-Nevis-Anguilla Islands and the British Virgin Islands)” and adding, in appropriate alphabetical order, the words “Saint Vincent and the Grenadines”, “Saint Kitts and Nevis,” and “United Kingdom and the

Dependencies: the Anguilla Islands, the Isle of Man, the British Virgin Islands, the Cayman Islands, and the Turks and Caicos Islands”.

Dated: October 9, 2008

JOANNE R. STUMP,
Chief,
Trade and Commercial Regulations Branch,
Regulations and Rulings,
Office of International Trade.

[Published in the Federal Register, October 15, 2008 (73 FR 60943)]



General Notices

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

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

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

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Intertek USA, Inc., 801 West Orchard St., Suite 5, Bellingham, WA 98225, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to cbp.labhq@dhs.gov. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/

DATES: The accreditation and approval of Intertek USA, Inc., as commercial gauger and laboratory became effective on March 14, 2007. The next triennial inspection date will be scheduled for March 2010.

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

Dated: October 2, 2008

IRA S. REESE,
Executive Director;
Laboratories and Scientific Services.

[Published in the Federal Register, October 9, 2008 (73FR 59642)]

Notice of Revocation of Customs Broker License

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

ACTION: General Notice

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 USC 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker license is canceled with prejudice.

<u>Name</u>	<u>License #</u>	<u>Issuing Port</u>
Sherri N. Boynton	10691	Los Angeles

DATED: September 24, 2008

DANIEL BALDWIN,
Assistant Commissioner;
Office of International Trade.

[Published in the Federal Register, October 9, 2008 (73FR 59642)]

GRANT OF "LEVER-RULE" PROTECTION

AGENCY: Customs & Border Protection, Department of Homeland Security.

ACTION: Notice of grant of "Lever-rule" protection.

SUMMARY: Pursuant to 19 CFR 133.2(f), this notice advises interested parties that Customs & Border Protection (CBP) has granted *Lever-rule* protection to the Colgate-Palmolive Company. Notice of the receipt of applications for *Lever-rule* protection was published in the July 23, 2008, issue of the *Customs Bulletin*.

FOR FURTHER INFORMATION CONTACT: Richard Chovanec, Intellectual Property Rights Branch, Regulations & Rulings, Office of International Trade (202) 572-8826.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to 19 CFR § 133.2(f), this notice advises interested parties that CBP has granted Lever-rule protection for the following COLGATE toothpaste products: COLGATE Cavity Protection, COLGATE Gel, COLGATE Triple Action, COLGATE Fresh Confidence, COLGATE Total, COLGATE Herbal, COLGATE Tartar Control, and COLGATE Max Fresh.

In accordance with the decisions in *Davidoff & CIE v. PLD Int'l Corp.*, 263 F. 3d 1297 (11th Cir. 2001), *Societe Des Produits Nestle, S.A. v. Casa Helvetia, Inc.*, 982 F.2d 633 (1st Cir. 1992) and *Ferrero U.S.A., Inc. v. Ozak Trading, Inc.*, 753 F. Supp. 1240 (D.N.J), aff'd 935 F.2d 1281 (3d Cir. 1991), CBP has determined that the above-referenced gray market COLGATE toothpaste products differ physically and materially from the COLGATE toothpaste products authorized for sale in the United States in one or more of the following respects: packaging not presented as required with U.S. Food and Drug Administration's "drug facts" labeling requirements; measurement of net contents differs; products distributed by an entity other than Colgate-Palmolive Company in New York; products certified by foreign dental associations and not by American Dental Association; products are labeled in or contain a foreign language; product packages have additional designations on them; and products have ingredients not found in U.S. authorized products.

ENFORCEMENT

Importation of the above-referenced subject gray market COLGATE toothpaste products is restricted, unless the labeling requirements of 19 CFR § 133.23(b) have been satisfied.

Dated: October 10, 2008

GEORGE FREDERICK MCCRAY,
Chief,
Intellectual Property Rights Branch,
Regulations & Rulings,
Office of International Trade.

GRANT OF “LEVER-RULE” PROTECTION

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

ACTION: Notice of grant of “Lever-rule” protection.

SUMMARY: Pursuant to 19 CFR § 133.2(f), this notice advises interested parties that CBP has granted “Lever-rule” protection to John Wiley & Sons, Inc. (hereinafter referred to as “Wiley”). Notice of the receipt of an application for “Lever-rule” protection was published in the October 23, 2008, issue of the Customs Bulletin.

FOR FURTHER INFORMATION CONTACT: Dean Cantalupo, Intellectual Property Rights and Restricted Merchandise Branch, Regulations & Rulings, (202) 572-0885.

SUPPLEMENTARY INFORMATION:**BACKGROUND**

Pursuant to 19 CFR § 133.2(f), this notice advises interested parties that CBP has granted “Lever-rule” protection for the following products: published by Wiley, written by Erwin Kreyszig, entitled Advanced Engineering Mathematics, 9th Edition, 2006, ISBN 0-471-48885-2.

In accordance with the holding of *Davidoff & CIE v. PLD Int'l Corp.*, 263 F. 3d 1297 (11th Cir. 2001), *Societe Des Produits Nestle, S.A. v. Casa Helvetia, Inc.*, 982 F.2d 633 (1st Cir. 1992) and *Ferrero U.S.A., Inc. v. Ozak Trading, Inc.*, 753 F. Supp. 1240 (D.N.J), aff'd 935 F.2d 1281 (3d Cir. 1991), CBP has determined that the gray market editions differ physically and materially from their correlating edition authorized for sale in the United States with respect to the following product characteristics: product construction, durability, quality, appearance, packaging, market pricing, and differences due to regulatory standards.

ENFORCEMENT

Importation of the subject international editions written by Erwin Kreyszig, entitled Advanced Engineering Mathematics, 9th Edition, 2006, are restricted, unless the labeling requirements of 19 CFR § 133.23(b) are satisfied.

Dated: October 3, 2008

GEORGE FREDERICK MCCRAY, ESQ.,
Chief, Intellectual Property Rights Branch,
Office of Regulations & Rulings.

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS.
Washington, DC, October 15, 2008

The following documents of U.S. Customs and Border Protection (“CBP”), Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and CBP field offices to merit publication in the CUSTOMS BULLETIN.

SANDRA L. BELL,
*Executive Director,
Regulations and Rulings,
Office of International Trade.*

**PROPOSED REVOCATION OF RULING LETTERS AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE TARIFF CLASSIFICATION OF CERTAIN BED RISERS
OR BED RAISERS**

AGENCY: Bureau of Customs and Border Protection; Department of Homeland Security.

ACTION: Notice of proposed revocation of a tariff classification ruling letters and proposed revocation of treatment relating to the classification of certain bed risers or bed raisers

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625 (c)), this notice advises interested parties that Customs and Border Protection (CBP) intends to revoke three ruling letters relating to the tariff classification of certain bed risers (also known as bed raisers or bed lifters), under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). 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.

DATE: Comments must be received on or before November 29, 2008.

ADDRESS: Written comments are to be addressed to Customs and Border Protection, Regulations and Rulings of the Office of International Trade, Attention: Commercial Trade and Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected at Customs and Border Protection, 799 9th Street N.W., Washington, D.C., during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark, Trade and Commercial Regulations Branch, at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: John Rhea, Tariff Classification and Marking Branch: (202) 572-8785

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 revoke three ruling letters pertaining to the tariff classification of bed risers (aka bed raisers). Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter ("NY") H87303, dated February 4, 2002, NY R02967, dated January 11, 2006 and NY N026503, dated May 21, 2008 (Attachments A-C), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the 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 the above mentioned rulings, CBP determined that the subject bed raisers were classifiable under subheading(s) 3924.90.5500, HTSUS and 3924.90.5600, HTSUS, as other household articles of plastics. Based upon our analysis of these bed raisers, we have determined that this merchandise is properly classified in heading 3926, HTSUS, as other articles of plastics. Specifically, these items are classified under subheading 3926.90.99, HTSUS, which provides for: "Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other . . ."

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke NY H87303, NY R02967 and NY N026503 and any other ruling not specifically identified, to reflect the proper classification of the bed raisers according to the analysis contained in proposed Headquarters Ruling Letter(s) ("HQ") H031398, H031399 and H031401, set forth as Attachment(s) D, E and F 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: October 9, 2008

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

Attachments:

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(ATTACHMENT A)

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
NY R02967
January 11, 2006
CLA-2-39:RR:NC:SP:221 R02967
CATEGORY: Classification
TARIFF NO.: 3924.90.5500

MR. TROY D. CRAGO
ATICO INTERNATIONAL USA, INC.
501 South Andrews Avenue
Ft. Lauderdale, FL 33301

RE: The tariff classification of plastic bed risers from China.

DEAR MR. CRAGO:

In your letter dated December 13, 2005, you requested a tariff classification ruling. You have submitted illustrations depicting bed risers that are identified as item number W038IA02001. The bed risers are made of

polypropylene material. They will be packaged for retail sale in sets of four. The plastic bed risers measure 6-5/8 inches long by 6-5/8 inches wide by 6 inches high. The bed risers are used under the legs or wheels of a bed frame to add height and create additional storage space under the bed.

The applicable subheading for the plastic bed risers will be 3924.90.5500, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other household articles and toilet articles, of plastics. The rate of duty will be 3.4 percent ad valorem.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on 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 Joan Mazzola at 646-733-3023.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

(ATTACHMENT B)

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
NY H87303
February 4, 2002
CLA-2-39:RR:NC:SP:222 H87303
CATEGORY: Classification
TARIFF NO.: 3924.90.5500

MS. YVONNE M. W. RICHARDSON
THE MILLWORK TRADING CO., LTD.
148 West 37th Street, 4th Floor
New York, NY 10018

RE: The tariff classification of plastic bed raisers from China.

DEAR MS. RICHARDSON:

In your letter dated January 25, 2002, you requested a tariff classification ruling.

The submitted sample is called a bed elevator. There is no style number for identification. Your letter of inquiry states that they will be available in sets of four. This product is used to raise the height of the bed by placing one under each leg of the bed. It is made of sturdy polypropylene material. The bed elevators measure approximately 6-1/2 inches high by 4 inches in diameter at the top by 6-1/4 inches in diameter at the bottom. The bed elevator is hollow inside. It is designed with a cut-out section in the top that is approximately one-inch deep. This section supports the leg of the bed when raised.

The applicable subheading for the plastic bed elevator will be 3924.90.5500, Harmonized Tariff Schedule of the United States (HTS),

which provides for . . . other household articles . . . of plastics: other, other. The rate of duty will be 3.4 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 Joan Mazzola at 646-733-3023.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

(ATTACHMENT C)

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
N026503
May 21, 2008
CLA-2-39:OT:RR:E:NC:N2:222
CATEGORY: Classification
TARIFF NO.: 3924.90.5600

MR. GARY D. HOLLIS
THE CONTAINER STORE
500 Freeport Parkway
Coppell, TX 75019

RE: The tariff classification of plastic bed lifts from China

DEAR MR. HOLLIS:

In your letter dated April 21, 2008 you requested a tariff classification ruling. The submitted illustration depicts an item identified as bed elevators, SKU# 10047490. This item is comprised of four separate but identical block components, each of which is made of polypropylene (PP) plastic material. Each of the four blocks stands 8 inches high and has a square shaped depression on the top surface. Each depression measures 3 inches wide by 1 inch deep.

You have stated that the purpose of this item is to create more storage space under the bed. When in use, the four blocks will be placed under the four legs of a bed, thereby elevating the bed and increasing the height of the storage space under the bed by 7 inches. In addition, you have stated that "the added bed height that this creates also makes it much easier for many people to get in and out of bed." This office believes that although the height of the top surface of the bed may provide a benefit for some individuals, the additional household storage space that this item creates under the bed is the benefit for which this item will be principally used.

The applicable subheading for SKU# 10047490 will be 3924.90.5600, Harmonized Tariff Schedule of the United States (HTSUS), which provides for . . . other household articles . . . of plastics: other: other. The rate of duty will be 3.4 percent ad valorem.

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

provided on 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 Gary Kalus at 646-733-3055.

ROBERT B. SWIERUPSKI,
*Director,
National Commodity,
Specialist Division.*

(ATTACHMENT D)

DEPARTMENT OF HOMELAND SECURITY.
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H031398
CLA-2 OT:RR:CTF:TCM H031398 JER
CATEGORY: Classification
TARIFF NO.: 3926.90.99

MR. TROY D. CARGO
ATICO INTERNATIONAL USA, INC.
501 South Andrews Avenue
Ft. Lauderdale, FL 33301

RE: Proposed Revocation of NY R02967; 3926.90.99, HTSUS; Bed Risers

DEAR MR. CRAGO:

On January 11, 2006, U.S. Customs and Border Protection ("CBP") issued New York Ruling Letter ("NY") R02967 to you on behalf of Atico International USA, Inc., classifying certain "bed risers" in heading 3924 of the Harmonized Tariff Schedule of the United States ("HTSUS"). After reviewing NY R02967, we have found that ruling to be in error. For the reasons set forth in this ruling, we are revoking NY R02967.

FACTS:

The subject merchandise is described as being comprised of four separate bed risers packaged for retail sale as a set, each of which are made of polypropylene plastic. Each bed riser measures 6 and 5/8 inches long, 6 and 5/8 inches in width and 6 inches in height.

ISSUE:

Whether the subject bed risers are classified under heading 3924, HTSUS, or under heading 3926, 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.

Although the merchandise is packaged as a retail set, all four items are identical and are not shipped with additional components (e.g., batteries, screws or bolts). As such, the goods are not classifiable in two or more headings and are not deemed to be a set for tariff purposes, making classification according to GRI 3 inapplicable.

The HTSUS provisions under consideration are as follows:

3924	Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastic:
3924.10	Tableware and kitchenware: * * *
3924.90	Other: * * *
3924.90.5600	Other
3926	Other articles of plastics and articles of other materials of headings 3901 to 3914: * * *
3926.90	Other: * * *
3926.90.99	Other
3926.90.9980	Other

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

CBP previously classified the subject bed risers¹ in heading 3924, HTSUS, as other household articles because these items were believed to impart storage capacity. NY R02967 explained that the bed risers were used under the legs or wheels of a bed to add height and to create additional storage space underneath the bed. However, following a recent classification decision involving substantially similar merchandise, and upon further review of the terms of the heading and the ENs to heading 3924, HTSUS, we are now of the view that the bed risers are not provided for in heading 3924, HTSUS.

Presently, we find that bed risers are not a household article of 3924, HTSUS, as these articles are not themselves storage containers capable of storing or holding items. Instead, their primary function is to increase the height of a bed. Our research demonstrates that bed raisers (aka bed elevators or bed risers) are marketed, designed and sold as both bed raisers for purposes of increasing the height of a bed and for creating storage space underneath the bed. In some cases bed raisers serve the purpose of elevating

¹ Similar merchandise is also referred to as bed raisers, bed lifters or bed elevators.

the height of a bed to provide convenient use for persons with medical conditions or disabilities. *Bed Raisers* at www.abledata.com. In those instances where bed raisers are market and sold as items intended to elevate the height of beds, these items are in some cases, simultaneously marketed as being useful for creating additional storage space. However, standing alone, these items are incapable of adding storage space or storing items therein. See, *Easy Risers Are Solution for Storage*, at www.rehabmart.com; see also, *And Add Storage Space!* at www.mileskimball.com.

Classification under heading 3924, HTSUS, is dependent upon the cannon of construction known as *ejusdem generis*, which means literally, “of the same class or kind.” “Where particular words of description are followed by general terms, the latter will be regarded as referring to things of a like class with those particularly described.” *Nissho-Iwai American Corp. v. United States* (Nissho), 10 CIT 154, 156 (1986). “As applicable to classification cases, *ejusdem generis* requires that the imported merchandise possess the essential characteristics or purposes that unite the articles enumerated *eo nomine* in order to be classified under the general terms.” *Id.* at 157. Accordingly, classification in heading 3924, HTSUS requires that the subject bed riser be *ejusdem generis* (of the same class or kind) as those household articles enumerated in the heading.

Unlike the bed risers of NY R02967, whose primary function is to increase the height of a bed, CBP has consistently found that storage containers or storage boxes, made of plastic, are within the purview of heading 3924, HTSUS, as other household articles. For instance, in Headquarters Ruling Letter (“HQ”) 089182, dated January 21, 1992, CBP classified a plastic “Earring Closet” designed to store earrings as a household article in heading 3924, HTSUS. Likewise, HQ H015358, dated November 2, 2007, classified a “plastic storage box” in heading 3924, HTSUS, because it stored items. In NY N012326, dated June 22, 2007, CBP classified a “plastic hardware storage case” in heading 3924, HTSUS, as a household article. Accordingly, storage containers, or articles which, standing alone provide storage, are within the scope of household articles of the heading, 3924, HTSUS. Unlike the storage containers discussed in HQ 089182, NY N012326 and HQ H015358, the subject bed risers do not themselves store items nor have the independent capacity to provide storage. By contrast, the primary function of the subject bed risers is to provide a means to raise the height of a bed. Increasing the height of furniture is not a function which is *ejusdem generis* with household articles of heading 3924, HTSUS.

The ENs to heading 3924 state that the heading covers four categories of merchandise: (A) Tableware (B) Kitchenware (C) Household articles and (D) Hygienic and Toilet articles. Category (A) includes items closely associated with food and beverage consumption, dining and table setting. Category (B) provides exemplars associated with foods, beverages, food preparation, food storage, etc. The examples provided in the ENs to heading 3924 under household articles list the following:

- (C) Other household articles such as ash trays, hot water bottles, matchbox holders, dustbins, buckets, watering cans, food storage containers, curtains, drapes, table covers and fitted furniture dust-covers (slipovers).

As the ENs to heading 3924, HTSUS, reflect, household articles are utilitarian, decorative, and receptacle in character, and are closely associated

with household functions and household activities. Primarily, such articles are used to hold, contain, store and in some cases safeguard other items. For example, an ash tray may hold cigars and hot water bottles can contain water, while a food storage container can store food. Unlike the exemplars provided as household articles of heading 3924, HTSUS, increasing the height of a bed is not consistent with the uses contemplated by household articles of heading 3924, HTSUS.

In *Totes, Inc. v. United States*, 865 F. Supp. 867; 18 CIT 919 (1994), the Court found that a “trunk organizer” designed to store automotive necessities such as jumper cables, tire inflator, windshield washer fluid, etc., was *ejusdem generis* to merchandise designed to organize, store and protect various items. The Court noted that the essential characteristics and purpose of the exemplars of the heading are the very ones that the Courts had identified as having the capacity to organize, store, protect and carry various items.

The Court further explained that:

Insofar as the trunk organizers serve the purposes of organization, holding, storage and protection of articles, they fall within the class or kind of articles listed as exemplars in Heading 4202, especially jewelry boxes and cutlery cases that serve mainly to facilitate an organized separation, protection, storage or holding of jewelry or cutlery items. *Totes* at 925.

In keeping with the decision in *Totes* concerning the doctrine of *ejusdem generis*, the subject bed risers (aka bed elevator, bed raiser or bed lift) must possess the essential characteristics and purposes as do the holders and storage containers of heading 3924, HTSUS. Moreover, under *Totes*, the bed risers must be designed to hold, contain, store or safeguard various items. For the reasons set forth above, we find that they do not.

By contrast, the ENs to heading 3926 list protective cups and [furniture] glides designed to be placed underneath furniture legs as articles classifiable in heading 3926, HTSUS. Protective cups and glides affixed to furniture legs are similar to the subject merchandise in that they impact the character, performance and function of the furniture item to which they are affixed. The subject bed elevators, like the protective cups and glides, are affixed to the legs of a bed and function to affect the height of the bed. We find that, items such as the protective cups, furniture glides and the subject bed elevators work in conjunction with furniture items as goods classifiable in heading 3926, HTSUS, rather than performing an independent household function as do the matchbox holders, buckets, food storage containers and other articles enumerated in the ENs to heading 3924, HTSUS.

Based on the foregoing, we find that the bed riser’s capacity to create storage space is ancillary to their primary function of raising the height of a bed. As a result, CBP no longer finds classification of this merchandise under heading 3924, HTSUS, to be correct.

HOLDING:

By application of GRI 1, the subject bed riser is classifiable under heading 3926, HTSUS. Specifically, the item is classified under subheading 3926.90.9980, HTSUS, which provides for “Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other: Other.” The 2008, column one, general rate of duty is 5.3% *ad valorem*.

EFFECT ON OTHER RULINGS:

NY R02967, dated January 11, 2006, is hereby revoked.

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

(ATTACHMENT E)

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H031399
CLA-2 OT:RR:CTF:TCM H031399 JER
CATEGORY: Classification
TARIFF NO.: 3926.90.99

MS. YVONNE M. W. RICHARDSON
THE MILLWORK TRADING CO., LTD.
148 West 37th Street, 4th Floor
New York, NY 10018

RE: Proposed Revocation of NY H87303; 3926.90.99, HTSUS; Bed Elevators

DEAR MS. RICHARDSON:

On February 4, 2002, U.S. Customs and Border Protection ("CBP") issued New York Ruling Letter ("NY") H87303 to you on behalf of Millwork Trading Company, Ltd., classifying certain "bed elevators" in heading 3924 of the Harmonized Tariff Schedule of the United States ("HTSUS"). After reviewing NY H87303, we have found that ruling to be in error. For the reasons set forth in this ruling, we are revoking NY H87303.

FACTS:

The subject merchandise is described as being comprised of four separate bed risers packaged for retail sale as a set, each of which are made of a sturdy polypropylene material (plastic). Each bed elevator measures 6 and ½ inches in height and 4 inches in diameter at the top, and 6 ¼ inches in diameter at the bottom. The bed elevators are hollow inside and are designed with a cut-out section in the top portion that is approximately 1 inch deep, designed to accommodate a leg of the bed.

ISSUE:

Whether the subject bed elevators are classified under heading 3924, HTSUS, or under heading 3926, 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.

Although the merchandise is packaged as a retail set, all four items are identical and are not shipped with additional components (e.g., batteries, screws or bolts). As such, the goods are not classifiable in two or more head-

ings and are not deemed to be a set for tariff purposes, making classification according to GRI 3 inapplicable.

The HTSUS provisions under consideration are as follows:

3924	Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastic:
3924.10	Tableware and kitchenware:
	* * *
3924.90	Other:
	* * *
3924.90.5600	Other
3926	Other articles of plastics and articles of other materials of headings 3901 to 3914:
	* * *
3926.90	Other:
	* * *
3926.90.99	Other
3926.90.9980	Other

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

CBP previously classified the subject bed elevators² in heading 3924, HTSUS, as other household articles because these items were believed to impart storage capacity. NY H87303 explained that the bed elevators are used to raise the height of the bed by placing one under each leg of the bed. However, following a recent classification decision involving substantially similar merchandise, and upon further review of the terms of the heading and the ENs to heading 3924, HTSUS, we are now of the view that the bed risers are not provided for in heading 3924, HTSUS.

Presently, we find that bed elevators are not a household article of 3924, HTSUS, as these articles are not themselves storage containers capable of storing or holding items. Instead, their primary function is to increase the height of a bed. Our research demonstrates that bed elevators (aka bed raisers or bed risers) are marketed, designed and sold as both bed raisers for purposes of increasing the height of a bed and for creating storage space underneath the bed. In some cases bed raisers serve the purpose of elevating the height of a bed to provide convenient use for persons with medical conditions or disabilities. *Bed Raisers* at www.abledata.com. In those instances where bed raisers are market and sold as items intended to elevate the height of beds, these items are in some cases, simultaneously marketed as

² Similar merchandise is also referred to as bed raisers, bed lifters or bed risers.

being useful for creating additional storage space. However, standing alone, these items are incapable of adding storage space or storing items therein. See, *Easy Risers Are Solution for Storage*, at www.rehabmart.com; see also, *And Add Storage Space!* at www.mileskimball.com.

Classification under heading 3924, HTSUS, is dependent upon the cannon of construction known as *ejusdem generis*, which means literally, “of the same class or kind.” “Where particular words of description are followed by general terms, the latter will be regarded as referring to things of a like class with those particularly described.” *Nissho-Iwai American Corp. v. United States* (Nissho), 10 CIT 154, 156 (1986). “As applicable to classification cases, *ejusdem generis* requires that the imported merchandise possess the essential characteristics or purposes that unite the articles enumerated *eo nomine* in order to be classified under the general terms.” *Id.* at 157. Accordingly, classification in heading 3924, HTSUS requires that the subject bed elevators be *ejusdem generis* (of the same class or kind) as those household articles enumerated in the heading.

Unlike the bed elevators of NY H87303, whose primary function is to increase the height of a bed, CBP has consistently found that storage containers or storage boxes, made of plastic, are within the purview of heading 3924, HTSUS, as other household articles. For instance, in Headquarters Ruling Letter (“HQ”) 089182, dated January 21, 1992, CBP classified a plastic “Earring Closet” designed to store earrings as a household article in heading 3924, HTSUS. Likewise, HQ H015358, dated November 2, 2007, classified a “plastic storage box” in heading 3924, HTSUS, because it stored items. In NY N012326, dated June 22, 2007, CBP classified a “plastic hardware storage case” in heading 3924, HTSUS, as a household article. Accordingly, storage containers, or articles which, standing alone provide storage, are within the scope of household articles of the heading, 3924, HTSUS. Unlike the storage containers discussed in HQ 089182, NY N012326 and HQ H015358, the subject bed elevators do not themselves store items nor have the independent capacity to provide storage. By contrast, the primary function of the subject bed elevators is to provide a means to raise the height of a bed. Increasing the height of furniture is not a function which is *ejusdem generis* with household articles of heading 3924, HTSUS.

The ENs to heading 3924 state that the heading covers four categories of merchandise: (A) Tableware (B) Kitchenware (C) Household articles and (D) Hygienic and Toilet articles. Category (A) includes items closely associated with food and beverage consumption, dining and table setting. Category (B) provides exemplars associated with foods, beverages, food preparation, food storage, etc. The examples provided in the ENs to heading 3924 under household articles list the following:

- (C) Other household articles such as ash trays, hot water bottles, matchbox holders, dustbins, buckets, watering cans, food storage containers, curtains, drapes, table covers and fitted furniture dust-covers (slipovers).

As the ENs to heading 3924, HTSUS, reflect, household articles are utilitarian, decorative, and receptacle in character, and are closely associated with household functions and household activities. Specifically, such articles are used to hold, contain, store and in some cases safeguard other items. For example, an ash tray may hold cigars and hot water bottles can contain water, while a food storage container can store food. Unlike the exemplars pro-

vided as household articles of heading 3924, HTSUS, increasing the height of a bed is not consistent with the uses contemplated by household articles of heading 3924, HTSUS.

In *Totes, Inc. v. United States*, 865 F. Supp. 867; 18 CIT 919 (1994), the Court found that a “trunk organizer” designed to store automotive necessities such as jumper cables, tire inflator, windshield washer fluid, etc., was *ejusdem generis* to merchandise designed to organize, store and protect various items. The Court noted that the essential characteristics and purpose of the exemplars of the heading are the very ones that the Courts had identified as having the capacity to organize, store, protect and carry various items.

The Court further explained that:

Insofar as the trunk organizers serve the purposes of organization, holding, storage and protection of articles, they fall within the class or kind of articles listed as exemplars in Heading 4202, especially jewelry boxes and cutlery cases that serve mainly to facilitate an organized separation, protection, storage or holding of jewelry or cutlery items. *Totes* at 925.

In keeping with the decision in *Totes* concerning the doctrine of *ejusdem generis*, the subject bed elevator (aka bed riser, bed raiser or bed lift) must possess the essential characteristics and purposes as do the holders and storage containers of heading 3924, HTSUS. Moreover, under *Totes*, the bed elevator must be designed to hold, contain, store or safeguard various items. For the reasons set forth above, we find that they do not.

By contrast, the ENs to heading 3926 list protective cups and [furniture] glides designed to be placed underneath furniture legs as articles classifiable in heading 3926, HTSUS. Protective cups and glides affixed to furniture legs are similar to the subject merchandise in that they impact the character, performance and function of the furniture item to which they are affixed. The subject bed elevators, like the protective cups and glides, are affixed to the legs of a bed and function to affect the height of the bed. We find that, items such as the protective cups, furniture glides and the subject bed elevators work in conjunction with furniture items as goods classifiable in heading 3926, HTSUS, rather than performing an independent household function as do the matchbox holders, buckets, food storage containers and other articles enumerated in the ENs to heading 3924, HTSUS.

Based on the foregoing, we find that the bed elevator’s capacity to create storage space is ancillary to their primary function of raising the height of a bed. As a result, CBP no longer finds classification of this merchandise under heading 3924, HTSUS, to be correct.

HOLDING:

By application of GRI 1, the subject bed elevator is classifiable under heading 3926, HTSUS. Specifically, the item is classified under subheading 3926.90.9980, HTSUS, which provides for “Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other: Other.” The 2008, column one, general rate of duty is 5.3% *ad valorem*.

EFFECT ON OTHER RULINGS:

NY H87303, dated February 4, 2002, is hereby revoked.

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

(ATTACHMENT F)

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H031401
CLA-2 OT:RR:CTF:TCM H031401 JER
CATEGORY: Classification
TARIFF NO.: 3926.90.99

MR. GARY D. HOLLIS
THE CONTAINER STORE
500 Freeport Parkway
Coppell, TX 75019

RE: Proposed Revocation of NY N026503; 3926.90.99, HTSUS; Bed Lifts

DEAR MR. HOLLIS:

On May 21, 2008, U.S. Customs and Border Protection (“CBP”) issued New York Ruling Letter (“NY”) N026503 to you on behalf of The Container Store, classifying certain “bed lifts” in heading 3924 of the Harmonized Tariff Schedule of the United States (“HTSUS”). After reviewing NY N026503, we have found that ruling to be in error. For the reasons set forth in this ruling, we are revoking NY N026503.

FACTS:

The subject merchandise is described as being comprised of four separate identical blocks, each of which are made of polypropylene plastic. Each block stands 8 inches high and has a square shaped depression on the top surface measuring 3 inches wide and 1 inch deep which is designed to receive the foot of the bed (leg). The four blocks are placed underneath the legs of the bed increasing the height of the bed by approximately 7 inches.

ISSUE:

Whether the subject bed lifts are classified under heading 3924, HTSUS, or under heading 3926, 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.

Although the merchandise is packaged as a retail set, all four items are identical and are not shipped with additional components (e.g., batteries, screws or bolts). As such, the goods are not classifiable in two or more headings and are not deemed to be a set for tariff purposes, making classification according to GRI 3 inapplicable.

The HTSUS provisions under consideration are as follows:

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

3924.10 Tableware and kitchenware:

* * *

3924.90	Other:			
		*	*	*
3924.90.5600	Other			
3926	Other articles of plastics and articles of other materials of headings 3901 to 3914:			
		*	*	*
3926.90	Other:			
		*	*	*
3926.90.99	Other			
3926.90.9980	Other			

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

CBP previously classified the subject bed lifts³ in heading 3924, HTSUS, as other household articles because these items were believed to impart storage capacity. NY N026503 explained that placing the four blocks under the four bed legs increased the height of the bed and in doing so increased the storage space underneath the bed and made it “easier for many people to get in and out of bed.” However, following a recent classification decision involving substantially similar merchandise, and upon further review of the terms of the heading and the ENs to heading 3924, HTSUS, we are now of the view that the bed risers are not provided for in heading 3924, HTSUS.

Presently, we find that bed lifts are not a household article of 3924, HTSUS, as these articles are not themselves storage containers capable of storing or holding items. Instead, their primary function is to increase the height of a bed. Our research demonstrates that bed raisers (aka bed elevators, bed lifts or bed risers) are marketed, designed and sold as both bed raisers for purposes of increasing the height of a bed and for creating storage space underneath the bed. In some cases bed raisers serve the purpose of elevating the height of a bed to provide convenient use for persons with medical conditions or disabilities. *Bed Raisers* at www.abledata.com. In those instances where bed raisers are market and sold as items intended to elevate the height of beds, these items are in some cases, simultaneously marketed as being useful for creating additional storage space. However, standing alone, these items are incapable of adding storage space or storing items therein. See, *Easy Risers Are Solution for Storage*, at www.rehabmart.com; see also, *And Add Storage Space!* at www.mileskimball.com.

Classification under heading 3924, HTSUS, is dependent upon the canon of construction known as *ejusdem generis*, which means literally, “of the same class or kind.” “Where particular words of description are followed by

³ Similar merchandise is also referred to as bed raisers, bed risers or bed elevators.

general terms, the latter will be regarded as referring to things of a like class with those particularly described.” Nissho-Iwai American Corp. v. United States (Nissho), 10 CIT 154, 156 (1986). “As applicable to classification cases, *ejusdem generis* requires that the imported merchandise possess the essential characteristics or purposes that unite the articles enumerated *eo nomine* in order to be classified under the general terms.” *Id.* at 157. Accordingly, classification in heading 3924, HTSUS requires that the subject bed lifts be *ejusdem generis* (of the same class or kind) as those household articles enumerated in the heading.

Unlike the bed lifts of NY N026503 whose primary function is to increase the height of a bed, CBP has consistently found that storage containers or storage boxes, made of plastic, are within the purview of heading 3924, HTSUS, as other household articles. For instance, in Headquarters Ruling Letter (“HQ”) 089182, dated January 21, 1992, CBP classified a plastic “Earring Closet” designed to store earrings as a household article in heading 3924, HTSUS. Likewise, HQ H015358, dated November 2, 2007, classified a “plastic storage box” in heading 3924, HTSUS, because it stored items. In NY N012326, dated June 22, 2007, CBP classified a “plastic hardware storage case” in heading 3924, HTSUS, as a household article. Accordingly, storage containers, or articles which, standing alone provide storage, are within the scope of household articles of the heading, 3924, HTSUS. Unlike the storage containers discussed in HQ 089182, NY N012326 and HQ H015358, the subject bed lifts do not themselves store items nor have the independent capacity to provide storage. By contrast, the primary function of the subject bed lifts is to provide a means to raise the height of a bed. Increasing the height of furniture is not a function which is *ejusdem generis* with household articles of heading 3924, HTSUS.

The ENs to heading 3924 state that the heading covers four categories of merchandise: (A) Tableware (B) Kitchenware (C) Household articles and (D) Hygienic and Toilet articles. Category (A) includes items closely associated with food and beverage consumption, dining and table setting. Category (B) provides exemplars associated with foods, beverages, food preparation, food storage, etc. The examples provided in the ENs to heading 3924 under household articles list the following:

- (C) Other household articles such as ash trays, hot water bottles, matchbox holders, dustbins, buckets, watering cans, food storage containers, curtains, drapes, table covers and fitted furniture dust-covers (slipovers).

As the ENs to heading 3924, HTSUS, reflect, household articles are utilitarian, decorative, and receptacle in character, and are closely associated with household functions and household activities. Specifically, such articles are used to hold, contain, store and in some cases safeguard other items. For example, an ash tray may hold cigars and hot water bottles can contain water, while a food storage container can store food. Unlike the exemplars provided as household articles of heading 3924, HTSUS, increasing the height of a bed is not consistent with the uses contemplated by household articles of heading 3924, HTSUS.

In Totes, Inc. v. United States, 865 F. Supp. 867; 18 CIT 919 (1994), the Court found that a “trunk organizer” designed to store automotive necessities such as jumper cables, tire inflator, windshield washer fluid, etc., was *ejusdem generis* to merchandise designed to organize, store and protect various items. The Court noted that the essential characteristics and purpose of

the exemplars of the heading are the very ones that the Courts had identified as having the capacity to organize, store, protect and carry various items.

The Court further explained that:

Insofar as the trunk organizers serve the purposes of organization, holding, storage and protection of articles, they fall within the class or kind of articles listed as exemplars in Heading 4202, especially jewelry boxes and cutlery cases that serve mainly to facilitate an organized separation, protection, storage or holding of jewelry or cutlery items. Totes at 925.

In keeping with the decision in Totes concerning the doctrine of *ejusdem generis*, the subject bed lifts (aka bed elevator, bed raiser or bed risers) must possess the essential characteristics and purposes as do the holders and storage containers of heading 3924, HTSUS. Moreover, under Totes, the bed lifts must be designed to hold, contain, store or safeguard various items. For the reasons set forth above, we find that they do not.

By contrast, the ENs to heading 3926 list protective cups and [furniture] glides designed to be placed underneath furniture legs as articles classifiable in heading 3926, HTSUS. Protective cups and glides affixed to furniture legs are similar to the subject merchandise in that they impact the character, performance and function of the furniture item to which they are affixed. The subject bed elevators, like the protective cups and glides, are affixed to the legs of a bed and function to affect the height of the bed. We find that, items such as the protective cups, furniture glides and the subject bed elevators work in conjunction with furniture items as goods classifiable in heading 3926, HTSUS, rather than performing an independent household function as do the matchbox holders, buckets, food storage containers and other articles enumerated in the ENs to heading 3924, HTSUS.

Based on the foregoing, we find that the bed lift's capacity to create storage space is ancillary to their primary function of raising the height of a bed. As a result, CBP no longer finds classification of this merchandise under heading 3924, HTSUS, to be correct.

HOLDING:

By application of GRI 1, the subject bed lift is classifiable under heading 3926, HTSUS. Specifically, the item is classified under subheading 3926.90.9980, HTSUS, which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other: Other." The 2008, column one, general rate of duty is 5.3% *ad valorem*.

EFFECT ON OTHER RULINGS:

NY N026503, dated May 21, 2008, is hereby revoked.

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