

# U.S. Customs and Border Protection



## **PROPOSED REVOCATION OF ONE RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF DION® 9100**

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

**ACTION:** Notice of proposed revocation of one ruling letter and revocation of treatment relating to the tariff classification of Dion® 9100.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke one ruling letter concerning tariff classification of Dion® 9100 under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

**DATES:** Comments must be received on or before June 3, 2016.

**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:** Nicholai 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 revoke one ruling letter pertaining to the tariff classification of Dion® 9100. Although in this notice, CBP is specifically referring to New York Ruling Letter (“NY”) N051856, dated February 23, 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 one ruling identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer’s failure to advise CBP of substantially identical transactions or of

a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY N051856, CBP classified Dion®9100 in heading 3907, HTSUS, specifically in subheading 3907.91.50, HTSUS, which provides for “Polyacetals, other polyethers and epoxide resins, in primary forms; polycarbonates, alkyd resins, polyallyl esters and other polyesters, in primary forms: Other polyesters: Unsaturated: Other.” CBP has reviewed NY N051856 and has determined the ruling letter to be in error. It is now CBP’s position that Dion® 9100 is properly classified, by operation of GRIs 1 and 6, in heading 3907, HTSUS, specifically in subheading 3907.20.00, HTSUS, which provides for “Polyacetals, other polyethers and epoxide resins, in primary forms; polycarbonates, alkyd resins, polyallyl esters and other polyesters, in primary forms: Other polyethers.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke NY N051856 and to revoke any other ruling not specifically identified to reflect the tariff classification of the subject merchandise according to the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H116109, 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: March 15, 2016

JACINTO JUAREZ

*for*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

Attachments

## [ATTACHMENT A]

N051856

February 23, 2009

CLA-2-39:OT:RR:E:NC:N2:237

CATEGORY: Classification

TARIFF NO.: 3907.91.5000

MR. PATRICK McKELVEY  
PRODUCT SAFETY MANAGER  
REICHHOLD, INC.  
P.O. BOX 13582  
RESEARCH TRIANGLE PARK, NC 27709

RE: The tariff classification for Dion 9100 unsaturated polyester resin from Germany.

DEAR MR. McKELVEY:

In your letter dated February 11, 2009 you requested a tariff classification ruling. You provided chemical structures of raw materials and a reaction scheme showing step by step structures.

Dion 9100 is described as an unsaturated polyester resin manufactured from epoxy resin, bisphenol A and methacrylic acid. The resin will be imported in the form of a liquid prepolymer as a 60–70% solution in styrene for use in building fiberglass reinforced tanks, pipes and other plastic parts.

Explanatory Note 39.07 (5) (e) provides for unsaturated polyesters that possess sufficient ethylenic unsaturation and can be readily crosslinked with monomers containing ethylenic unsaturation to form thermosetting products. These polyesters are usually in the form of liquid prepolymers and are mainly used for producing glass fiber reinforced laminates and cast transparent thermosetting products.

The applicable subheading for Dion 9100 unsaturated polyester resin will be 3907.91.5000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for: Polyacetals, other polyethers and epoxide resins, in primary forms; polycarbonates, alkyd resins, polyallyl esters and other polyesters, in primary forms: Other polyesters: Unsaturated: Other. The rate of duty will be 6.5% ad valorem.

This merchandise may be subject to the requirements of the Toxic Substances Control Act administered by the U.S. Environmental Protection Agency (EPA). You may contact the EPA located at 402 M Street, S.W., Washington, D.C. 20460, at telephone number 204–554–1404.

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 Frank Cantone at (646) 733–3038.

Sincerely,

ROBERT B. SWIERUPSKI

*Director*

*National Commodity Specialist Division*

## [ATTACHMENT B]

HQ H116109  
CLA-2 OT:RR:CTF:TCM H116109 NCD  
CATEGORY: Classification  
TARIFF NO.: 3907.20.0000

MARK DUBOIS  
PRODUCT SAFETY MANAGER  
REICHHOLD, INC.  
P.O. BOX 13582  
RESEARCH TRIANGLE PARK  
NORTH CAROLINA 27709

RE: Revocation of NY N051856; classification of Dion® 9100

DEAR MR. DUBOIS:

This letter is in reference to the electronic request, filed June 28, 2010 on behalf of Reichhold, Inc. (“Reichhold”), for reconsideration of New York Ruling Letter (NY) N051856, dated February 23, 2009. NY N051856 was issued to Reichhold by U.S. Customs and Border Protection (CBP) in response to Reichhold’s February 11, 2009 request for a ruling as to the proper classification of the Dion® 9100 under the Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed NY N051856, have determined that it is incorrect, and, for the reasons set forth below, are revoking that ruling.

**FACTS:**

In NY N051856, CBP stated as follows with regard to Reichhold’s original ruling request and the merchandise at issue:

Dion 9100 is described as an unsaturated polyester resin manufactured from epoxy resin, bisphenol A and methacrylic acid. The resin will be imported in the form of a liquid prepolymer as a 60–70% solution in styrene for use in building fiberglass reinforced tanks, pipes and other plastic parts.

Based upon the provided description, CBP classified the Dion® 9100 in subheading 3907.91.50, HTSUS, which provides for “Polyacetals, other polyethers and epoxide resins, in primary forms; polycarbonates, alkyd resins, polyallyl esters and other polyesters, in primary forms: Other polyesters: Unsaturated.”

On June 10, 2010, prior to filing the instant reconsideration request, Reichhold submitted to CBP a series of diagrams depicting the chemical synthesis by which the Dion® 9100 is manufactured (see figures 1 and 2 below). The diagrams were forwarded to CBP’s Laboratories and Scientific Services Directorate (LSSD) for technical analysis. LSSD provided the following description of the diagrams:

The structure forwarded to our office shows a molecule with epoxide terminating units and a repeating internal structure (between 3 and 10 functionalized repeating units) that is reacted with methacrylate to form the final product with vinyl ester terminating units. Information on this product notes it is a “Bisphenol-A expoxide based vinyl ester resin...”

Upon additional review of the diagrams, LSSD noted with respect to the Dion® 9100 in its final state:

Since between three and ten ether-function monomer units are present, versus the two terminating carboxylic ester units, the polyether units predominate...the chemical in question is obtained from an epoxide (epoxide-terminating groups are found in the chemical prior to reacting with methacrylate, as previously noted) and ether-functional groups are readily visible in the polymer chain.

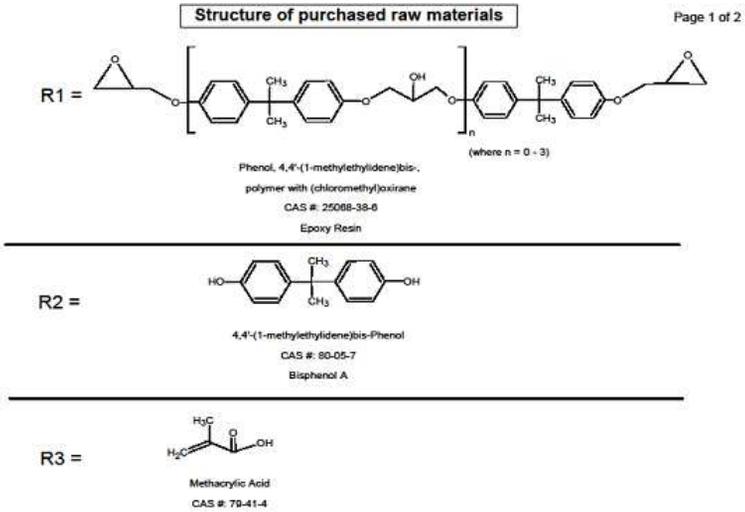


Figure 1

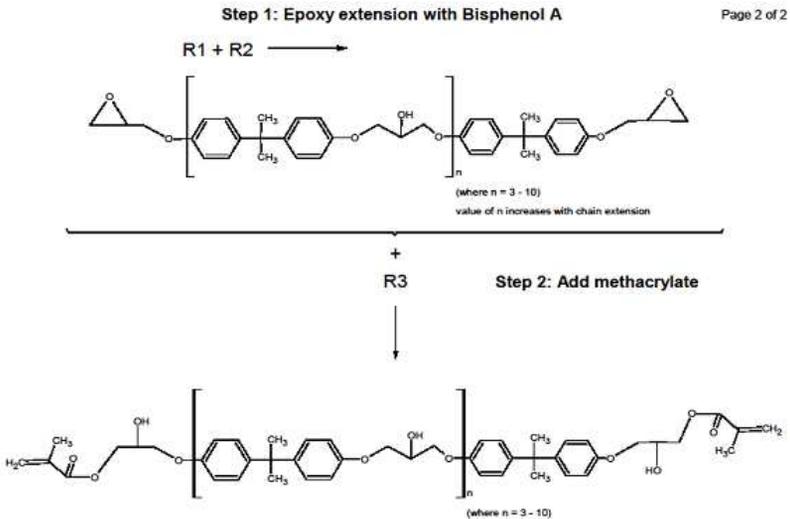


Figure 2

**ISSUE:**

Whether the Dion® 9100 is properly classified as an “other polyether” of subheading 3907.20.00, HTSUS, as an “epoxide resin” of subheading 3907.30.00, HTSUS, or as an “unsaturated polyester resin” of subheading 3907.91.50, HTSUS.

**LAW AND ANALYSIS:**

Merchandise imported into the United States is classified under the HTSUS. Tariff classification is governed by the principles set forth in the 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 HTSUS 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 and, unless otherwise required, according to the remaining GRIs taken in their appropriate 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 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 HTSUS provisions under consideration are as follows:

3907	Polyacetals, other polyethers and epoxide resins, in primary forms; polycarbonates, alkyd resins, polyallyl esters and other polyesters, in primary forms:
3907.20.00	Other polyethers
3907.30.00	Epoxide resins
	Other polyesters:
3907.91	Unsaturated:
3907.91.50	Other

As an initial matter, we consider whether Dion® 9100 is properly classified in heading 3907, HTSUS, which describes, *inter alia*, epoxide resins, “other” polyethers, and “other” polyesters in primary forms. Interpretation of heading 3907 is governed by Note 3 to Chapter 39, which states, in relevant part, as follows:

Headings 39.01 to 39.11 apply only to goods of a kind produced by chemical synthesis, falling in the following categories...

(c) Other synthetic polymers with an average of at least 5 monomer units....

With respect to “chemically modified” polymers, Note 5 to Chapter 39 states as follows:

Chemically modified polymers, that is those in which only appendages to the main polymer chain have been changed by chemical reaction, are to be classified in the heading appropriate to the unmodified polymer. This provision does not apply to graft copolymers.

While a definition of “polymer” is absent from the HTSUS, the General EN to Chapter 39 describes “polymers” within the meaning of Notes 4 and 5 to Chapter 39 as “molecules which are characterised by the repetition of one or more types of monomer units.” *See also* Richard J. Lewis, Sr., HAWLEY’S CONDENSED CHEMICAL DICTIONARY 1013 (15th ed. 2007) (defining “polymer” as “a macromolecule formed by the chemical union of five or more identical combining units called monomers”)[hereinafter Hawley’s]<sup>1</sup>. As to the specific types of polymers classifiable in heading 3907, EN 39.07 provides as follows:

This heading covers...

- (2) **Other polyethers.** Polymers obtained from epoxides, glycols or similar materials and characterised by the presence of ether-functions in the polymer chain. They are not to be confused with the polyvinyl ethers of heading 39.05, in which the ether-functions are substituents on the polymer chain. The most important members of this group are poly(oxyethylene) (polyethylene glycol), polyoxypropylene and polyphenylene oxide (PPO) (more correctly named poly(dimethylphenylene-oxide)). These products have a variety of uses, PPO being used, like the polyacetals, as engineering plastics, polyoxypropylene as an intermediate for polyurethane foam...
- (3) **Epoxide resins.** Polymers made, for example, by condensing epichlorohydrin (1-chloro-2,3-epoxypropane) with bisphenol A (4,4'-isopropylidenediphenol), novolak (phenolic) resins or other polyhydroxy compounds or by epoxidising unsaturated polymers. Whatever the basic structure of the polymer, these resins are characterised by the presence of reactive epoxide groups which allow them to be readily cross-linked at the time of use, e.g. by the addition of an amino compound, an organic acid or anhydride, a boron trifluoride complex or an organic polymer...

...

- (5) These polymers are characterised by the presence of carboxylic ester functions in the polymer chain and are obtained, for example, by condensation of a polyhydric alcohol and a polycarboxylic acid...

The diagram provided by Reichhold indicates that the Dion® 9100 contains between three and ten repeating ether-function units as its sole repeating monomer unit. The Dion® 9100 can consequently be described as a polymer of ether-function units. EN 39.07 instructs that polymers characterized by the presence of ether functions in the polymer chain are to be described as

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<sup>1</sup> It is well-established that when a tariff term is not defined by the HTSUS or its legislative history, its correct meaning is its common or commercial meaning, which can be ascertained through reference to “dictionaries, scientific authorities, and other reliable information sources and lexicographic and other materials.” *See Rocknell Fastener, Inc. v. United States*, 267 F.3d 1354 (Fed. Cir. 2001).

“other polyethers” for purposes of classification in heading 3907. Moreover, EN 39.07 describes such “other polyethers” as having been obtained from epoxides. In this case, epoxides form the reactive terminating units of the polymer chain with which the methacrylate is reacted to produce the Dion® 9100. In effect, by operation of Note 3 to Chapter 39, and consistent with the General EN to Chapter 39 and EN 39.07, the Dion® 9100 is properly classified as “other polyethers” in heading 3907.

As to the proper classification of the Dion® 9100 at the subheading level, Subheading Note 1 to Chapter 39 states, in pertinent part, as follows:

1. Within any one heading of this chapter, polymers (including copolymers) are to be classified according to the following provisions...
  - (b) Where there is no subheading named “Other” in the same series:
    - (1) Polymers are to be classified in the subheading covering polymers of that monomer unit which predominates by weight over every other single comonomer unit. For this purpose, constituent monomer units of polymers falling in the same subheading shall be taken together. Only the constituent comonomer units of the polymers in the series under consideration are to be compared.<sup>2</sup>
    - (2) Chemically modified polymers are to be classified in the subheading appropriate to the unmodified polymer.

The EN to Subheading Note 1 expounds on the note as follows:

A subheading named “Other” does not include subheadings such as “Other polyesters” and “Of other plastics”.

The expression “in the same series” applies to subheadings of the same level, namely, one-dash subheadings (level 1) or two-dash subheadings (level 2) (see the Explanatory Note to General Interpretative Rule 6).<sup>3</sup>

In the instant case, the series in which the subheadings under consideration fall contains the subheading “other polyethers” but is devoid of any subheading entitled simply “Other.” Therefore, Subheading Note 1(b) governs classification of the Dion® 9100 at the subheading level. As described above, the structure representing Dion® 9100 contains between three and ten ether-function units as its sole repeating monomer units. By contrast, it does not contain a single repetition of the reactive epoxide units, let alone five such repetitions, or any carboxylic acid esters whatsoever. *See* EN 39.07. By logical necessity, then, the ether units predominate by weight for purposes of Sub-

<sup>2</sup> Note 4 to Chapter 39 provides that “‘copolymers’ covers all polymers in which no single monomer unit contributes 95% or more by weight to the total copolymer content.”

<sup>3</sup> The EN to GRI 6 provides, in relevant part, as follows:

- (II) For the purposes of Rule 6, the following expressions have the meanings hereby assigned to them:

- (a) “subheadings at the same level”: one-dash subheadings (level 1) or two-dash subheadings (level 2).

Thus, when considering the relative merits of two or more one-dash subheadings within a single heading in the context of Rule 3(a), their specificity or kinship in relation to a given article is to be assessed solely on the basis of the texts of the competing one-dash subheadings. When the one-dash subheading that is most specific has been chosen and when that subheading is itself subdivided, then, and only then, shall the texts of the two-dash subheadings be taken into consideration for determining which two-dash subheading should be selected.

heading Note 1(b)(1), to the effect that the Dion® 9100 must be classified in the subheading covering the ether units' composite polymer. Again, polymers consisting of ether-functions are described as "other polyethers" for tariff classification purposes, particularly where, as here, they originate from epoxides. Therefore, the Dion® 9100 is properly classified in subheading 3907.20.00.

We have also considered whether the Dion® 9100 is classifiable in subheading 3907.30.00. To this end, we note that Subheading Note 1(b)(2) to Chapter 39 requires classification of chemically modified polymers in the subheading appropriate to the unmodified polymer, and Note 5 defines "chemically modified polymers" as "those in which only appendages to the main polymer chain have been changed by chemical reaction." However, while the unreacted polymer chain depicted in Figure 1 is labelled "epoxy resin," it actually lacks the repeating epoxide monomer units required for description as such. *See* EN 39.07; HAWLEY'S at 507 (noting in defining "epoxy resins" that "[t]he reactive epoxies form a tight, cross-linked polymer network..."). In its unmodified state, just as in its reacted state, the Dion® 9100 is in fact a polymer of ether-function units. Therefore, it cannot be classified in subheading 3907.30.00.

**HOLDING:**

By application of GRIs 1 and 6, the Dion® 9100 is properly classified in heading 3907, HTSUS, specifically in subheading 3907.20.0000, HTSUSA (Annotated), which provides for: "Polyacetals, other polyethers and epoxide resins, in primary forms; polycarbonates, alkyd resins, polyallyl esters and other polyesters, in primary forms: Other polyethers." The 2015 column one general rate of duty is 6.1% ad valorem.

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

**EFFECT ON OTHER RULINGS:**

New York Ruling Letter N051856, dated February 23, 2009, is hereby REVOKED in accordance with the above analysis.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*



**PROPOSED REVOCATION OF RULING LETTER AND  
PROPOSED REVOCATION OF TREATMENT RELATING TO  
THE TARIFF CLASSIFICATION OF SHOE COVERS**

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

**ACTION:** Notice of proposed revocation of one ruling letter and proposed revocation of treatment relating to tariff classification of shoe 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 Customs and Border Protection (CBP) proposes to revoke New York Ruling Letter (NY) N239495, dated April 9, 2013, relating to the tariff classification of disposable shoe covers under the Harmonized Tariff Schedule of the United States (HTSUS). CBP also proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed action.

**DATES:** Comments must be received on or before June 3, 2016.

**ADDRESSES:** Written comments are to be addressed to Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 10th Floor, 90 K St., N.E., Washington, D.C. 20229–1177. Submitted comments may be inspected at Customs and Border Protection, 10th 90 K St. N.E., 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:** Claudia Garver, Tariff Classification and Marking Branch, Regulations and Rulings, Office of International Trade: (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 commu-

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

Pursuant to section 625 (c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625 (c)(1)), this notice advises interested parties that CBP is proposing to revoke one ruling letter pertaining to the tariff classification of the "Super Bootie II" disposable shoe cover. Although in this notice, CBP is specifically referring to the revocation of NY N239495, dated April 9, 2013 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., 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 N239495, CBP determined that the Super Bootie II was classified in heading 6402, HTSUS, specifically subheading 6402.99.33, HTSUS, as other footwear with outer soles and uppers of rubber or plastics, designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather.

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to revoke NY N239495 and revoke or modify any other ruling not specifically identified, in order to reflect the proper classification of the shoe covers at issue in subheading 6402.99.31, HTSUS, as other footwear with uppers of which over 90 percent of the external surface area is plastics, except footwear designed to be worn over, or in lieu of, other footwear

as a protection against water, oil, grease or chemicals or cold or inclement weather, according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H246161, set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: March 15, 2016

JACINTO JUAREZ

*for*

MYLES B. HARMON,

*Director,*

*Commercial and Trade Facilitation Division*

Attachments

## [ATTACHMENT A]

N239495

April 9, 2013

CLA-2-64:OT:RR:NC:N4:447

CATEGORY: Classification

TARIFF NO.: 6402.99.33

JONATHAN M. FEE  
ALSTON & BIRD LLP  
950 F STREET, NW  
WASHINGTON, DC 20004

RE: The tariff classification of disposable shoe covers from China

DEAR MR. FEE:

In your letters dated January 10, 2013, and March 11, 2013, you requested a tariff classification ruling.

Samples of shoe covers were submitted with your first letter. Your second letter provided requested upper external surface area measurements. The universally-sized, disposable shoe covers, identified as style Super Bootie II, measure approximately 16-1/2 inches long and approximately 6 inches tall when lying flat. They are made from spunbond Polypropylene (textile) and an applied layer of chlorinated polyethylene (PE) (rubber/plastics), with a band of elastic encircling the topline. The blue-colored PE layer covers all but the top 7/8-inch of the white-colored textile portion of the upper and, as such, does not have a clearly defined outer sole. As stated in the Explanatory Notes to chapter 64, the upper is defined as the portion of the shoe above the sole, or in cases where it is difficult to identify the demarcation between the outer sole and the upper, the upper shall be considered to be that portion of the shoe which covers the sides and top of the foot. Private laboratory analysis, submitted by you, found the plastic portion of the upper occupies approximately 91 percent and the textile portion occupies approximately 9 percent. The shoe covers are sold in specially designed bundles that are loaded into machines as part of an automatic shoe cover dispensing system. They are intended to be used once in clean rooms, food processing facilities, health care facilities, manufacturing facilities, etc., and discarded.

You suggest classification of the shoe covers under 3926.90.9980 Harmonized Tariff Schedule of the United States (HTSUS), the provision for articles of plastic. You contend that the shoe covers are "flimsy" and are not considered footwear of chapter 64 because they do not have an applied outer sole. We disagree. The blue colored rubber or plastics layer was separately manufactured and applied to the textile layer thus constituting an outer sole. They would be considered footwear. Although these shoe covers are for one-time-use, they would not be considered flimsy. It is for these reasons the Super Booties II will be classified elsewhere.

The applicable subheading for the Super Booties II will be 6402.99.33, HTSUS, which provides for other footwear with outer soles and uppers of rubber or plastics: footwear designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather. 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/>.

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 H246161  
CLA-2 OT:RR:CTF:TCM H246161 CkG  
CATEGORY: Classification  
TARIFF NO: 6402.99.31

JONATHAN M. FEE  
ALSTON & BIRD LLP  
950 F STREET, NW  
WASHINGTON, DC 20004

RE: Reconsideration of NY N239495; classification of disposable shoe covers

DEAR MR. FEE:

This is in response to your request for reconsideration of New York Ruling Letter (NY) N239495, dated April 9, 2013, filed on behalf of Protexer, Inc., contesting Customs and Border Protection's (CBP) classification of disposable shoe covers in subheading 6402.99.33, Harmonized Tariff Schedule of the United States (HTSUS), as other, protective footwear with outer soles and uppers of rubber or plastics.

**FACTS:**

The product at issue is a disposable shoe cover, identified as style Super Bootie II, with an elasticized opening, of the type worn by persons in health care or food processing facilities over regular shoes. The shoe cover is made of a spunbound polypropylene material, which has been partially laminated with a plastic chlorinated polyethylene (CPE), then subsequently cut to shape. The CPE layer is affixed to the polypropylene base layer only by its edges, while the remainder of the CPE layer separates easily from the base material. The universally-sized shoe covers measure approximately 16–1/2 inches long and approximately 6 inches tall when lying flat. It is intended to prevent the transfer of oil, dirt, water and other contaminants from a user's shoe to an otherwise sanitary environment. The blue-colored CPE layer covers the bottom of the shoe cover and up to the toe portion, covering all but the top 7/8-inch of the white-colored textile portion of the upper.

You claim classification of the subject disposable shoe covers in heading 6307, HTSUS, as other made up textile articles, or alternatively, in heading 6402, HTSUS.

**ISSUE:**

Whether the Super Bootie II disposable shoe covers imported by Protexer are classified in heading 6307, HTSUS, as other made up textile articles, or in heading 6402, HTSUS, as footwear with outer soles and uppers of plastics or rubber.

**LAW AND ANALYSIS:**

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI's). GRI 1 provides that "classification shall be determined according to the terms of the headings and any relative section or chapter notes, and, provided such headings or notes do not otherwise require, according to the remaining GRI's." In other words, classification is governed first by the terms of the headings of the tariff and any relative section or chapter notes.

The HTSUS headings at issue are as follows:

6307: Other made up articles, including dress patterns:

Other:

Other:

Other...

\* \* \* \*

6402: Other footwear with outer soles and uppers of rubber or plastics:

Other footwear:

6402.99 Other:

Other:

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

Other:

6402.99.31: Other...

Other:

6402.99.33

Footwear designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather...

\* \* \* \*

Note 1 to Chapter 64, HTSUS, provides, in pertinent part, as follows:

1. This chapter does not cover...

(a) Disposable foot or shoe coverings of flimsy material (for example, paper, sheeting of plastics) without applied soles. These products are classified according to their constituent material<sup>xix</sup>

(b) Footwear of textile material, without an outer sole glued, sewn or otherwise affixed or applied to the upper (Section XI)

Note 4 to Chapter 64 provides as follows:

4. Subject to note 3 to this chapter:

(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;

(b) The constituent material of the outer sole shall be taken to be the material having the greatest surface area in contact with the ground, no account being taken of accessories or reinforcements such as spikes, bars, nails, protectors or similar attachments.

Note 14 to Section XI provides as follows:

14. Unless the context otherwise requires, textile garments of different headings are to be classified in their own headings even if put up in sets for retail sale. For the purposes of this note, the expression “textile garments” means garments of headings 6101 to 6114 and headings 6201 to 6211.

\* \* \* \*

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

The General Explanatory Note to Chapter 64 provides, in pertinent part, as follows:

#### GENERAL

With certain **exceptions** (see particularly those mentioned at the end of this General Note) this Chapter covers, under headings 64.01 to 64.05, various types of footwear (including overshoes) irrespective of their shape and size, the particular use for which they are designed, their method of manufacture or the materials of which they are made.

For the purposes of this Chapter, the term “footwear” **does not**, however, **include** disposable foot or shoe coverings of flimsy material (paper, sheeting of plastics, etc.) without applied soles. These products are classified according to their constituent material.

(A) The Chapter includes:

...

- (10) Disposable footwear, with applied soles, generally designed to be used only once.

(B) The footwear covered by this Chapter may be of any material (rubber, leather, plastics, wood, cork, textiles including felt and nonwovens, furskin, plaiting materials, etc.) **except** asbestos, and may contain, in any proportion, the materials of Chapter 71.

Within the limits of the Chapter itself, however, it is the constituent material of the outer sole and of the upper which determines classification in headings 64.01 to 64.05.

(C) The term “outer sole” as used in headings 64.01 to 64.05 means that part of the footwear (other than an attached heel) which, when in use, is in contact with the ground. The constituent material of the outer sole for purposes of classification shall be taken to be the material having the greatest surface area in contact with the ground. In determining the constituent material of the outer sole, no account should be taken of attached accessories or reinforcements which partly cover the sole (see Note 4 (b) to this Chapter). These accessories or reinforcements include spikes, bars, nails, protectors

or similar attachments (including a thin layer of textile flocking (e.g., for creating a design) or a detachable textile material, applied to but not embedded in the sole).

In the case of footwear made in a single piece (e.g., clogs) without applied soles, no separate outer sole is required; such footwear is classified with reference to the constituent material of its lower surface.

- (D) 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...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 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).

Emphasis supplied.

The EN to heading 6405 provides:

Subject to Notes 1 and 4 to this Chapter, this heading covers all footwear having outer soles and uppers of a material or combination of materials not referred to in the preceding headings of this Chapter.

The heading includes in particular:

- (1) Footwear, with outer soles of rubber or plastics, and the uppers made of material other than rubber, plastics, leather or textile material;...

\* \* \* \*

In NY N239495, CBP concluded that the instant shoe covers should be classified as footwear in Chapter 64, specifically heading 6402, HTSUS. You claim classification of the instant goods in heading 6307, HTSUS.

You argue that the instant footwear is excluded from Chapter 64 by operation of Note 1(b) to that Chapter, because the shoe covers are made of textile material, and because they lack an applied sole. You contend that the plastic laminate on the instant cover is not a sole because it covers too much of the shoe cover, extending to the sides and potentially over the top of the toes, and that in any case, the plastic coating could not be considered to be an applied sole because it was applied to the textile base material before it was cut to form the shoe cover. Finally, you contend that classification of the shoe covers as "protective" footwear in subheading 6402.88.33, HTSUS, is inappropriate because the plastic coating does not offer sufficient protection against water, oil or inclement weather.

Pursuant to Note 1(a) to Chapter 64, which governs the classification of disposable shoe coverings in Chapter 64, a disposable shoe covering made of flimsy material and lacking an applied sole is precluded from classification as footwear of Chapter 64. Pursuant to Note 1(b) to Chapter 64, footwear of textile material without an outer sole glued, sewn or otherwise affixed or applied to the upper is precluded from classification in Chapter 64. Conversely, as noted in the General Explanatory Note to Chapter 64, flimsy disposable shoe covers, including those of textile materials, are classified in Chapter 64, as "footwear", if they do have an applied sole.

A sole is defined in the General Explanatory Note to Chapter 64 as the part of the footwear in contact with the ground. In determining whether a shoe covering has an *applied* sole pursuant to Note 1 to Chapter 64, we look to whether there is a “line of demarcation” between the upper and the outer sole, which indicates that the outer sole was a distinct, separate component which was applied to the upper. *See* Headquarters Ruling Letter (HQ) H005104, dated May 20, 2010; HQ 967659, dated July 1, 2005; HQ 967851, dated November 18, 2005; and HQ 956921, dated November 22, 1994. In particular the “line of demarcation” has been defined as “the line along which the sole ends and the upper begins.” *See* Treasury Decision (T.D.) 93–88 (27 Cust. Bull. & Dec. 46), dated October 25, 1993.

Applying these definitions to the present merchandise, the product consists of two separate pieces of material that are affixed together, with a clear line of demarcation between them. You claim that the sole is not a separate piece of material because the CPE layer constitutes a coating, and that the shoe cover is therefore covered in its entirety by Section XI, as a coated fabric. We disagree. The CPE layer is affixed to the polypropylene base layer only at the edges; the remainder of the CPE layer is not attached to the base textile layer in any way. In addition, this office was able to easily detach the blue CPE layer entirely. The CPE layer is therefore not a coating, but rather a separate piece of material applied to the base material of the upper. The seam is the line of demarcation and the ability to separate the two components is a clear indication that there is a separately applied outer sole.

Contrary to your position that the plastic laminate on the instant cover cannot be a sole because it is too extensive, nothing in the tariff or ENs states that a sole that is too extensive is no longer a sole. Nor is it stated anywhere in the tariff or in common definitions of the term “sole” that a sole must provide support or absorb impact for the user, as the Protestant contends. For example, the Merriam-Webster Dictionary Online and the Oxford English Dictionary Online, respectively, define “sole” as follows:

a : the undersurface of a foot

b : the part of an item of footwear on which the sole rests and upon which the wearer treads

<http://www.merriam-webster.com/dictionary/sole>.

a. The bottom of a boot, shoe, etc.; that part of it upon which the wearer treads (freq. exclusive of the heel); one or other of the pieces of leather or other material of which this is composed (cf. *insole* n. and *outsole* n.). Also, a separate properly-shaped piece of felt or other material placed in the bottom of a boot, shoe, etc.

<http://www.oed.com/view/Entry/184121?rskey=VW5Gs4&result=1#eid>.

Thus, there is nothing in either the tariff or the common understanding of the term “sole” that limits the scope of the term in the manner you suggest. The sole of an article of footwear is the portion covering the bottom of the foot. Whether the material constituting the sole extends past the bottom of the shoe cover is irrelevant, as long as it covers the bottom of the foot.

Nor do we find that the stage at which the CPE layer is applied precludes it from being considered an applied sole. Essentially, you argue that the

plastic coating was not a sole when it was applied to the polypropylene base layer because the material was not yet cut to shape. However, articles are classified in their condition at time of importation. See *United States v. Citroen*, 223 U.S. 407 (1911). The instant shoe covers have an additional, separate layer that was applied to cover the bottom of the foot. Hence, regardless of when the plastic laminate became a sole, by the time of importation it is a sole. That sole was separately applied to the base material of the shoe cover, making it an applied sole for the purposes of Note 1 to Chapter 64.

The instant shoe covers are made of a base layer of a nonwoven textile material, partially covered with plastic. Pursuant to Note 4(a) to Chapter 64, the outer sole is the part of the footwear in contact with the ground. The CPE layer thus constitutes the outer sole. Pursuant to Note 4(b) to Chapter 64, the material of the upper is the constituent material having the greatest external surface area. In this case, the CPE layer covers the majority of the external surface area of the upper. The instant shoe covers therefore have outer soles and uppers of plastic and are classified in heading 6402, HTSUS.

Within heading 6402, HTSUS, two subheadings are implicated. We thus turn to GRI 6. Subheading 6402.99.31 provides for footwear with uppers of which over 90 percent of the external surface area is plastics, except footwear designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather. Subheading 6402.99.33 provides for footwear designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather. NY N239495 determined that instant shoe covers were classified as “protective” footwear in subheading 6402.99.33, HTSUS. We disagree. While the blue laminate is waterproof, it does not cover the entire shoe cover, and the shoe cover itself does not cover the entire foot. Due to the design of the shoe cover, the top of the foot is left mostly exposed while excess material gathers at the front and back of the shoe. Thus, we do not find that the shoe cover offers significant protection against water, oil, grease or chemicals or cold or inclement weather. The instant shoe covers are therefore classified in subheading 6402.99.31, HTSUS.

You cite to several rulings in support of classification of the instant shoe covers in heading 6307, HTSUS, including HQ 089744, dated October 10, 1991, HQ 081945, dated January 29, 1990, NY J83244, dated April 18, 2003, and NY G83136, dated October 25, 2000, all of which classified various styles of disposable shoe covers in heading 6307, HTSUS. However, we note that the merchandise at issue in these rulings is distinguishable from the Protexer shoe covers. In NY J83244, CBP classified a disposable shoe cover with plastic dots used for traction in heading 6307, HTSUS. Plastic dots that do not cover the entire bottom of the shoe cover are not soles for the purposes of Chapter 64; NY J83244 therefore has no bearing on the classification of the instant merchandise. Similarly, in NY G82136, CBP classified shoe covers with and without a “skid bottom” in heading 6307, HTSUS. It is unclear from the description whether the composition and coverage of the referenced “skid bottom” is more similar to the plastic laminate of the Protexer shoe covers or the “plastic dots” added for traction to the shoe covers of NY J83244. Finally, the shoe covers at issue in HQ 089744 and HQ 081945 were made of one material only and thus lacked an additional, applied coating on the bottom of the shoe cover. We therefore do not find any of these rulings persuasive as to the classification of the instant merchandise.

In contrast, CBP has classified virtually identical merchandise to the Protexer shoe covers at issue in Chapter 64, HTSUS, as footwear. *See* Headquarters Ruling Letter (HQ) 956921, dated November 22, 1994. In HQ 956921, CBP determined that a plastic layer applied to the bottom of a disposable textile shoe covering constituted an applied sole pursuant to Note 1(a) to Chapter 64, and therefore the disposable shoe cover was classified in Chapter 64, specifically heading 6404. In this ruling, CBP noted that the blue plastic laminate applied to the shoe cover was designed to be in contact with the ground, and would be approximately under the foot. *See also* HQ H241512, dated Jul 07, 2014; NY N239495, dated April 9, 2013; NY N202027, dated February 22, 2012; NY N182015, dated September 16, 2011; NY N034202, dated August 11, 2008; NY N007466, dated March 15, 2007; NY L81039, dated December 13, 2004; and NY F86838, dated June 2, 2000.

**HOLDING:**

Pursuant to GRIs 1 and 6, the Protexer Super Bootie II shoe covers are classified in heading 6402, HTSUS, specifically subheading 6402.99.31, HTSUS, which provides for “Other footwear with outer soles and uppers of rubber or plastics: Other footwear: Other: Other: Having uppers of which over 90 percent of the external surface area (including any accessories or reinforcements such as those mentioned in note 4(a) to this chapter) is rubber or plastics (except footwear having a foxing or a foxing-like band applied or molded at the sole and overlapping the upper and except footwear designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather): Other: Other.” The 2016 general, column one rate of duty is 6% *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 online at [www.usitc.gov/tata/hts/](http://www.usitc.gov/tata/hts/).

**EFFECT ON OTHER RULINGS:**

NY N239495, dated April 9, 2013, is hereby revoked.

*Sincerely,*

MYLES B. HARMON,

*Director,*

*Commercial and Trade Facilitation Division*



**19 CFR PART 177**

**MODIFICATION OF A RULING LETTER AND REVOCATION  
OF TREATMENT RELATING TO THE TARIFF  
CLASSIFICATION OF A CAST SOCK**

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

**ACTION:** Notice of modification of a ruling letter, and of revocation of treatment relating to the tariff classification of a cast sock.

**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 modifying one ruling letter concerning tariff classification of a cast sock under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 49, No. 51, on December 23, 2015. No comments supporting the proposed modification were received in response to that notice.

**DATES:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after July 5, 2016.

**FOR FURTHER INFORMATION CONTACT:** Michelle Garcia, Tariff Classification and Marking Branch, Regulations and Rulings, Office of International Trade, at (202) 325–1115.

## **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, a notice was published in the *Customs Bulletin*, Vol. 49, No. 51, on December 23, 2015, proposing to revoke a ruling letter pertaining to the tariff classification of a cast sock. As stated in the proposed notice, this action will cover New York Ruling Letter (“NY”) NY N183637, dated October 4, 2011, as well as any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

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

In NY N183637, CBP classified a cast cover in heading 6115, HTSUS, specifically in subheading 6115.96.9020, HTSUS, which provides for “Panty hose, tights, stockings, socks and other hosiery, including graduated compression hosiery (for example, stockings for varicose veins) and footwear without applied soles, knitted or crocheted: Other: Of synthetic fibers: Other.” CBP has reviewed NY N183637 and has determined the ruling letter to be in error. It is now CBP’s position that the cast sock is properly classified, by operation of GRI 1, in heading 9021, HTSUS, specifically in subheading 9021.10.00, HTSUS, which provides for “Orthopedic appliances, including crutches, surgical belts and trusses; splints and other fracture appliances; artificial parts of the body; hearing aids and other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability; parts and accessories thereof: Orthopedic or fracture appliances, and parts and accessories thereof.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is modifying NY N183637 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter (“HQ”) H194697, set forth as an Attachment to this notice.

Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: March 08, 2016

ALLYSON MATTANAH

*for*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

Attachment

HQ H194697

March 08, 2016

CLA-2: OT:RR:CTF:TCM H194697 MG

CATEGORY: Classification

TARIFF NO.: 9021.10.00

DEBRA READING

NOW AND NEW COMFORT, INC.

294 MALLARD POINT UNIT C

BARRINGTON, IL 60010

RE: Modification of NY N183637, dated October 4, 2011; tariff classification of a cast sock

DEAR Ms. READING:

This is in response to your letter, dated October 13, 2011, in which you have requested reconsideration on behalf of Now and New Comfort, Inc., of New York Ruling Letter (NY) N183637, dated October 4, 2011, as it pertains to the classification under the Harmonized Tariff Schedule of the United States (“HTSUS”), of the “BRRPAW FOOT CAST COVER” (“cast cover”) and the “BRRPAW THERMA-HEAT SLIPPER” (“heat slipper”). Samples of these two items were submitted with your request and are being returned. We have reviewed N183637 and find it to be in error with respect to the “BRRPAW FOOT CAST COVER” only. For the reasons set forth in this ruling, we are modifying N183637.

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 on December 23, 2015, in the *Customs Bulletin*, Vol. 49, No. 51. No comments were received.

**FACTS:**

NY N183637 states the following:

The submitted sample is Style CAST SOCK #2556 constructed of knit 100% polyester fleece fabric. The CAST SOCK is an ankle length sock. It is used to cover the foot while wearing a cast. The ankle portion of the sock has a hook and loop closure that secures the item to the wearer’s foot. The toe portion of the sock has a sewn in padded cushion.

The submitted sample is Therma Heat Slipper #2284 is an indoor slipper with an outer sole of rubber or plastics. The upper, which covers the ankle, is made of textile fleece and has a hook and loop closure above the ankle which secures the slipper to the wearer’s foot.

NY N183637 classified the BRRPAW FOOT CAST COVER (identified in the ruling as the CAST SOCK #2556) in subheading 6115.96.90, HTSUS, which provides for “Panty hose, tights, stockings, socks and other hosiery, including graduated compression hosiery (for example, stockings for varicose veins) and footwear without applied soles, knitted or crocheted: Other: Of synthetic fibers: Other.”

NY N183637 classified the BRRPAW THERMA-HEAT SLIPPER (identified in the ruling as the Therma Heat Slipper #2284) in 6404.19.70, 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: Other: Valued over \$3 but not over \$6.50/pair: Other.<sup>1</sup> ”

You request that we reconsider our classification of these items as orthopedic appliances, and parts and accessories thereof, under subheading 9021.10.00, HTSUS, as they are used for medical problems.

#### ISSUE:

Whether the cast cover is classified as socks and other hosiery, in heading 6115, HTSUS, or whether it is provided for as parts and accessories of orthopedic appliances, in heading 9021, HTSUS.

Whether the heat slipper is classified as other footwear with outer soles of rubber/plastics, in heading 6404, HTSUS, or whether it is provided for as parts and accessories of orthopedic appliances, in heading 9021, 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 GRI may then be applied.

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

The HTSUS provisions under consideration are as follows:

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:
	Other:
	Valued over \$3 but not over \$6.50/pair:
	Other:
6404.19.79	Other.
	* * * * *
6115	Panty hose, tights, stockings, socks and other hosiery, including graduated compression hosiery (for example, stockings for varicose veins) and footwear without applied soles, knitted or crocheted:
	Other:
6115.96	Of synthetic fibers:

<sup>1</sup> Subheading 6404.19.70, HTSUS (2011) is now subheading 6404.19.79, HTSUS (2015). The rate of duty remains unchanged.

6115.96.90	Other: * * * * *
9021	Orthopedic appliances, including crutches, surgical belts and trusses; splints and other fracture appliances; artificial parts of the body; hearing aids and other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability; parts and accessories thereof.
9021.10.00	Orthopedic or fracture appliances, and parts and accessories thereof. * * * * *

To determine whether the subject merchandise is classified in heading 9021, HTSUS, we first consider whether they are “orthopedic appliances” within the meaning of Note 6 to Chapter 90, which provides as follows:

For the purposes of heading 9021, the expression “*orthopedic appliances*” means appliances for:

- (a) Preventing or correcting bodily deformities; or
- (b) Supporting or holding parts of the body following an illness, operation or injury.

Orthopedic appliances include footwear and special insoles designed to correct orthopedic conditions, provided that they are either (1) made to measure or (2) mass-produced, entered singly and not in pairs and designed to fit either foot equally.

The ENs to heading 9021 state, in pertinent part, the following:

Orthopaedic appliances are defined in Note 6 to this Chapter. These are appliances for:

- Preventing or correcting bodily deformities; or
- Supporting or holding parts of the body following an illness, operation or injury.

They include:

- (1) Appliances for hip diseases (coxalgia, etc.).
- (2) Humerus splints (to enable use of an arm after resection), (extension splints).
- (3) Appliances for the jaw.
- (4) Traction, etc., appliances for the fingers.
- (5) Appliances for treating Pott’s disease (straightening head and spine).
- (6) Orthopaedic footwear and special insoles designed to correct orthopaedic conditions, provided that they are either (1) made to measure or (2) mass-produced, presented singly and not in pairs and designed to fit either foot equally.
- (7) Dental appliances for correcting deformities of the teeth (braces, rings, etc.).
- (8) Orthopaedic foot appliances (talipes appliances, leg braces, with or without spring support for the foot, surgical boots, etc.).

- (9) Trusses (inguinal, crural, umbilical, etc., trusses) and rupture appliances.
- (10) Appliances for correcting scoliosis and curvature of the spine as well as all medical or surgical corsets and belts (including certain supporting belts) characterised by:
  - (a) Special pads, springs, etc., adjustable to fit the patient.
  - (b) The materials of which they are made (leather, metal, plastics, etc.);
 or
  - (c) The presence of reinforced parts, rigid pieces of fabric or bands of various widths.

The special design of these articles for a particular orthopaedic purpose distinguishes them from ordinary corsets and belts, whether or not the latter also serve to support or hold.

- (11) Orthopaedic suspenders (other than simple suspenders of knitted, netted or crocheted materials, etc.).

\* \* \* \* \*

Your letter states that the cast cover keeps the toes warm and protected while protecting the cast from dirt, grime and harmful objects. Upon examination of the sample, we find that the cast cover under consideration is designed to cover a wearer's foot while wearing a cast. The retail packaging described the item as follows:

The BRRPAW FOOT CAST WRAP is a patented cast cover which keeps the toes and overall foot warm (silver lining technology) while having a cast in place. Foot casts are molded around the diameter of the break of the foot and will always have an opening for the toes. The BRRPaw Foot cast Wrap keeps the toes warm and protected as well as allowing the consumer the ability to keep the cast protected from dirt, grime and harmful objects.

Given its design, the cast cover at issue is only suitable to be worn with a cast, which meets the terms of Note 6 to Chapter 90, HTSUS, as an orthopedic appliance designed to support parts of the body following an injury. The instant merchandise is sold individually and not in pairs and is designed to fit either foot equally. Its construction is such that it would only be used over a casted leg to provide warmth to the foot. Therefore, it is suitable for use as an accessory solely or principally with the orthopedic appliances provided for in heading 9021 HTSUS<sup>2</sup>. See, NY K86171, dated May 27, 2004 and NY K87491, dated July 6, 2004.

<sup>2</sup> The courts have considered the scope of the term "accessories", and have found that although the HTSUS does not define the term "accessory", "the language of the HTSUS reflects the common understanding that accessories must be 'of' or 'to' another thing." *Rollerblade, Inc. v. United States* ("Rollerblade"), 116 F. Supp. 2d 1247 (CIT 2000), aff'd 282 F.3d 1349, 1351 (C.A.F.C. 2002). The Court of Appeals clarified that an accessory "must be 'of' or 'to' the article ... listed in the heading, not 'of' or 'to' the activity ... for which the article is used." *Rollerblade*, 282 F.3d 1349, 1351. In subsequent rulings, CBP has added that an accessory is generally an article that is not necessary to enable the goods with which it is used to fulfill their intended function. An accessory must be identifiable as being intended

Based on the foregoing, we find that the cast cover meets the terms of heading 9021, HTSUS, as an accessory used solely or principally with the orthopedic appliances provided for in the heading and is specifically provided for in subheading 9021.10.00, HTSUS, which provides for “Orthopedic appliances, including crutches, surgical belts and trusses; splints and other fracture appliances; artificial parts of the body; hearing aids and other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability; parts and accessories thereof: Orthopedic or fracture appliances, and parts and accessories thereof.”

With regard to the heat slipper, your letter states that it is a patented slipper designed to increase and sustain heat to consumers who have been diagnosed with diabetes and those who have inherent problems with poor circulation. The retail packaging describes this item as follows:

The BRR Paw Therma-Heat Slipper is a patented slipper which has been designed to aid in increasing and sustaining heat to the feet of consumers who have been diagnosed with diabetes and/or for those who have inherent problems with poor circulation by providing a silver lining technology which accelerates and sustains heat to the lower foot extremities. Diabetes affects the body’s blood circulation which in turn affects the feet which can become cold due to this lack of blood flow. The BRR Paw Therma-Heat Slipper’s silver lining promotes accelerated and sustained heat to the feet as well as protects the feet from sores, cuts, abrasions, and infections. The BRR Paw Therma-Heat Slipper enables consumers who have been treated for diabetes, arthritis, bunions or other common foot ailments to become more active without sacrificing their health due to lack of protections.

We note that, unlike the cast cover, the heat slipper is sold in pairs. We further note that its design is not suitable for use as an accessory solely or principally with the orthopedic appliances provided for in heading 9021, HTSUS.

Furthermore, the heat slipper does not prevent or correct bodily deformities and does not support or hold parts of the body following an illness, operation or injury within the meaning of Note 6 to Chapter 90, HTSUS. Although you assert that the subject heat slipper is designed to provide heat and assist with circulation, we find that it is not “*eiusdem generis*” or “of the same kind” of merchandise as orthopedic appliances listed in heading 9021, HTSUS. In this regard, we note that the heat slipper at issue is not similar to any of the exemplars covered by the ENs to heading 9021, HTSUS. Hence, the heat slipper is correctly classified in NY N183637 as footwear of subheading 6404.19.70, HTSUS (2011), now subheading 6404.19.79, HTSUS (2016).

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solely or principally for use with a specific article. Accessories are of secondary or subordinate importance, not essential in and of themselves. They must, however, somehow contribute to the effectiveness of the principal article (e.g., facilitate the use or handling of the principal article, widen the range of its uses, or improve its operation). *See, e.g.*, HQ H244547, dated March 28, 2014; HQ H171296, dated November 2, 2011; HQ H068286, dated November 19, 2010; HQ 966736, dated November 17, 2003; HQ 966354, dated June 18, 2003.

**HOLDING:**

By application of GRI 1, the subject cast cover is provided for in heading 9021, HTSUS, which provides for “Orthopedic appliances, including crutches, surgical belts and trusses; splints and other fracture appliances; artificial parts of the body; hearing aids and other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability; parts and accessories thereof. It is specifically provided for in subheading 9021.10.0000, HTSUSA (Annotated), which provides for “Orthopedic appliances, including crutches, surgical belts and trusses; splints and other fracture appliances; artificial parts of the body; hearing aids and other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability; parts and accessories thereof: Orthopedic or fracture appliances, and parts and accessories thereof.” The column one, general rate of duty is *free*.

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

**EFFECT ON OTHER RULINGS:**

NY N183637, dated October 4, 2011, is hereby MODIFIED as set forth herein with respect to the classification analysis of the “BRRPAW FOOT CAST COVER” (identified in the ruling as the CAST SOCK #2556). The classification of the “BRRPAW THERMA-HEAT SLIPPER” (identified in the ruling as the Therma Heat Slipper #2284) is not affected by this modification.

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

*Sincerely,*

ALLYSON MATTANAH

*for*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*



**PROPOSED REVOCATION OF ONE RULING LETTER AND  
REVOCATION OF TREATMENT RELATING TO THE  
TARIFF CLASSIFICATION OF GRADUATED  
COMPRESSION HOSIERY**

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

**ACTION:** Notice of proposed revocation of one ruling letter and revocation of treatment relating to the tariff classification of graduated compression hosiery.

**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 U.S. Customs and Border Protection (CBP) intends to revoke one ruling letter concerning tariff classification of graduated compression hosiery under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

**DATES:** Comments must be received on or before June 3, 2016.

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

**FOR FURTHER INFORMATION CONTACT:** Laurance W. Frierson, Tariff Classification and Marking Branch, Regulations and Rulings, Office of International Trade, at (202) 325–0371.

#### **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 neces-

sary 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 revoke one ruling letter pertaining to the tariff classification of graduated compression hosiery. Although in this notice, CBP is specifically referring to New York Ruling Letter (“NY”) N235286, dated December 7, 2012 (Attachment A), this notice covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

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

In ruling letter NY N235286, CBP classified two styles of graduated compression hosiery under heading 6115, HTSUS, specifically in subheading 6115.30.90, HTSUS, which provides for “Panty hose, tights, stockings, socks and other hosiery, including graduated compression hosiery (for example, stockings for varicose veins) and footwear without applied soles, knitted or crocheted: Other women’s full-length or knee-length hosiery, measuring per single yarn less than 67 decitex: Other.” CBP has reviewed ruling letter NY N235286 and has determined the ruling letter to be in error. It is now CBP’s position that the two styles of graduated compression hosiery are properly classified, by operation of GRIs 6 and 1, in heading 6115, HTSUS, specifically in subheading 6115.10.05, HTSUS, which provides for “Panty hose, tights, stockings, socks and other hosiery, including graduated compression hosiery (for example, stockings for varicose veins) and footwear without applied soles, knitted or crocheted: Graduated compres-

sion hosiery (for example, stockings for varicose veins): Surgical panty hose and surgical stockings with graduated compression for orthopedic treatment.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke ruling letter NY N235286 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H237738, 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: March 15, 2016

GREG CONNOR

*for*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

Attachments

## [ATTACHMENT A]

N235286

December 7, 2012

CLA-2-61:OT:RR:NC:N3:348

CATEGORY: Classification

TARIFF NO.: 6115.30.9010

MR. JOHN PETERSON  
NEVILLE PETERSON LLP  
17 STATE STREET  
19TH FLOOR  
NEW YORK, NY 10004

RE: The tariff classification of graduated compression hosiery from unknown origin.

DEAR MR. PETERSON:

In your letter dated November 8, 2012, on behalf of your client, Total Vein Systems Inc., you requested a tariff classification ruling. The samples are being returned to you as requested.

The submitted sample, "Surgeon's Choice", is a thigh-length hosiery composed of 72% nylon 28% spandex knit fabric. You state the stocking will have a graduated compression of 20-30 or 30-40 mm Hg, with the strongest compression being applied to the foot and ankle, gradually decreasing as the stocking rises.

The submitted sample, "Boost", is a calf-length hosiery composed of man-made knit fabric. You state the hosiery will be offer in two styles "Beginner" which will have a graduated compression of 15-20 mm Hg and "Professional" which will have a graduated compression of 20-30 mm Hg. The strongest compression being applied to the foot and ankle, gradually decreasing as the sock rises.

Your letter of inquiry states that it is your opinion that this hosiery would be classified under heading 6115.10.0500 of the Harmonized Tariff Schedule of the United States, (HTSUS) which provides for "Surgical panty hose and surgical stockings with graduated compression for orthopedic treatment." We disagree with your proposed classification.

You state they are specially designed, intended and advertised primarily for use in preventing malformations, disease and disorders of the superficial venous system, particularly in athletes and other persons participating in activities. Surgical graduated compression panty hose and hosiery have a minimum compression of 20-30 mm Hg, are principally used for orthopedic purposes, primarily prescribed by a physician to prevent or correct bodily deformities and the consequences associated with venous disease, and measured and fitted by trained personnel. The items in question will be sold at medical/surgical supply stores and on the internet, however, the socks are offered in "specific sizes and may be generally prescribed by a physician for patients who require compression but who lead an active lifestyle."

In HQ 963517 and HQ 963518, Customs determined that physicians generally recommend graduated compression therapy as a treatment for venous insufficiency. We further recognized that graduated compression hosiery is generally available in three classes of compression; class I specifically covers a compression range of 20-30 mm Hg. We found that physicians generally prescribe compression stockings and that doctors indicated that patients

generally find the hosiery uncomfortable and do not wear them unless directed by a doctor. Moreover, letters from medical authorities and conversations with medical professionals confirmed that certified and well-trained personnel must measure various parts of the foot and leg of a patient in order to obtain a proper fit for the stockings. We also found that pharmacies and medical supply companies prefer that a patient have a prescription that prescribes the amount of compression and noted that stockings obtained by prescription are often covered by insurance.

The applicable subheading for styles “Surgeon’s Choice” and “Boost” will be 6115.30.9010, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other women’s full length or knee length hosiery, measuring per single yarn less than 67 decitex: other, of man-made fibers. The rate of duty will be 14.6% ad valorem.

You specifically propose a possible (secondary) classification of these items under HTSUS 9817.00.96 as articles for the handicapped.

We do not agree. Headquarters Ruling Letter H131516 KSG, dated March 1, 2011, concerned the applicability of HTSUS 9817.00.96 to compression hosiery, especially whether they are worn by those suffering from a physical impairment which substantially limits one or more major life activities in terms of HTSUS, Chapter 98, Subchapter 17, U.S. Note 4. We find that, regarding these items, as with those items, “It has not been shown that the compression hosiery described above are specifically designed for the use of a person who has little or no mobility.” While that applies to all the items here, it is extra clear for the Boost hosiery, described on the packaging as “Athletic Compression Therapy” and “Training and Recovery Socks for Optimal Performance.”

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 Rosemarie Hayward at (646) 733-3064.

Sincerely,

THOMAS J. RUSSO

*Director*

*National Commodity Specialist Division*

## [ATTACHMENT B]

HQ H237738

CLA-2 OT:RR:CTF:TCM H237738 LWF

CATEGORY: Classification

TARIFF NO.: 6115.10.05

MR. JOHN PETERSON  
NEVILLE PETERSON LLP  
17 STATE STREET, 19TH FLOOR  
NEW YORK, NY 10004

RE: Revocation of New York Ruling (NY) N235286, dated December 7, 2012; tariff classification of graduated compression hosiery

DEAR MR. PETERSON:

This letter is to inform you that U.S. Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) N235286, issued to Total Vein Systems, Inc. (“Total Vein”) on December 7, 2012, concerning the tariff classification of under the Harmonized Tariff Schedule of the United States (HTSUS) of certain graduated compression hosiery. In ruling letter NY N235286, CBP classified two styles of Total Vein graduated compression hosiery under subheading 6115.30.90, HTSUS, which provides for “Panty hose, tights, stockings, socks and other hosiery, including graduated compression hosiery (for example, stockings for varicose veins) and footwear without applied soles, knitted or crocheted: Other women’s full-length or knee-length hosiery, measuring per single yarn less than 67 decitex: Other.” In response to Total Vein’s request, dated January 8, 2013, that CBP reconsider ruling letter NY N235286, CBP has reviewed the ruling letter and determined it to be in error. Accordingly, for the reasons set forth below, CBP is revoking ruling letter NY N235286.

**FACTS:**

The Total Vein graduated compression hosiery consists of two styles of stockings, the thigh-length “Surgeon’s Choice” stocking and the calf-length “Boost” stocking. Both styles of hosiery provide graduated compression in the range of 20–30 or 30–40 mm of mercury (mm HG), with the strongest compression being applied to the foot and ankle area, and gradually decreasing as the stocking rises up the leg. The graduated compression is designed to help push blood out of the legs and feet by compressing surface veins to increase arterial pressure, thereby causing more blood to return back towards the heart.

The Total Vein graduated compression hosiery is prescribed by physicians to prevent or treat venous disorders of the legs and feet, including blood clots (deep vein thrombosis), varicose veins, and lymphedema. The hosiery is sold on the Internet and in medical and surgical supply stores, where trained personnel use detailed measurements of a patient’s leg to properly fit the stockings and socks. The hosiery is not sold in ordinary retail or fashion retail outlets.

**ISSUE:**

Whether the Total Vein “Surgeon’s Choice” and “Boost”-style graduated compression hosiery are classified under subheading 6115.10, HTSUS, as graduated compression hosiery, or under subheading 6115.30, HTSUS, as other women’s full-length or knee-length hosiery, measuring per single yarn less than 67 decitex.

**LAW AND ANALYSIS:**

Merchandise imported into the United States is classified under the Harmonized Tariff Schedule of the United States. 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 may then be applied.

Heading 6115, HTSUS, provides, in pertinent part, as follows:

6115	Panty hose, tights, stockings, socks and other hosiery, including graduated compression hosiery (for example, stockings for varicose veins) and footwear without applied soles, knitted or crocheted:
6115.10	Graduated compression hosiery (for example, stockings for varicose veins):
6115.10.05	Surgical panty hose and surgical stockings with graduated compression for orthopedic treatment Other graduated compression panty hose and tights:
6115.10.10	Of synthetic fibers (659) [...] Other graduated compression hosiery [...]
6115.10.40	Of synthetic fibers (632) [...]
6115.30	Other women’s full-length or knee-length hosiery, measuring per single yarn less than 67 decitex: [...]
6115.30.90	Other * * * * *

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, the ENs provide a commentary on the scope of each heading of the HTSUS and are thus useful in ascertaining the proper classification of merchandise. It is CBP’s practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89–90, 54 Fed Reg. 35127, 35128 (August 23, 1989).

EN 61.15, HS, provides, in pertinent part, that:

This heading covers the following knitted or crocheted goods, without distinction between those for women or girls and those for men or boys:

- (1) Panty hose and tights designed to cover the feet and legs (hose) and the lower part of the body up to the waist (panty), including those without feet.
- (2) Stockings and socks (including ankle-socks).
- (3) Under stockings, used mainly as a protection against the cold.
- (4) Graduated compression hosiery, e.g., stockings for varicose veins.
- (5) Sockettes intended to protect the feet or toes of stockings from friction or wear.
- (6) Footwear without an outer sole glued, sewn or otherwise affixed or applied to the upper, other than babies' booties.

[...]

Subheading Explanatory Note.

Subheading 6115.10

For the purposes of subheading 6115.10, "graduated compression hosiery" means hosiery in which the compression is greatest at the ankle and reduces gradually along its length up the leg, so that blood flow is encouraged.

\* \* \* \* \*

As an initial matter, this office notes that Total Vein's request for reconsideration of ruling letter NY N235286 concerns the tariff classification of certain graduated compression hosiery under the subheadings of heading 6115, HTSUS. Accordingly, there is no dispute that the instant merchandise is fully described by the terms of heading 6115, HTSUS, which provides, in pertinent part, for "Panty hose, tights, stockings, socks and other hosiery, including graduated compression hosiery (for example, stockings for varicose veins)." Therefore, because this matter requires a determination as to the proper classification of merchandise among the subheadings of the same heading, GRI 6 applies.<sup>1</sup>

Specifically, Total Vein asserts that in ruling letter NY N235286, CBP erroneously classified the "Surgeon's Choice" and "Boost"-style graduated compression hosiery under subheading 6115.30.90, HTSUS, as women's full-length or knee-length hosiery. Total Vein therefor seeks revocation of NY N235286 and advocates for the classification of its merchandise under subheading 6115.10, HTSUS, as "graduated compression hosiery (for example, stockings for varicose veins)."

In this case, a good indication of the meaning of "graduated compression hosiery" can be obtained from the Explanatory Notes to heading 61.15, HS. The ENs to subheading 6115.10, HS, describe "graduated compression hosiery" as articles of hosiery in which the compression is greatest at the ankle and reduces gradually along its length up the leg, so that blood flow is

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<sup>1</sup> GRI 6 states that, "For legal purposes, the classification of goods in the subheadings of a subheading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to the above rules, on the understanding that only subheadings at the same level are comparable. For the purposes of this rule, the relative section, chapter and subchapter notes also apply, unless the context otherwise requires."

encouraged. Subheading EN 6115.10, HS. Additionally, the U.S. National Library of Medicine at the National Institutes of Health (NIH) describes “compression stockings” as physician-prescribed hosiery used to treat leg aches and swelling and, to a lesser extent, blood clots after surgery or injury. See *Compression Stockings*, U.S. National Library of Medicine (May 12, 2015), <http://www.nlm.nih.gov/medlineplus/ency/patientinstructions/000597.htm>.

In accord with the meaning of “graduated compression hosiery” provided by the ENs to heading 61.15, HS, CBP observes that the Total Vein “Surgeon’s Choice” and “Boost”-style graduated compression hosiery are provided for *eo nomine* by the text of subheading 6115.10, HTSUS, as “Graduated compression hosiery (for example, stockings for varicose veins).” Specifically, the Total Vein merchandise consists of two styles of physician-prescribed hosiery that provide graduated compression (at levels of 30–40 or 20–30 mm Hg) to treat venous disorders in the legs and feet, including blood clots (deep vein thrombosis), varicose veins, and lymphedema.

In classifying the Total Vein graduated compression hosiery under subheading 6115.10, HTSUS, this office notes that CBP has previously examined similar classification matters, and has found that compression strength and the use of physician prescriptions are important considerations in determining whether an article of graduated compression hosiery can be properly described as a “surgical stocking with graduated compression for orthopedic treatment” of subheadings 6115.10.05. See, e.g., Headquarters Ruling Letter (HQ) 959399, dated December 16, 1996; and HQ 963517, dated January 2, 2002. In ruling letter HQ 963517, for example, CBP determined that certain graduated compression pantyhose and stocking were properly described as “surgical” hosiery heading 6115, HTSUS, because the articles were primarily prescribed by a physician, and were specially fitted to the patient by certified healthcare personnel.<sup>2</sup>

By contrast, CBP has consistently held that non-prescription graduated compression hosiery—identified by comparatively low compression strengths and suitable for purchase without specialty fitting—are not classifiable as “surgical” hosiery. For example, in HQ 959399, dated December 16, 1996, CBP rejected the classification of various styles of graduated compression panty hose and stockings as “surgical compression stockings for orthopedic purposes, other than stockings merely for the treatment of varicose veins,” because the merchandise supplied less than 30 mm Hg of compression, was available for purchase without prescription or specialty fitting, and was more “fashionable” than articles properly classified as surgical compression stockings. See HQ 959399, dated December 16, 1996.

<sup>2</sup> In ruling letter HQ H963517, CBP described amendments to the HTSUS in 1992 that transferred surgical stockings and pantyhose with graduated compression out of heading 9021, HTSUS, and into the newly created *eo nomine* subheadings of heading 6115, HTSUS, which provide for “surgical” hosiery. Moreover, following the 1992 amendments to the HTSUS, CBP has consistently described certain compression pantyhose and stockings with minimum compression measurements of 30 mm Hg, as surgical hosiery of heading 6115, HTSUS. See HQ 959399, dated December 16, 1996; NY B87014, dated August 6, 1997; NY B81996, dated February 24, 1997; NY E82160, dated June 10, 1999; NY E82592; dated June 11, 1999; NY E82593, dated June 11, 1999; NY E82594, dated June 11, 1999; NY E82595, dated June 11, 1999; NY E82596, dated June 11, 1999; and NY F80388, dated December 28, 1999.

Similarly, in HQ 963517, discussed *supra*, CBP drew a clear distinction between physician-prescribed, “surgical” hosiery with graduated compression for orthopedic treatment, as compared to non-prescription, anti-embolism stockings designed to equalize blood pressure along the leg of a non-ambulatory patient. There, CBP declined to identify the anti-embolism stockings as “surgical stockings with graduated compression” for the threshold reason that the anti-embolism stockings did not feature graduated compression; however, CBP notably observed that the anti-embolism stockings were nonetheless distinguishable from surgical stockings, because the anti-embolism stockings were available for purchase without a physician prescription and provided significantly less compression as compared to surgical pantyhose and stockings.<sup>3</sup> See HQ 963517, dated January 2, 2002.

Consistent with the analysis set forth in prior CBP ruling letters distinguishing “surgical stockings” of subheading 6115.10.05, HTSUS, from “other graduated compression panty hose and tights,” CBP finds that the Total Vein “Surgeon’s Choice” and “Boost”-style graduated compression hosiery are substantially similar to merchandise previously classified by CBP as “surgical panty hose and surgical stockings with graduated compression for orthopedic treatment.” Specifically, the “Surgeon’s Choice” and “Boost” hosiery are prescribed by physicians to prevent or treat venous disorders of the legs and feet, including blood clots (deep vein thrombosis), varicose veins, and lymphedema. The hosiery provide graduated compression in the range of 20–30 or 30–40 mm of mercury (mm HG), and are designed to help push blood out of the legs and feet by compressing surface veins to increase arterial pressure. Moreover, CBP observes that the “Surgeon’s Choice” and “Boost” hosiery are sold in medical and surgical supply stores, where trained personnel use detailed measurements of a patient’s leg to properly fit the stockings and socks.

Upon consideration of the channels of sale, use, and therapeutic effectiveness of the “Surgeon’s Choice” and “Boost”-style graduated compression hosiery, CBP finds that the hosiery share the commercial identity of “surgical stockings with graduated compression for orthopedic treatment” and are substantially similar to other “surgical” graduated compression stockings previously classified by CBP. See, e.g., ruling letter HQ 963517. Consequently, the Total Vein graduated compression hosiery is properly classified as graduated compression hosiery of subheading 6115.10, HTSUS, and specifically, in subheading 6115.10.05, which provides, in relevant part, for “surgical stockings with graduated compression for orthopedic treatment.”

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<sup>3</sup> CBP has also ruled that surgical compression hosiery of subheading 6115.10.05, HTSUS, does not include certain graduated compression hosiery marketed to and worn by athletes. In ruling letter NY N118186, dated August 30, 2010, CBP classified certain knee-length, graduated compression socks for athletes in subheading 6115.30.90, HTSUS, as hosiery other than surgical hosiery, drawing a distinction between the athletic compression socks and surgical compression hosiery that “are prescribed by physicians for the treatment of venous diseases and other serious conditions such as reversible and irreversible lymphedema and severe post-thrombotic treatment.”

**HOLDING:**

By application of GRIs 6 and 1, the “Surgeon’s Choice” and “Boost”-style graduated compression hosiery are classified under heading 6115, HTSUS, specifically subheading 6115.10.05, which provides for “Panty hose, tights, stockings, socks and other hosiery, including graduated compression hosiery (for example, stockings for varicose veins) and footwear without applied soles, knitted or crocheted: Graduated compression hosiery (for example, stockings for varicose veins): Surgical panty hose and surgical stockings with graduated compression for orthopedic treatment.” The 2016 column one, general rate of duty is *free*.

**EFFECT ON OTHER RULINGS:**

In accordance with the analysis set forth above, ruling letter NY N235286, dated December 7, 2012, is hereby REVOKED.

*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 PRINTED CIRCUIT BOARD  
SWITCH ASSEMBLIES**

**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 printed circuit board switch assemblies from China.

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

**DATES:** Comments must be received on or before June 3, 2016.

**ADDRESSES:** Written comments are to be addressed to the U.S. Customs and Border Protection, Office of International Trade,

Regulations and 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:** Dwayne Rawlings, Tariff Classification and Marking Branch, Regulations and Rulings, Office of International Trade, at (202) 325–0092.

### **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 printed circuit board switch assemblies. Although in this notice, CBP is specifically referring to New York Ruling Letter (“NY”) 202228, dated February 17, 2012 (Attachment A), this notice covers any rulings on this merchandise that may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision

(i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

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

In NY 202228, CBP classified printed circuit board switch assemblies, identified as Part Number 02-080902/20565 and Part Number 02-08903/20567, in heading 8536, HTSUS, specifically in subheading 8536.50.9031, HTSUSA (Annotated), which provides for "Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits ... for a voltage not exceeding 1,000 V: Other switches: Other: Other: Push-button: Rated at not over 5 A: Momentary contact." CBP has reviewed NY 202228 and has determined the ruling letter to be in error. It is now CBP's position that the printed circuit board switch assemblies are properly classified, by operation of GRI 1, in heading 8537, HTSUS, specifically in subheading 8537.10.90, HTSUS, which provides for "Boards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity, including those incorporating instruments or apparatus of chapter 90, and numerical control apparatus, other than switching apparatus of heading 8517: For a voltage not exceeding 1,000 V: Other."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to modify NY 202228 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter ("HQ") H250002, 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: February 29, 2016

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

Attachments

## [ATTACHMENT A]

N202228

February 17, 2012

CLA-2-85:OT:RR:NC:1:110

CATEGORY: Classification

TARIFF NO.: 8536.50.9031; 8537.10.9070

Ms. PAULA M. CONNELLY  
LAW OFFICES OF PAULA M. CONNELLY  
12 ALFRED STREET, SUITE 300  
WOBBURN, MA 01801

RE: The tariff classification of printed circuit board switch assemblies from Canada.

DEAR Ms. CONNELLY:

In your letter dated January 26, 2012, you requested a tariff classification ruling on behalf of your client, Pollak Switch Product Division of Stoneridge.

The items under consideration are three printed circuit board assemblies (PCBAs) identified as Part Numbers 02-080902/20565, 02-080903/20567 and 02-092402/20943. A sample of each item was included with your ruling request. The three PCBAs consists of a printed circuit board measuring approximately 3 inches in length by ½ inch in width mounted onto a plastic base forming a connector housing. It is stated that the three PCBAs function as analog selection devices for various electric control modules in a motor vehicle. Part Number 02-080902/20565 contains one momentary contact push-button micro switch, resistors, light emitting diode (LED) indicator lights and a six-prong rectangular connector. Part Number 02-080903/20567 contains two momentary contact push-button micro switches, resistors, LED indicator lights and a six-prong rectangular connector. Part Number 02-092402/20943 contains three momentary contact push-button micro switches, resistors, LED indicator lights and an eight-prong rectangular connector.

In your letter you suggest classification of all three PCBAs under subheading 8537.10.9070, Harmonized Tariff Schedule of the United States (HTSUS), which provides for boards, panels...and other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity. 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 HTS and are generally indicative of the proper interpretation of these headings. The ENs to heading 8537, HTSUS, states that the heading excludes simple switch assemblies, such as those consisting of two switches and a connector. Such simple switch assemblies are classifiable under heading 8536, HTSUS. As Part Numbers 02-080902/20565 and 02-080903/20567 contain two or less switches and a connector, they are considered to be simple switch assemblies classifiable under heading 8536, HTSUS.

The applicable subheading for Part Numbers 02-080902/20565 and 02-080903/20567 will be 8536.50.9031, HTSUS, which provides for "Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits...for a voltage not exceeding 1000 V:

Other switches: Other: Other: Push-button: Rated at not over 5 A: Momentary contact.” The general rate of duty will be 2.7 percent ad valorem.

The applicable subheading for Part Number 02-092402/20943 will be 8537.10.9070, HTSUS, which provides for “Boards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of 8535 or 8536, for electric control or the distribution of electricity...: For a voltage not exceeding 1,000 V: Other: Other: Other.” The general rate of duty will be 2.7 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 Thomas Campanelli at (646) 733-3016.

*Sincerely,*

THOMAS J. RUSSO

*Director*

*National Commodity Specialist Division*

## [ATTACHMENT B]

HQ H250002  
CLA-2 OT:RR:CTF:TCM H250002 DSR  
CATEGORY: Classification  
TARIFF NO.: 8537.10.90

Ms. PAULA M. CONNELLY  
LAW OFFICES OF PAULA M. CONNELLY  
12 ALFRED STREET, SUITE 300  
WOBURN, MA 01801

RE: Modification of NY N202228; tariff classification of printed circuit board switch assemblies from Canada

DEAR Ms. CONNELLY:

This is in reference to New York Ruling Letter (NY) N202228 issued to you on February 17, 2012, regarding the tariff classification under the Harmonized Tariff Schedule of the United States (HTSUS) of three printed circuit board assemblies (“PCBAS”) identified as Part Numbers 02–080902/20565, 02–08903/20567 and 02–092402/20943. The ruling classified Part Numbers 02–080902/20565 and 02–08903/20567 under subheading 8536.50.9031, HTSUSA (Annotated), which provides for “Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits ... for a voltage not exceeding 1,000 V:...: Other switches: Other: Other: Push-button: Rated at not over 5 A: Momentary contact.” Part Number 02–092402/20943 was classified under subheading 8537.10.9070, HTSUSA, which provides for “Boards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of 8535 or 8536, for electrical control or the distribution of electricity, ...: For a voltage not exceeding 1,000 V: Other: Other: Other.”

We have reviewed the tariff classification of Part Number 02–080902/20565 and Part Number 02–08903/20567 and have determined that the cited ruling is in error with regard to those parts. Therefore, NY N202228 is modified for the reasons set forth in this ruling.

**FACTS:**

In NY N202228, the items under consideration were three printed circuit board assemblies (PCBAs) identified as Part Numbers 02–080902/20565, 02–08903/20567 and 02–092402/20943. A sample of each item was included with your ruling request. The three PCBAs consists of a printed circuit board measuring approximately 3 inches in length by ½ inch in width mounted onto a plastic base forming a connector housing. The three PCBAs function as analog selection devices for various electric control modules in a motor vehicle. Part Number 02–080902/20565 contains one momentary contact push-button micro switch, resistors, light emitting diode (LED) indicator lights and a six-prong rectangular connector. Part Number 02–080903/20567 contains two momentary contact push-button micro switches, resistors, LED indicator lights and a six-prong rectangular connector. Part Number 02–092402/20943 contains three momentary contact push-button micro switches, resistors, LED indicator lights and an eight-prong rectangular connector.

**ISSUE:**

Whether Part Number 02–080902/20565 and Part Number 02–080903/20567 are classified under heading 8536, HTS, which provides for “Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits ... for a voltage not exceeding 1,000 V ... ;” or under heading 8537, HTS, which covers “Boards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 8535 or 8537, for electric control or the distribution of electricity...”

**LAW AND ANALYSIS:**

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRI’s). 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 based on GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI’s 2 through 6 may then be applied in order.

In addition, in interpreting the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs are not dispositive or legally binding and, as a rule, cannot limit or restrict the scope of the legal texts to which they correspond. Instead, the ENs provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. *See* T.D. 89 80, 54 Fed. Reg. 35127 (August 23, 1989). The HTSUS provisions under consideration are as follows:

8536            Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, relays, fuses, surge suppressors, plugs, sockets, lamp-holders and other connectors, junction boxes), for a voltage not exceeding 1,000 V; connectors for optical fibers, optical fiber bundles or cables

\* \* \* \*

8537            Boards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity, including those incorporating instruments or apparatus of chapter 90, and numerical control apparatus, other than switching apparatus of heading 8517

\* \* \* \*

In HQ 966607 (June 2, 2004), CBP examined the relationship between headings 8536 and 8537, HTSUS, and stated:

. . . heading 8537, HTSUS, reads, in pertinent part, “[b]oards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of Heading 8535 or 8536, for electric control or the distribution of electricity ...” It is Customs (sic) position that a plain reading of this text would indicate that multiples of one type of apparatus are covered by this heading. The wording of the heading itself does not specifically refer to two or more ‘types’ of apparatus of Heading 8536, only two or more apparatus of Heading 8536. We *see* no reason to read additional words into heading 8537 which will narrow the scope of the heading.

Both articles in question consist of a printed circuit board mounted onto a plastic base forming connector housing. Part Number 02–080902/20565 contains one momentary contact push-button micro-switch, resistors, LEDs indicator lights and a six-prong connector. Part Number 02–080903/20567 contains two momentary contact push-button micro-switches, resistors, LED indicator lights and a six-prong rectangular connector. The articles clearly meet the terms of heading 8537, HTSUS, in that they consist of multiples of apparatus named in heading 8536 (one switch and one connector, and two switches and a connector), mounted on a base.

We note that in NY N202228, we relied upon language contained in EN 85.37<sup>1</sup> that explained that “simple” switch assemblies (*i.e.*, those consisting of two switches and a connector), are excluded from heading 8537, HTS. We erroneously viewed that exclusion in a way that conflicts with the plain text of heading 8537. When the cited language is properly read in concert with the text of heading 8537, HTS, it is clear that the phrase “simple switch assemblies” refers to two individual switches simply connected together to form a single unit with a double switch, and does not contemplate articles that contain multiples of articles classified in heading 8536 and that are mounted onto boards, panels or other bases.

Therefore, we conclude that NY N202228 misinterpreted the scope of heading 8537, HTSUS, by misinterpreting the meaning of the phrase “simple switch assembly” provided for in EN 85.37. Part Number 02–080902/20565 and Part Number 02–080903/20567 considered in that ruling are therefore properly classified in heading 8537, HTS.

#### **HOLDING:**

By application of GRI 1, Part Number 02–080902/20565 and Part Number 02–080903/20567 are classified in heading 8537, HTS. Specifically, they are classified under subheading 8537.10.90, HTSUS, which provides for “Boards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity, including those incorporating instruments or apparatus of chapter 90, and numerical control apparatus, other than switching apparatus of heading 8517: For a voltage not exceeding 1,000 V: Other.” The column one, general rate of duty is 2.7% *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 at [www.usitc.gov/tata/hts](http://www.usitc.gov/tata/hts).

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

NY N202228, dated February 17, 2012, is hereby modified.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

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<sup>1</sup> EN 85.37 states that heading 8537, HTS, excludes “[s]imple switch assemblies, such as those consisting of two switches and a connector (heading 85.35 or 85.36).”

**PROPOSED MODIFICATION OF ONE RULING LETTER  
AND REVOCATION OF TREATMENT RELATING TO THE  
APPLICABILITY OF SUBHEADING 9802.00.50, HTSUS, TO  
RELABELED COMPUTER KEYBOARDS**

**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 applicability of subheading 9802.00.50, Harmonized Tariff Schedule of the United States (HTSUS), to certain relabeled computer keyboards.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to modify one ruling letter concerning the applicability of subheading 9802.00.50, HTSUS, to certain relabeled computer keyboards. 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 June 3, 2016.

**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:** 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) (“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 applicability of subheading 9802.00.50, HTSUS, to certain relabeled computer keyboards. Although in this notice, CBP is specifically referring to New York Ruling Letter (“NY”) L83879, dated May 9, 2005 (Attachment A), this notice covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

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

In NY L83879, CBP determined, in relevant part, that relabeling computer keyboards with new part numbers and UPC labels was not was a repair or alteration eligible for duty free treatment under subheading 9802.00.50, HTSUS.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to modify NY L83879 and to revoke any other ruling not specifically identified to reflect the proper treatment of relabeling computer keyboards under subheading 9802.00.50, HTSUS, according to the analysis contained in proposed Headquarters Ruling Letter (“HQ”) H268757, 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: March 16, 2016

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

Attachments

## [ATTACHMENT A]

May 9, 2005

CLA-2-84:RR:NC:N1:120 L83879

CATEGORY: Classification

TARIFF NO.: 8471.60.2000, 9802.00.50

MR. BRIAN JOHNSON  
KEYTRONIC CORPORATION  
4424 N. SULLIVAN ROAD  
SPOKANE, WA 99216

RE: Whether computer keyboards and printed circuit board assemblies upon return to the US from Mexico qualify for partial duty exemption under 9802.00.50, HTSUS

DEAR MR. JOHNSON:

In your letter dated April 4, 2005 you requested a tariff classification ruling under 9802.00.5060, HTSUS, concerning computer keyboards and printed circuit board assemblies for printers imported to the US, exported to Mexico and returned to the US. The computer keyboards were imported into the US under subheading 8471.60.2000 and the printed circuit board assemblies (PCB) were imported under subheading 8473.30.1080.

Computer keyboards imported to the US are exported to Mexico to be relabeled with new part numbers, UPC labels, repacked and reimported to the US for delivery. Occasionally the PCAs are imported to the US damaged, thus they may be exported to Mexico for cleaning/sorting/testing and repackaging before being reimported to the US for delivery.

Articles exported from and returned to the U.S., after having been advanced in value or improved in condition by repairs or alterations in Mexico, may qualify for duty exemption under the Harmonized Tariff Schedule of the United States (HTSUS) subheading 9802.00.50 provided the foreign operation does not destroy the identity of the exported articles or create new or commercially different articles through a process of manufacture. The Customs regulations which implement the North American Free Trade Agreement (NAFTA) are contained in title 19 C.F.R. Part 181. Section 181.64(a) defines "repairs or alterations" for purposes of NAFTA as follows: "repairs or alterations" means restoration, addition, renovation, redyeing, cleaning, resterilizing, or other treatment which does not destroy the essential characteristics of, or create a new or commercially different good from, the good exported from the United States.

HRL 555806 dated January 14, 1991 held that foreign repacking of merchandise for retail sale would not, in and of itself, preclude tariff treatment under subheading 9802.00.50, HTSUS. Headquarters Ruling Letter (HRL) 555180 dated December 26, 1989. However, to qualify for a partial duty exemption under that subheading, the article itself must be advanced in value or improved in condition. In that regard, Customs has held that the mere repacking of an article does not advance its value or improve its condition.

In the manner described in Section 181.64(a), cleaning constitutes an alteration, thereby entitling the returned printed circuit board assemblies for printers to the partial duty exemption under subheading 9802.00.50, HTSUS. Based on the provided information regarding computer keyboards, the re-labeling and repackaging performed in Mexico does not advance the

value or improve in condition by repairs or alterations, thereby the computer keyboards do not qualify for 9802.00.5060.

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 Denise M. Faingar at (646) 733-3010.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director,*

*National Commodity Specialist Division*

## [ATTACHMENT B]

HQ H268757  
OT:RR:CTF:VS H268757 AJR  
CATEGORY: CLASSIFICATION

MR. BRIAN JOHNSON  
KEYTRONIC CORPORATION  
4424 N. SULLIVAN ROAD  
SPOKANE, WA 99216

RE: Modification of NY L83879; Subheading 9802.00.50, HTSUS; Relabeled computer keyboards

DEAR MR. JOHNSON:

This is in reference to New York Ruling Letter (“NY”) L83879, dated May 9, 2005, issued to you on behalf of KeyTronic Corporation of Spokane, Washington. At issue was the applicability of subheading 9802.00.50, Harmonized Tariff Schedule of the United States (“HTSUS”), to computer keyboards and printed circuit board assemblies upon return to the United States from Mexico. In NY L83879, U.S. Customs and Border Protection (“CBP”) determined, in relevant part, that relabeling keyboards with new part numbers and UPC labels was not a repair or alteration eligible for duty free treatment under subheading 9802.00.50, HTSUS. It is now our position that such relabeling of keyboards was a repair or alteration eligible for duty free treatment under subheading 9802.00.50, HTSUS. For the reasons described in this ruling, we hereby modify NY L83879.

The applicability of subheading 9802.00.50, HTSUS, to the printed circuit board assemblies upon return to the United States from Mexico is unaffected.

**FACTS:**

NY L83879 stated, in relevant part, that computer keyboards were imported into the United States under subheading 8471.60.20, HTSUS, and then exported to Mexico to be relabeled with new part numbers, UPC labels, repacked and reimported to the U.S. for delivery. CBP found that relabeling keyboards with new part numbers and UPC labels was not a repair or alteration eligible for duty free treatment under subheading 9802.00.50, HTSUS, because relabeling did not advance the value or improve the condition of the keyboards.

**ISSUE:**

Whether computer keyboards relabeled in Mexico may be entered under subheading 9802.00.50, HTSUS?

**LAW AND ANALYSIS:**

Subheading 9802.00.50, HTSUS, provides a full or partial duty exemption for articles returned to the United States after having been exported to be advanced in value or improved in condition by means of repairs or alterations. Articles returned to the United States after having been repaired or altered in Mexico, whether or not pursuant to warranty, may be eligible for duty free treatment, provided the documentary requirements of section 181.64, CBP Regulations, (19 C.F.R. § 181.64), are satisfied. Section 181.64(a) states, in pertinent part:

‘Repairs or alterations’ means restoration, addition, renovation, redyeing, cleaning, reesterilizing, or other treatment which does not destroy the essential character of, or create a new and commercially different good from, the good exported from the United States.

Classification under subheading 9802.00.50, HTSUS, is precluded where: (1) the exported articles are not complete for their intended use and the foreign processing operation is a necessary step in the preparation or manufacture of finished articles; or (2) the operations performed abroad destroy the identity of the exported articles or create new or commercially different articles through a process of manufacture. See *Guardian Indus. Corp. v. United States*, 3 Ct. Int’l Trade 9 (1982), and *Dolliff & Co., Inc., v. United States*, 81 Cust. Ct. 1, C.D. 4755, 455 F. Supp. 618 (1978), *aff’d*, 66 C.C.P.A. 77, C.A.D. 1225, 599 F.2d 1015 (1979).

CBP has previously held that marking or affixing a label to a product constitutes an acceptable alteration for purposes of subheading 9802.00.50, HTSUS. See Headquarters Ruling Letter (“HQ”) W563554, dated November 13, 2006 (t-shirts exported to Mexico for relabeling were entitled to tariff treatment under subheading 9802.00.50, HTSUS); HQ 562952, dated March 29, 2004 (belted jeans and pants exported to Mexico for inspection and tagging were entitled to duty free treatment under subheading 9802.00.50, HTSUS); HQ 559639, dated June 25, 1996 (flashlights exported to Mexico, where a product nameplate or label was affixed and the company’s logo and product name were pad-printed onto the flashlight, were entitled to duty free treatment under subheading 9802.00.50, HTSUS); HQ 557327, dated July 26, 1993 (vendor marking labels, flasher tags, hang tags, size tickets were operations that constituted an acceptable alteration under subheading 9802.00.50, HTSUS); HQ 555724, dated December 17, 1990 (air bag sensors exported to Mexico for relabeling and testing operations were eligible for treatment under subheading 9802.00.50, HTSUS); HQ 554996, dated June 30, 1988 (sunglasses exported for inspection, temple adjustment, and retagging were entitled to partial duty exemption under item 806.20, TSUS, the precursor to subheading 9802.00.50, HTSUS); and HQ 071159, dated March 2, 1983 (diodes exported to Mexico for marking and packaging operations were entitled to treatment under item 806.20, TSUS, as the printing operation had no more significance than a label for identification purposes).

After reviewing the above-referenced cases, we find that where labeling was found to be an acceptable alteration for purposes of subheading 9802.00.50, HTSUS, the labeling served an “identification purpose.” Namely, the identification informed anyone using the good that the good conformed to certain specifications. For instance, in HQ 071159 and HQ 559639, the labeling informed that the good conformed to the expectations of the brand identified; in HQ 557327, the labeling informed that the good conformed to the size identified by the label; and, in HQ 555724, the labeling informed that the good conformed to airbag requirements identified by the label. Similarly, the relabeling described in NY L83879 serves an identification purpose, informing that the keyboard conforms to the part and product code identified on the label.

Given the foregoing, relabeling the keyboards with new part numbers and UPC labels was a repair or alteration eligible for duty free treatment under

subheading 9802.00.50, HTSUS, as the identification purpose of the label advances the value or improves the condition of the keyboards.

**HOLDING:**

NY L83879 is modified to reflect that the relabeling of the keyboards with new part numbers and UPC labels was a repair or alteration eligible for duty free treatment under subheading 9802.00.50, HTSUS. The applicability of subheading 9802.00.50, HTSUS, to the printed circuit board assemblies upon return to the United States from Mexico is unaffected.

**EFFECT ON OTHER RULINGS:**

NY L83879, dated May 9, 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*



**APPROVAL OF AMSPEC SERVICES, LLC, AS A  
COMMERCIAL GAUGER**

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

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

**SUMMARY:** Notice is hereby given, pursuant to CBP regulations, that AmSpec Services, LLC, has been approved to gauge petroleum and certain petroleum products for customs purposes for the next three years as of August 13, 2015.

**EFFECTIVE DATE:** The approval of AmSpec Services, LLC, as commercial gauger became effective on August 13, 2015. The next triennial inspection date will be scheduled for August 2018.

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

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to 19 CFR 151.13, that AmSpec Services, LLC, 2308 East Burton St., Sulphur, LA 70663, has been approved to gauge petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.13. AmSpec Services,

LLC is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

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

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

*<http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories>*

Dated: April 11, 2016.

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

[Published in the Federal Register, April 19, 2016 (81 FR 23003)]

**ACCREDITATION OF DIXIE SERVICES INC., AS A  
COMMERCIAL LABORATORY**

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

**ACTION:** Notice of accreditation of Dixie Services, Inc., as a commercial laboratory.

**SUMMARY:** Notice is hereby given, pursuant to CBP regulations, that Dixie Services, Inc., has been accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of September 9, 2015.

**DATES:** The accreditation of Dixie Services, Inc., as commercial laboratory became effective on September 9, 2015. The next triennial inspection date will be scheduled for September 2018.

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

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to 19 CFR 151.12 that Dixie Services, Inc., 1706 First St., Galena Park, TX 77547, has been accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12.

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

CBPL No.	ASTM	Title
27-04 .....	D95	Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation.
27-05 .....	D4928	Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration.
27-06 .....	D473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27-07 .....	D4807	Standard Test Method for Sediment in Crude Oil by Membrane Filtration.
27-08 .....	D86	Standard Test Method for Distillation of Petroleum Products.
27-11 .....	D445	Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids.
27-13 .....	D4294	Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry.
27-14 .....	D2622	Standard Test Method for Sulfur in Petroleum Products.
27-39 .....	D721	Standard Test Method for Oil Content of Petroleum Waxes.

CBPL No.	ASTM	Title
27-48 .....	D4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.
27-50 .....	D93	Standard Test Methods for Flash-Point by Pensky-Martens Closed Cup Tester.
27-53 .....	D2709	Standard Test Method for Water and Sediment in Middle Distillate Fuels by Centrifuge.
27-58 .....	D5191	Standard Test Method For Vapor Pressure of Petroleum Products.

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

*<http://www.cbp.gov/about/labsscintific/commercial-gaugers-and-laboratories>*

Dated: April 11, 2016.

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

[Published in the Federal Register, April 18, 2016 (81 FR 22623)]

## ACCREDITATION AND APPROVAL OF OILTEST, 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 Oiltest, Inc., as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given, pursuant to CBP regulations, that Oiltest, Inc., has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of December 11, 2014.

**EFFECTIVE DATE:** The accreditation and approval of Oiltest, Inc., as a commercial gauger and laboratory became effective on December 11, 2014. The next triennial inspection date will be scheduled for December 2017.

**FOR FURTHER INFORMATION CONTACT:** Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1331 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202-344-1060.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Oiltest, Inc., 109 Aldene Rd., Building #4, Roselle, NJ 07203, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Oiltest, Inc. is approved for the following gauging procedures for petroleum and certain petroleum products per the American Petroleum Institute (API) Measurement Standards:

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

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

CBPL No.	ASTM	Title
27-03 .....	ASTM D 4006	Standard test method for water in crude oil by distillation.
27-04 .....	ASTM D 95	Standard test method for water in petroleum products and bituminous materials by distillation.
27-06	ASTM D 473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27-08 .....	ASTM D 86	Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure.

CBPL No.	ASTM	Title
27-11 .....	ASTM D 445	Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (the Calculation of Dynamic Velocity).
27-13 .....	ASTM D 4294	Standard test method for sulfur in petroleum and petroleum products by energy-dispersive x-ray fluorescence spectrometry.
27-46 .....	ASTM D 5002	Standard test method for density and relative density of crude oils by digital density analyzer.
27-48 .....	ASTM D 4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.
27-50 .....	ASTM D 93	Standard test methods for flash point by Pensky-Martens Closed Cup Tester.

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

*<http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories>*

Dated: April 12, 2016.

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

[Published in the Federal Register, April 18, 2016 (81 FR 22624)]

## AGENCY INFORMATION COLLECTION ACTIVITIES:

### Prior Disclosure

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

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

**SUMMARY:** U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following

information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Prior Disclosure. This is a proposed extension of information collection requirements that were previously approved. CBP is proposing these requirements be extended with no change to the burden hours or to the information collected. This document is published to obtain comments from the public and affected agencies.

**DATES:** Written comments should be received on or before May 18, 2016 to be assured of consideration.

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

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

**SUPPLEMENTARY INFORMATION:** This proposed information collection was previously published in the **Federal Register** (81 FR 4326) on January 26, 2016, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10. CBP invites the general public and other Federal agencies to comment on proposed and/ or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13; 44 U.S.C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden, including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a

matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

**Abstract:** The Prior Disclosure program establishes a method for a potential violator to disclose to CBP that they have committed an error or a violation with respect to the legal requirements of entering merchandise into the United States, such as underpaid tariffs or duties, or misclassified merchandise. The procedure for making a prior disclosure is set forth in 19 CFR 162.74 which requires that respondents submit information about the merchandise involved, a specification of the false statements or omissions, and what the true and accurate information should be. A valid prior disclosure will entitle the disclosing party to the reduced penalties pursuant to 19 U.S.C. 1592(c)(4).

**Current Actions:** CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information collected.

**Type of Review:** Extension (without change).

**Affected Public:** Businesses.

**Estimated Number of Respondents:** 3,500.

**Estimated Number of Annual Responses:** 3,500.

**Estimated Time per Response:** 1 hour.

**Estimated Total Annual Burden Hours:** 3,500.

Dated: April 13, 2016.

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

[Published in the Federal Register, April 18, 2016 (81 FR 22625)]

