

U.S. Customs and Border Protection



DEPARTMENT OF THE TREASURY

19 CFR PART 12

CBP DEC. 17-07

RIN 1515-AE31

EXTENSION OF IMPORT RESTRICTIONS IMPOSED ON ARCHAEOLOGICAL OBJECTS AND ECCLESIASTICAL AND RITUAL ETHNOLOGICAL MATERIALS FROM CYPRUS

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

ACTION: Final rule.

SUMMARY: This document amends the U.S. Customs and Border Protection (CBP) regulations to reflect an extension of import restrictions on Pre-Classical and Classical archaeological objects, and Byzantine and post-Byzantine ecclesiastical and ritual ethnological materials from Cyprus. The restrictions, which were originally imposed by Treasury Decision 02-37, and last extended by CBP Dec. 12-13, are due to expire on July 16, 2017. The Assistant Secretary for Educational and Cultural Affairs, United States Department of State, has determined that conditions continue to warrant the imposition of import restrictions. Accordingly, these import restrictions will remain in effect for an additional five years, and the CBP regulations are being amended to reflect this extension through July 16, 2022. These restrictions are being extended pursuant to determinations of the United States Department of State made under the terms of the Convention on Cultural Property Implementation Act in accordance with the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. CBP Dec. 12-13 contains the Amended Designated List of all archaeological objects and Byzantine and Post-Byzantine ecclesiastical and ritual ethnological materials from Cyprus, to which the restrictions apply.

DATES: Effective July 16, 2017.

FOR FURTHER INFORMATION CONTACT: For regulatory aspects, Lisa L. Burley, Chief, Cargo Security, Carriers and Restricted Merchandise Branch, Regulations and Rulings, Office of Trade, (202) 325-0215. For operational aspects, William R. Scopa, Branch Chief, Partner Government Agency Branch, Trade Policy and Programs, Office of Trade, (202) 863-6554, *William.R.Scopa@cbp.dhs.gov*.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to the provisions of the 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention, codified into U.S. law as the Convention on Cultural Property Implementation Act (hereinafter, “the Cultural Property Implementation Act” or “the Act”) (Pub. L. 97-446, 19 U.S.C. 2601 *et seq.*), the United States entered into a bilateral agreement with the Republic of Cyprus on July 16, 2002, to impose import restrictions on certain archaeological materials representing the Pre-Classical and Classical periods ranging in date from approximately the 8th Millennium B.C. to approximately 330 A.D. of Cyprus (“the 2002 Agreement”). On July 19, 2002, the former United States Customs Service (U.S. Customs and Border Protection’s predecessor agency) published Treasury Decision (T.D.) 02-37 in the **Federal Register** (67 FR 47447), which amended 19 CFR 12.104g(a) to reflect the imposition of these restrictions and included a list designating the types of articles covered by the restrictions. These restrictions were to be effective through July 16, 2007.

On August 17, 2006, the Republic of Cyprus and the United States amended the 2002 Agreement (covering Pre-Classical and Classical archeological materials) to include a list of Byzantine ecclesiastical and ritual ethnological materials dating from approximately the 4th century A.D. through approximately the 15th century A.D. that had been (and, at that time, were still) protected pursuant to an emergency action which was published in the **Federal Register** (64 FR 17529) on April 12, 1999. The amendment of the 2002 Agreement to cover both the archaeological materials and the ethnological materials was reflected in CBP Dec. 06-22, which was published in the **Federal Register** (71 FR 51724) on August 31, 2006. CBP Dec. 06-22 contains the list of Byzantine ecclesiastical and ritual ethnological materials from Cyprus previously protected pursuant to the emergency action and announced that import restrictions, as of August 31, 2006, were imposed on this cultural property pursuant to the amended Agreement (19 U.S.C. 2603(c)(4)). Thus, as of that date, the import restrictions covering materials described in CBP Dec. 06-22 were set to be effective through July 16, 2007.

On July 13, 2007, CBP published CBP Dec. 07–52 in the **Federal Register** (72 FR 38470) which further extended the import restrictions to July 16, 2012. The Designated List was published with this decision.

On July 13, 2012, CBP published CBP Dec. 12–13 in the **Federal Register** (77 FR 41266), effective on July 16, 2012, amending CBP regulations to reflect the extension of import restrictions and also to cover Post-Byzantine ecclesiastical and ritual ethnological materials ranging from approximately 1500 A.D. to approximately 1850 A.D. of Cyprus. The amended Designated List was published with the decision in CBP Dec. 12–13, which includes the unrevised list of covered archaeological objects, as well as Byzantine and post-Byzantine ecclesiastical and ritual ethnological materials. The import restrictions are due to expire on July 16, 2017.

On August 1, 2012, CBP published a correcting amendment to CBP Dec. 12–13 in the **Federal Register** (77 FR 45479) as the amended Designated List and the regulatory text in that document contained language which was inadvertently not consistent with the rest of the document as to the historical period that the import restrictions cover for ecclesiastical and ritual ethnological materials from Cyprus.

Import restrictions listed in the Code of Federal Regulations (CFR) at 19 CFR 12.104g(a) are effective for no more than five years beginning on the date on which the agreement enters into force with respect to the United States. This period may be extended for additional periods of not more than five years if it is determined that the factors which justified the initial agreement still pertain and no cause for suspension of the agreement exists. (19 CFR 12.104g(a)).

On July 12, 2016, the Department of State received a request by the Republic of Cyprus to extend the Agreement. The Department of State proposed to extend the import restrictions for an additional five years in a notice published in the **Federal Register** (81 FR 52946) on August 10, 2016. On March 22, 2017, the Assistant Secretary for Educational and Cultural Affairs, State Department, after consultation with and recommendations by the Cultural Property Advisory Committee, determined that the cultural heritage of Cyprus continues to be in jeopardy from pillage of certain archaeological objects and certain ethnological materials and that the import restrictions should be extended for an additional five-year period to July 16, 2022. Diplomatic notes have been exchanged reflecting the extension of those restrictions for an additional five-year period. Accordingly, CBP is amending 19 CFR 12.104g(a) to reflect the extension of the import restrictions.

The Amended Designated List of archaeological objects and Byzantine and post-Byzantine ecclesiastical and ritual ethnological materials is set forth in CBP Dec. 12–13. The herein mentioned Agreements and the Designated List and amended Designated Lists may

be found at the following Web site address: <https://eca.state.gov/cultural-heritage-center/cultural-property-protection/bilateral-agreements> by clicking on “Cyprus.”

The restrictions on the importation of these archaeological, and ecclesiastical and ritual ethnological materials from Cyprus are to continue in effect through July 16, 2022. Importation of such materials from Cyprus continues to be restricted through that date unless the conditions set forth in 19 U.S.C. 2606 and 19 CFR 12.104c are met.

Inapplicability of Notice and Delayed Effective Date

This amendment involves a foreign affairs function of the United States and is, therefore, being made without notice or public procedure under 5 U.S.C. 553(a)(1). In addition, CBP has determined that such notice or public procedure would be impracticable and contrary to the public interest because the action being taken is essential to avoid interruption of the application of the existing import restrictions (5 U.S.C. 553(b)(B)). For the same reason, a delayed effective date is not required under 5 U.S.C. 553(d)(3).

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Executive Orders 12866 and 13771

Because this rule involves a foreign affairs function of the United States, it is not subject to either Executive Order 12866 or Executive Order 13771.

Signing Authority

This regulation is being issued in accordance with 19 CFR 0.1(a)(1).

List of Subjects in 19 CFR Part 12

Cultural property, Customs duties and inspection, Imports, Prohibited merchandise.

Amendment to CBP Regulations

For the reasons set forth above, part 12 of title 19 of the Code of Federal Regulations (19 CFR part 12), is amended as set forth below:

PART 12—SPECIAL CLASSES OF MERCHANDISE

■ 1. The general authority citation for part 12 and the specific authority citation for § 12.104g continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

Sections 12.104 through 12.104i also issued under 19 U.S.C. 2612;

* * * * *

§ 12.104g [Amended]

■ 2. In § 12.104g, paragraph (a), the table is amended in the entry for “Cyprus” by adding the words “extended by CBP Dec. 17–07” after the words “CBP Dec. 12–13” in the column headed “Decision No.”.

Dated: July 11, 2017.

KEVIN K. McALEENAN,
Acting Commissioner,
U.S. Customs and Border Protection.

TIMOTHY E. SKUD,
Deputy Assistant
Secretary of the Treasury.

[Published in the Federal Register, July 14, 2017 (82 FR 32452)]

**PROPOSED REVOCATION OF ONE RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF DOCUMENT HOLDER OR
MULTI-FUNCTION FOLDER WITH A MEMORADUM PAD**

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 a document holder or multi-function folder with a memorandum pad.

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 a document holder or multi-function folder with a memorandum pad under the Harmonized Tariff Schedule of the United States (HTSUS). Simi-

larly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments on the correctness of the proposed actions are invited.

DATE: Comments must be received on or before September 1, 2017.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of 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: Michele Boyd, Chemicals, Petroleum and Miscellaneous Branch, Regulations and Rulings, Office of Trade, at (202) 325–0136.

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 a document holder or multi-

function folder with a memorandum pad. Although in this notice, CBP is specifically referring to New York Ruling Letter (“NY”) N106619, dated June 15, 2010 (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 N106619, CBP classified a document holder or multi-function folder with a memorandum pad in heading 4820, HTSUS, specifically in subheading 4820.10.2040, HTSUS, which provides for “Other note books with dimensions of 152.4–381 mm (6”-15”) inclusive (small side) X222.5–381 mm (8.75”-15”), inclusive (large side).” CBP has reviewed NY N106619 and has determined the ruling letter to be in error. It is now CBP’s position that a document holder or multi-function folder with a memorandum pad is properly classified, by operation of GRIs 1 and 6, in heading 4820, HTSUS, specifically in subheading 4820.10.2020, HTSUS, which provides for “Memorandum pads, letter pads and similar articles.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke NY N106619 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H252610, set forth as Attachment “B” to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: July 6, 2017

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

Attachments

[ATTACHMENT A]

N106619

June 15, 2010

CLA-2-48:OT:RR:NC:N2:234

CATEGORY: Classification

TARIFF NO.: 4820.10.2040

MS. SARAH ALBERTINI-BOND
DOLLAR TREE STORES, INC.
500 VOLVO PARKWAY
CHESAPEAKE, VA 23462

RE: The tariff classification of a document holder with a notepad from China

DEAR MS. ALBERTINI-BOND:

In your letter dated May 12, 2010 you requested a tariff classification ruling. The sample is being returned as requested.

The submitted sample is product SKU number 26596, described as a plastic document case containing a pad of 30 sheets of lined paper. The case itself has a plastic accordion file with tabs, a mesh pocket with a zipper closure, three pockets that can hold cards measuring up to 4 ¼ inches in width and pockets to hold pencils/pens on the inside left of the case and the pad is on the inside right when the case is opened. The case measures approximately 13 ½ inches by 11 ½ inches it is closed. It is approximately 1 ½ inches deep.

The applicable subheading for the plastic document case with notepad will be 4820.10.2040, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Register account books, notebooks . . . and book covers (including cover boards and book jackets) of paper or paperboard: Registers, account books, notebooks, order books, receipt books letter pads, memorandum pads diaries and similar articles: Diaries, notebooks and address books, receipt books, letter pads, memorandum pads, diaries and similar articles: Other note books with dimensions of 152.4–381 mm (6"-15") inclusive (small side) X 222.5–381 mm (8.75"-15"), inclusive (large side). The rate of duty will be Free.

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

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

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

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

[ATTACHMENT B]

HQ H252610
CLA-2 OT:RR:CTF:CPM: HQ H252610 MAB
CATEGORY: Classification
TARIFF NO.: 4820.10.2020

Ms. ERIN CARRICO
CUSTOMS COMPLIANCE ANALYST
DOLLAR TREE STORES, INC.
500 VOLVO PARKWAY
CHESAPEAKE, VA 23320

RE: Revocation of NY N106619; tariff classification of document holder with a memorandum pad from China

DEAR Ms. CARRICO:

On June 15, 2010, U.S. Customs and Border Protection (CBP) issued Dollar Tree, Stores, Inc., New York Ruling Letter (NY) N106619. The ruling pertains to the tariff classification under the Harmonized Tariff Schedule of the United States (HTSUS) of a document holder with a memorandum pad imported from China, also referred to as a multi-function folder (SKU 26596). We have reviewed your request for reconsideration dated January 15, 2014, in regard to the instant merchandise at issue. We have also examined the sample you provided. We find NY N106619 to be in error with respect to the tariff classification. We regret the delay, however, for the reasons set forth below, we are revoking NY N106619.

FACTS:

In NY N106619 CBP found the following:

The submitted sample is product SKU number 26596, described as a plastic document case containing a pad of 30 sheets of lined paper. The case itself has a plastic accordion file with tabs, a mesh pocket with a zipper closure, three pockets that can hold cards measuring up to 4 ¼ inches in width and pockets to fold pencils/pens on the inside left of the case and the pad is on the inside right when the case is opened. The case measures approximately 13 ½ inches by 11 ½ inches it is closed. It is approximately 1 ½ inches deep.

The applicable subheading for the plastic document case with notepad will be 4820.10.2040, Harmonized Tariff Schedule of the United States (HTSUS)...the rate of duty will be Free.

Additional information provided with this submission asserts that subsequent to NY N106619, NY rulings N179575 (dated September 9, 2011) and N245528 (dated August 20, 2013) addressed similar items. Both rulings found the essential character of this type of merchandise to be the note pad, therefore classifying them in 4820.10.2020, HTSUSA (Annotated), as a note pad and not a note book.

ISSUE:

Whether the subject document holder with a memorandum pad is considered “Memorandum pads, letter pads and similar articles” of subheading 4820.10.2020, HTSUS, or “Other note books with dimensions of 5–381 mm

(6" – 15"), inclusive (small side) X 222.5–381 mm (8.75" – 15"), inclusive (large side)" of subheading 4820.10.2040, HTSUS.

LAW AND ANALYSIS:

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

4820	Registers, account books, notebooks, order books, receipt books, letter pads, memorandum pads, diaries and similar articles, exercise books, blotting pads, binders (looseleaf or other), folders, file covers, manifold business forms, interleaved carbon sets and other articles of stationery, of paper or paperboard; albums for samples or for collections and book covers (including cover boards and book jackets) of paper or paperboard:
4820.10	Registers, account books, notebooks, order books, receipt books, letter pads, memorandum pads, diaries and similar articles:
4820.10.20	Diaries, notebooks and address books, bound; memorandum pads, letter pads and similar articles
4820.10.2020	Memorandum pads, letter pads and similar articles
4820.10.2040	Other note books with dimensions of 152.4–381 mm (6" -15"), inclusive (small side) X 222.5–381 mm (8.74" – 15"), inclusive (large side)

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

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

There is no dispute that the goods at issue are document holders and are properly classified in heading 4820, HTSUS. Further, there is no dispute they are classified in subheading 4820.10.20 as "Diaries, notebooks and address books, bound; memorandum pads, letter pads and similar articles." Therefore, CBP's analysis turns to whether the subject document holders or multi-function folders are classified at the 10-digit level under subheading 4820.10.2020, HTSUSA, which provides for "Memorandum pads, letter pads and similar articles" or under subheading 4820.10.2040, HTSUSA, which provides for "Other note books with dimensions of 152.4–381 mm (6" – 15"), inclusive (small side) X 222.5–381 mm (8.75" – 15"), inclusive (large side)."

The HTSUS does not define the term "memorandum pads" but the terms of the HTSUS are construed according to their common commercial meaning.

See Millennium Lumber Distrib. Ltd. v. United States, 558 F.3d 1326, 1329 (Fed. Cir. 2009). To ascertain the common commercial meaning of a tariff term, CBP, “may rely on its own understanding of the term as well as lexicographic and scientific authorities.” *See Len-Ron Mfg. Co. v. United States*, 334 F.3d 1304, 1309 (Fed. Cir. 2003). A memorandum pad is defined as a “pad of paper intended for writing memos”¹ or it can be “a block with tear-off pages for writing notes on.”²

CBP has had occasion to distinguish between similar products and has been consistent with its classification of document holders or portfolios. *See* NY N245528, dated August 30, 2013, which classified two (2) black zippered portfolios, each with a removable writing pad that measured 8 ½' x 11 ¾", under subheading 4820.10.2020, HTSUSA, which provides for “Memorandum pads, letter pads and similar articles.” *See also* NY N179575, dated September 9, 2011, where CBP classified a portfolio with a notepad measuring 7" x 9" and removable tablet holder measuring 7 ½" x 9 ¾" under subheading 4820.10.2020, HTSUSA, as “Memorandum pads, letter pads and similar articles.” In both NY N245528 and NY N179575, CBP applied the GRI 3(b) analysis, finding that although the portfolios were multi-functional, their essential character was imparted by the writing pad.

We find the importer’s description of the article to be accurate as compared to the sample provided. The document holder or multi-function folder’s specific use is the facilitation of taking and organizing notes. The article’s use is centered on the memorandum pad, a named exemplar under heading 4820. The article’s other parts, its sheeting, pouches and folder, merely serve to enhance the article’s primary use, which is to provide a convenient and organized method by which to take notes in various locations in a variety of circumstances. The article has three small punches and a hold for a pen and pencil or other small supplies. Its tabbed folders restrict use of the multi-function folder to holding or organizing papers, such as notes from the memorandum pad, and its sheeting protects the memorandum pad folders. For these reasons, we find that the imported article, as a whole, exhibits characteristics of an article of stationery, of paper or paperboard, and shares the common characteristics of a memorandum pad. Thus, instant merchandise is properly classified under subheading 4820.10.2020, HTSUSA, which provides for, “Memorandum pads, letter pads and similar articles.”

Additionally, please note that the subject document holder with a memorandum pad from China may fall within the scope of antidumping order, published A-570–901, on October 31, 2013, from China. *See* 78 FR 65274. We highly recommend that you obtain a scope ruling from the U.S. Department of Commerce, International Trade Administration (ITA), which issues written decisions regarding the scope of antidumping and countervailing (AD/CVD) orders. Scope rulings issued by the ITA are separate from tariff classification rulings issued by CBP. You may contact the ITA at <http://www.trade.gov/ia/> (click on “Contact Us”). For further information, you may view a list of current AD/CVD cases at the United States International Trade Commission website at <http://www.usitc.gov> (click on “Antidumping and countervailing duty investigations”), and you can search AD/CVD deposit and liquidation messages using the AD/CVD Search tool at <http://addcvd.cbp.gov/>.

¹ *See* https://en.oxforddictionaries.com/definition/us/memo_pad

² *See also*, <https://www.collinsdictionary.com/us/dictionary/english/memo-pad>

HOLDING:

Under the authority of GRIs 1 and 6, the subject document holder is properly classifiable under subheading 4820.10.2020, HTSUSA, which provides for “Memorandum pads, letter pads and similar articles.” The 2017 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 internet at www.usitc.gov/tata/hts/.

EFFECT ON OTHER RULINGS:

NY N106619, dated June 15, 2010 is hereby REVOKED in accordance with the above analysis.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

19 CFR PART 177**REVOCAION OF NINE RULING LETTERS AND
REVOCAION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF SLEEP SACKS**

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

ACTION: Notice of revocation of nine ruling letters, and of revocation of treatment relating to the tariff classification of sleep sacks.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking nine ruling letters concerning tariff classification of sleep sacks 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. 51, No. 15, on April 12, 2017. No comments were received in response to this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after October 2, 2017.

FOR FURTHER INFORMATION CONTACT: Parisa J. Ghazi, Food, Textiles, and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325–0272.

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 commu-

nity'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. 51, No. 15, on April 12, 2017, proposing to revoke nine ruling letters pertaining to the tariff classification of sleep sacks. As stated in the proposed notice, this action will cover New York Ruling Letter ("NY") N012720, dated June 22, 2007, NY H81550, dated June 26, 2001, NY F84497, dated March 31, 2000, NY C89291, dated July 16, 1998, NY 817811, dated January 25, 1996, Headquarters Ruling Letter ("HQ") 950620, dated February 20, 1992, HQ 089134, dated August 8, 1991, HQ 089137, dated August 6, 1991, and HQ 088149, dated December 27, 1990, 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 nine 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 N012720, NY H81550, NY F84497, NY C89291, NY 817811, HQ 950620, HQ 089134, HQ 089137, and HQ 088149, CBP classified sleep sacks in heading 6302, HTSUS, which provides for "Bed linen, table linen, toilet linen and kitchen linen." CBP has reviewed NY N012720, NY H81550, NY F84497, NY C89291, NY 817811, HQ 950620, HQ 089134, HQ 089137, and HQ 088149, and has deter-

mined the ruling letters to be in error. It is now CBP's position that sleep sacks are properly classified, by operation of GRIs 1 and 6, in heading 6307, HTSUS, specifically in subheading 6307.90.98, HTSUS, which provides for "Other made up articles, including dress patterns: Other: Other: Other."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY N012720, NY H81550, NY F84497, NY C89291, NY 817811, HQ 950620, HQ 089134, HQ 089137, and HQ 088149 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in HQ H243928, 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: June 22, 2017

IEVA K. O'ROURKE
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachment

HQ H243928

June 22, 2017

CLA-2 OT:RR:CTF:TCM H243928 PJG

CATEGORY: Classification

TARIFF NO.: 6307.90.98

MR. HANS WURIAN
DESIGN SALT
P.O. BOX 751
REDWAY, CALIFORNIA 95560

RE: Revocation of NY N012720, NY H81550, NY F84497, NY C89291,
NY 817811, HQ 950620, HQ 089134, HQ 089137, and HQ 088149;
tariff classification of sleep sacks

DEAR MR. WURIAN:

This letter is to inform you that U.S. Customs and Border Protection (“CBP”) has reconsidered three Headquarters Ruling Letters (“HQ”), specifically, HQ 088149, dated December 27, 1990, HQ 089134, dated August 8, 1991, and HQ 950620, dated February 20, 1992, issued to you on behalf of Design Salt.¹ We have also reconsidered HQ 089137, dated August 6, 1991, issued to Bellsey and Baker. All four rulings pertain to the tariff classification under the Harmonized Tariff Schedule of the United States (“HTSUS”) of the COCOON TravelSheet 100 percent woven cotton sleep sacks. We have since reviewed these rulings and determined them to be in error. Accordingly, HQ 088149, HQ 089137, HQ 089134, and HQ 950620 are revoked.

CBP has also reviewed New York Ruling Letters (“NY”) NY 817811, dated January 25, 1996, NY C89291, dated July 16, 1998, NY F84497, dated March 31, 2000, NY H81550, dated June 26, 2001, and N012720, dated June 22, 2007, which concern the tariff classification of substantially similar sleep sacks, and has determined them to be in error as well. Accordingly, NY 817811, NY C89291, NY F84497, NY H81550, and N012720 are also revoked.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. No. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed action was published on April 12, 2017, in Volume 51, Number 15, of the *Customs Bulletin*. No comments were received in response to this notice.

FACTS:

In both HQ 088149 and HQ 089137 (which affirmed HQ 088149), the sleep sack was described as follows:

The merchandise at issue is a 100 percent woven cotton sleeping sack, to be imported from China. It measures 33 x 86 inches and is sewn together

¹ In Headquarters Ruling Letter (“HQ”) 957767, dated August 30, 1995, U.S. Customs Service indicated that it had reviewed HQ 088149, dated December 27, 1991, HQ 089137, dated August 6, 1991, and HQ 089134, dated August 8, 1991, and determined them to be erroneous. The U.S. Customs Service indicated that it intended to revoke those rulings. In HQ 957767, CBP withdrew its proposed revocation of District ruling (“DD”) 801305, dated September 6, 1994, and HQ 956038, dated June 22, 1994, and affirmed those two rulings, which classified Double TravelSheet sleeping bag liners under heading 6307, HTSUS. In HQ 957767, CBP stated that the merchandise “opens on one side, has a Velcro closure, and features a pocket for a pillow insert.”

on three sides. One end of the sack has an 11 1/2 inch pocket which is formed by a folded length of material sewn on its sides, which can be used to accommodate the insertion of a pillow. The portion of the top sheet near the pillow insert is not sewn down, forming a flap which allows a person to easily slip into and out of the sleep sack.

The literature accompanying your request states that this item is called a COCOON TRAVELSHEET. It is advertised as a “washable sleeping environment” to be used in hotels, hostels, hammocks, and homes. In your letter you indicate that the sleeping sack is intended to serve as a sleeping bag for travellers in warm countries. “COCOON” is available in three printed fabric styles.

In the Sales Facts sheet that you submitted to us along with a letter dated July 31, 1995, you describe the TravelSheet as a “[s]leeping bag liner” and a “stand alone product in warmer climates.” On your website, you explain that the “TravelSheet is an extremely lightweight and roomy sleep sack or sleeping bag liner for hotels, youth hostels, alpine huts, boats, planes and trains. TravelSheets are also used as warm weather sleeping bags and guest-sheets.”²

In both HQ 088149 and HQ 089137, CBP classified the sleep sack in heading 6302, HTSUS, which provides for “Bed linen, table linen, toilet linen and kitchen linen.”

ISSUE:

Whether the subject sleep sacks are classifiable in heading 6302, as bed linen, or in heading 6307, HTSUS, as other made up articles.

LAW AND ANALYSIS:

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

The 2017 HTSUS provisions under consideration are as follows:

6302 Bed linen, table linen, toilet linen and kitchen linen:

* * *

6307 Other made up articles, including dress patterns:

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).

² http://www.cocoon.at/products/index.php/p/travelsheet_mummyliners_en

The EN to 63.02 states, in pertinent part:

These articles are usually made of cotton or flax, but sometimes also of hemp, ramie or man-made fibres, etc.; they are normally of a kind suitable for laundering. They include:

- (1) **Bed linen**, e.g., sheets, pillowcases, bolster cases, eiderdown cases and mattress covers.

The EN to 63.07 states, in pertinent part:

This heading covers made up articles of any textile material which are **not included** more specifically in other headings of Section XI or elsewhere in the Nomenclature.

As to the issue of whether the subject merchandise is a “bed linen,” we note that neither the relevant legal text of the HTSUS nor EN 63.02 define the term “bed linen,” therefore, we are permitted to consult dictionaries and other reliable sources to determine its common meaning. See *C.J. Tower & Sons of Buffalo, Inc. v. United States*, 673 F.2d 1268, 1271 (C.C.P.A. 1982) (citing *Optical Glass, Inc. v. United States*, 612 F.2d 1283 (C.C.P.A. 1979)). The Oxford English Dictionary defines “bed linen” as “[b]ed-clothes, esp. sheets and pillow-cases, originally of linen.” *Id.* (Oxford University Press 2012) available at www.oed.com. The dictionary defines “bed-clothes” as “[t]he sheets and blankets with which a bed is covered.” *Id.* (Oxford University Press 2016) available at www.oed.com.

The tariff term “bed linens” in heading 6302, HTSUS, includes “specialized items ... which are only found on ‘some’ beds.” See *Medline Indus. v. United States*, 62 F.3d 1407, 1409 (Fed. Cir. 1995) (the court held that drawsheets, which are “used primarily by hospitals and other health care providers to lift, roll, or slide incapacitated patients and to protect undersheets and mattresses from soiling” are classified in heading 6302, HTSUS). The court referred to the definition of “bed linen” in the *Webster’s Third New International Dictionary* 196 (1981), which defined the term as “linen or cotton articles for a bed; *esp.* : sheets and pillow cases” and also referenced the broad language of the Explanatory Notes for heading 6302, HTSUS, which also included bolster cases and mattress covers as examples of bed linen. *Id.* The court concluded that “[n]either the statute nor the sources cited above limit the definition of ‘bed linens’ to only ‘those items found on *all* beds.’ The definition of bed linens includes at least linen, cotton or other fabric articles for a bed.” *Id.*

The term “bed” is defined by the Oxford English Dictionary as “[t]he sleeping-place of a person or animal.” The Oxford English Dictionary further provides that a bed is “[a] permanent structure or arrangement for sleeping on, or for the sake of rest.” *Id.* (Oxford University Press 2016) available at www.oed.com.

Your description of the subject merchandise and your website suggest that it is designed and marketed primarily for use during travel, such as in a hammock, sleeping bag or independently, rather than on a “permanent structure or arrangement” as a bed linen. Therefore, we find that the COCOON TravelSheet described in HQ 088149, HQ 089137, HQ 089134, and HQ 950620 is not classifiable as bed linens in heading 6302, HTSUS.

Similarly, the sleep sacks described in NY N012720, NY H81550, NY F84497, NY C89291, and NY 817811, are not classifiable as bed linens in heading 6302, HTSUS, because they are certainly not “found on *all* beds,” nor can they be described as “specialized items ... which are only found on ‘some’

beds.” See *Medline*, 62 F.3d at 1409. Instead, they are designed to travel with the consumer and be used either on a bed, alone, or as a sleeping bag liner. Indeed, some of the sleep sacks are imported with a carrying pouch for easier travel. Moreover, unlike the drawsheets in *Medline*, the sleep sacks are used to protect the consumer from the undersheets and mattresses, rather than to protect the undersheets and mattresses from the consumer. In other words, they are not “bed-clothes” designed to cover the bed, rather they are designed to protect the consumer. *Id.* (Oxford University Press 2016) available at www.oed.com.

Since the sleep sacks are not classifiable more specifically in any other heading, we find that they are classifiable in heading 6307, HTSUS, as “Other made up articles, including dress patterns” and specifically under subheading 6307.90.98, HTSUS, which provides for “Other made up articles, including dress patterns: Other: Other: Other.”

HOLDING:

Under the authority of GRIs 1 and 6 the sleep sacks are classified in heading 6307, HTSUS, specifically in subheading 6307.90.98, HTSUS, which provides for “Other made up articles, including dress patterns: Other: Other: Other.” The 2017 column one, general rate of duty is 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 the internet at www.usitc.gov/tata/hts/.

EFFECT ON OTHER RULINGS:

NY N012720, dated June 22, 2007, NY H81550, dated June 26, 2001, NY F84497, dated March 31, 2000, NY C89291, dated July 16, 1998, NY 817811, dated January 25, 1996, HQ 950620, dated February 20, 1992, HQ 089134, dated August 8, 1991, HQ 089137, dated August 6, 1991, and HQ 088149, dated December 27, 1990, are hereby revoked.

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

Sincerely,

IEVA K. O’ROURKE

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**REVOCAION OF NY N247006, NY N159136 AND NY
N159575 RULING LETTERS AND REVOCAION OF
TREATMENT RELATING TO THE TARIFF
CLASSIFICATION OF PLASTIC OPTICAL FIBER
PRODUCTS FROM JAPAN**

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

ACTION: Notice of revocation of three ruling letters, and of revocation of treatment relating to the tariff classification of plastic optical fiber products from Japan.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking three ruling letters concerning the tariff classification of plastic optical fiber products from Japan 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. 50, No. 33, on August 17, 2016. One comment supporting the proposed revocation was received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after October 2, 2017.

FOR FURTHER INFORMATION CONTACT: Dwayne Rawlings, Tariff Classification and Marking Branch, Regulations and Rulings, Office of 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, a notice was published in the *Customs Bulletin*, Vol. 50, No. 33, on August 17, 2016, proposing to revoke one ruling letter pertaining to the tariff classification of plastic optical fibers from Japan. As stated in the notice, this action will cover New York Ruling Letter ("NY") N247006, dated January 9, 2014, 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. We have received notice of two additional rulings involving such substantially identical transactions, i.e., NY N159136 and NY N159575, both dated May 4, 2011. Any other 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 N247006, NY N159136 and NY N159575, CBP classified plastic optical fiber products from Japan in heading 9001, HTSUS, specifically in subheading 9001.10.00, HTSUS, which provides for "Optical fibers, optical fiber bundles and cables." CBP has reviewed NY N247006, NY N159136 and NY N159575, and has determined the ruling letters to be in error. It is now CBP's position that the plastic

optical fiber products from Japan are properly classified, by operation of GRI 1, in heading 8544, HTSUS, specifically in subheading 8544.70.00, HTSUS, which provides for “Optical fiber cables.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY N247006, NY N159136 and NY N159575, and revoking or modifying any other ruling not specifically identified, to reflect the analysis contained in Headquarters Ruling Letter (“HQ”) H251018, 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: May 08, 2017

ALLYSON MATTANAH
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachment

HQ H251018

May 08, 2017

CLA-2 OT:RR:CTF:TCM H251018 DSR

CATEGORY: Classification

TARIFF NO.: 8544.70.00

MS. SANDRA LISS FRIEDMAN
BARNES RICHARDSON & COLBURN LLP
475 PARK AVENUE SOUTH
NEW YORK, NY 10016

RE: Revocation of NY N247006, NY N159136 and N159575; tariff classification of plastic fiber optic products from Japan

DEAR MS. FRIEDMAN:

This is in response to your letter, dated January 9, 2014, requesting reconsideration of New York Ruling Letter (NY) N247006, dated October 31, 2013. NY N247006 pertains to the tariff classification under the 2013 Harmonized Tariff Schedule of the United States (HTSUS) of plastic optical fiber products used to transmit light. The ruling classified the products in subheading 9001.10.00, HTSUS, which provides for optical fibers for transmission of voice, data or video communications. The corresponding, column one general rate of duty was 6.7 percent *ad valorem*.

We have reviewed the tariff classification of the merchandise and have determined that the cited ruling is incorrect. Therefore, NY N247006 is revoked for the reasons set forth in this ruling. In addition, we are revoking NY N159136 and N159575, both dated May 4, 2011, for the same reasons.

FACTS:

The five items are designated as SH 6001–2.2, BH 4001, GH 4001–1000-TR, SH 4002 and SH 6002. None of the items contains strength members. Item SH 6001–2.2 is composed of a single 1.5 mm plastic optical fiber core with fluorinated polymer cladding, and covered by a black polyethylene jacket. The overall diameter of the product is 2.2 mm and the jacket has a thickness of 0.35 mm. This product is used mostly in sensor applications. It is also commonly used for “prisoner at home bracelets.”

Item BH 4001 is composed of a single 1 mm plastic optical fiber core with fluorinated polymer cladding, and covered by a black polyethylene jacket. The product has an overall diameter of 2.2 mm and the jacket has a thickness of 0.6 mm. This product has generic applications, but for high temperature situations. The main customer for this product utilizes it as a data media for their operational instruments within a locomotive.

Item GH 4001–1000-TR is identical to BH 4001, other than the fact that it has a clear polyethylene jacket. This product has a specific application and is primarily used by electric utility companies to detect system sparks.

Item SH 4002 is described as a “figure-eight” design composed of two 1 mm plastic optical fibers (each with fluorinated polymer cladding) and covered by a black polyethylene jacket. The individually jacketed fibers are joined together lengthwise. In appearance, this item consists of side-by-side single strands of optical fiber individually covered by a black jacket. The product has an overall diameter of 4.4 mm and each jacketed fiber has an overall diameter of 2.2 mm. The jacket has a thickness of 0.6 mm. This product has

generic applications, however the main customers are in the medical industry. It is used as a media for instrument control.

Item SH 6002 is described as a “figure-eight” design composed of two 1.5 mm plastic optical fibers (each with fluorinated polymer cladding) and covered by a black polyethylene jacket. The individually jacketed fibers are joined together lengthwise. In appearance, this item consists of side-by-side single strands of optical fiber individually covered by a black jacket. The product has an overall diameter of 6 mm and each jacketed fiber has an overall diameter of 3 mm. The jacket has a thickness of 0.75 mm. This product is used primarily as a sensor media and the main customer is a medical instrument producer.

ISSUE:

Whether the subject items are classified under heading 8544, HTSUS, which provides, in pertinent part, for optical fiber cable composed of individually sheathed fibers; or are instead classified under heading 9001, HTSUS, which provides, in pertinent part, for optical fibers, optical fiber bundles, and optical fiber cables other than those of heading 8544.

LAW AND ANALYSIS:

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

- | | |
|-------------------|---|
| 8544 | Insulated (including enameled or anodized) wire, cable (including coaxial cable) and other insulated electric conductors, whether or not fitted with connectors; optical fiber cables, made up of individually sheathed fibers, whether or not assembled with electric conductors or fitted with connectors:
* * * |
| 8544.70.00 | Optical fiber cables:
* * * |
| 9001 | Optical fibers and optical fiber bundles; optical fiber cables other than those of heading 8544; sheets and plates of polarizing material; lenses (including contact lenses), prisms, mirrors and other optical elements, of any material, unmounted, other than such elements of glass not optically worked: |
| 9001.10.00 | Optical fibers, optical fiber bundles and cables:
* * * * |

Heading 9001, HTSUS, provides, in relevant part, for optical fibers, optical fiber bundles and optical fiber cables (other than those of heading 8544, HTSUS). Thus, if the subject items are classifiable at heading 8544, they cannot be classifiable at heading 9001, HTSUS.

EN 85.44 states that optical fiber cables of heading 8544, HTSUS, are made up of individually sheathed fibers, whether or not assembled with electric conductors or fitted with connectors. EN 85.44 does not exclude optical fiber cables containing a single optical fiber strand. EN 90.01(B) states that, optical fibers classifiable under heading 9001, consist of “concentric layers of glass or plastics of different refractive indices. Those drawn from glass have a very thin coating of plastics, invisible to the naked eye, which renders the fibers less prone to fracture. ... They are used to make optical fiber bundles and optical fiber cables.” EN 90.01(C) states that optical fiber bundles “may be rigid, in which case the fibers are agglomerated by a binder along their full length, or they may be flexible, in which case they are bound only at their ends.” EN 90.01 concludes by stating that optical fiber cables of heading 9001, HTSUS, “... consist of a sheath containing one or more optical fiber bundles, the fibers of which are not individually sheathed.”

It is evident that whether optical fibers are individually sheathed is at least one determinative factor regarding the applicability of headings 8544 or 9001, HTSUS. If an individual optical fiber is sheathed, or an item is composed of individually sheathed optical fibers, then that fiber and item cannot be classified in heading 9001, HTSUS.

With regard to the meaning of the term “individually sheathed,” the term must be construed in accordance with its common and commercial meanings because neither the legal notes or heading texts, nor the Harmonized Commodity Description and Coding System Explanatory Notes, provide guidance as to the meaning of the expression. *See Nippon Kogaku (USA), Inc., v. United States*, 69 CCPA 89, 673 F.2d 380 (1982). Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities and other reliable resource materials.

Generally, a typical optical fiber is comprised of three main components — the core, cladding and coating. The cladding surrounds the core and has a lower refractive index that enables it to contain the light. The coating is typically colorless and very thin, and makes the fiber less prone to fracture by absorbing the chocks, nicks, scrapes and moisture that could damage the cladding. *See Andrew Oliviero and Bill Woodward, The Complete Guide to Copper and Fiber-Optic Networking*, Chapters 8 and 21 (Sybex 5th Ed., 2014) (discusses typical composition of a fiber optic strands and cable). In HQ 963016, dated April 3, 2001, we examined the meaning of “individually sheathed” and noted that the mere application of a thin primary inking or coating applied to a fiber optic strand primarily for color-coding would not constitute a “sheath” for purposes of heading 8544, HTSUS. Additionally, we have noted that the noun “sheath” is considered a “close fitting protective covering.” HQ 965593, dated July 16, 2003 (*citing Cambridge International Dictionary of English*, March 1995, and *Webster’s Third New International Dictionary*, 1965). Also, the verb “sheathe,” from which the term “sheathed” derives, means “to cover or encase.” Examples of sheathes include, of course, scabbards for swords, but also close fitting dresses and encapsulating coverings. Thus, the terms “sheath” or “sheathed” connote the active process of covering with something that protects. Moreover, the terms “cover” and “coat”

are acceptable synonyms for the term “sheath.” See Roget’s International Thesaurus, 3d. Ed. (1962). It is therefore evident that an optical fiber is aptly considered to be “individually sheathed” if a protective covering surrounds that individual fiber’s core, cladding and coating.

Our reconsideration of NY N247006 does not end there. With regard to the meaning of the term optical fiber “cable,” NY N247006 noted that CBP had developed a definition that required all such cables to include strength members. For instance, in HQ 964883 (September 14, 2001), CBP addressed the classification of certain jacketed plastic optical fibers with connectors. In determining the common and commercial meaning of the term “cable,” CBP relied on a meaning reflected in David R. Goff, *Fiber Optic Reference Guide* 153 (Kimberly S. Hansen ed., Focal Press 1st ed. 1996) in which the term “cable,” in reference to optical fiber cable, was defined as “[o]ne or more optical fibers enclosed within protective covering(s) and strength members.” The ruling also noted that another optical fiber cable industry glossary defined “cable” as “[a]n assembly of optical fibers and other material providing mechanical and environmental protection and optical insulation of the waveguides.” See Lascomm, Fiber Optic Division, *Fiber Optic Glossary*, www.lascomm.com, 3/28/01.¹ CBP thus concluded that all optical fiber cable must contain strength members. Compare HQ 966619 (October 31, 2003) (individually sheathed glass fiber optical cable assemblies containing strength members classified in heading 8544, HTSUS, and those glass fiber optical assemblies without strength members classified in heading 9001, HTSUS).

Further, in NY N247006, CBP stated the following while determining whether the subject items are optical fiber cables within the meaning of heading 8544, HTSUS. To wit:

First the fibers, which are composed of a core surrounded by a cladding, must be individually sheathed. The sheathing is a protective layer that surrounds EACH fiber. Second, the individually sheath fibers must be assembled into a cable. CBP has determined that a cable would include an outer protective jacket that surrounds all of the sheathed fibers as well as strength members (aramid yarn fiber).

CBP then concluded that the subject items were not “optical fiber cables” of heading 8544, HTSUS, because they lacked outer jackets and strength members.

We have re-examined NY N247006 and are now of the opinion that plastic optical fiber cables, made up of individually sheathed plastic fibers, do not need to employ strength members in order to be classifiable in heading 8544, HTSUS, as such a requirement is not supported by the text of the tariff, nor does it reflect commercial realities associated with plastic optical fiber. At the time HQ 964883 was published, plastic optical fiber was not widely used. Indeed, the chief reference cited in HQ 964883 – *Fiber Optic Reference Guide* (1996) – did not extensively address the composition of plastic optical fiber, and instead focused upon the construction and uses of glass optical fiber. The later edition of that reference also emphasized glass fiber. See David R. Goff, *Fiber Optic Reference Guide* (2d. ed. 1999).² The contemporary commercial reality is that plastic optical fibers are usually employed over relatively short

¹ This source is apparently no longer accessible via the Internet.

² A third edition of this source was published in 2002. It too emphasizes the attributes of glass optical fiber.

distances and are flexible enough to withstand greater amounts of bending stress than glass optical fiber and, thus, typically do not employ or need strength members.

Here, the items designated as SH 6001–2.2, BH 4001, GH 4001–1000-TR in NY N247006 each consists of a single strand of plastic optical fiber sheathed in an easily discernable, relatively thick, protective polyethylene jacket. None of the items possess strength members. These three items are clearly not the unsheathed optical fibers, optical fiber bundles made up of several unsheathed fibers, or optical fiber cables consisting of a sheath containing one or more optical fiber bundles, contemplated by heading 9001, HTSUS. Instead, they are plastic optical fibers individually sheathed in protective coverings and are properly classified as fiber optic cables of subheading 8544.70.00, HTSUS.

The remaining two items designated as SH 4002 and SH 6002 are each composed of two strands of plastic optical fiber, each strand individually sheathed by an easily discernable, relatively thick, protective black polyethylene jacket, and joined along their lengths. The items do not possess strength members. They are also properly classified as fiber optic cables of subheading 8544.70.000, HTSUS.

HOLDING:

By application of GRI 1, the subject items identified as SH 6001–2.2, BH 4001, GH 4001–1000-TR, SH 4002 and SH 6002 are classifiable under heading 8544, HTSUS. Specifically, they are classifiable under subheading 8544.70.00, HTSUS, which provides for “Optical fiber cables.” 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 HTSUSA and the accompanying duty rates are provided at www.usitc.gov/tata/hts.

EFFECT ON OTHER RULINGS:

NY N247006, dated October 31, 2013, and NY N159136 and NY N159575, both dated May 4, 2011, are hereby revoked.

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

Sincerely,

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 FIBER OPTIC RIBBON

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 fiber optic ribbon.

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 the tariff classification of fiber optic ribbon under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments on the correctness of the proposed actions are invited.

DATE: Comments must be received on or before September 1, 2017.

ADDRESS: Written comments are to be addressed to the U.S. Customs and Border Protection, Office of 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: Claudia Garver, Tariff Classification and Marking Branch, Regulations and Rulings, Office of Trade, at (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) (“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 glass fiber optic ribbon. Although in this notice, CBP is specifically referring to Headquarters Ruling Letter ("HQ") 962445, dated April 3, 2001 (Attachment A), this notice covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

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

In HQ 962445, CBP classified glass fiber optic ribbon in heading 8544, HTSUS, specifically in subheading 8544.70.00, HTSUS, which provides for "Insulated (including enameled or anodized) wire, cable (including coaxial cable) and other insulated electric conductors, whether or not fitted with connectors; optical fiber cables, made up of individually sheathed fibers, whether or not assembled with electric conductors or fitted with connectors: Optical fiber cables." CBP has

reviewed HQ 962445 and has determined the ruling letter to be in error. It is now CBP's position that the plastic fiber optic products are properly classified, by operation of GRI 1, in heading 9001, HTSUS, specifically in subheading 9001.10.00, HTSUS, which provides for "[o]ptical fibers and optical fiber bundles; optical fiber cables other than those of heading 8544; sheets and plates of polarizing material; lenses (including contact lenses), prisms, mirrors and other optical elements, of any material, unmounted, other than such elements of glass not optically worked: [o]ptical fibers, optical fiber bundles and cables."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke NY N247006 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed ruling letter HQ H098958, 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: May 03, 2017

IEVA K. O'ROURKE
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

HQ 962445

April 3, 2001

CLA-2 RR:CR:GC 962445 BJB

CATEGORY: Classification

TARIFF NO.: 8544.70.00

MELVIN S. SCHWECHTER
LEBOEUF, LAMB, GREENE & MACRAE
175 CONNECTICUT AVENUE, NW
WASHINGTON, DC 20009-5728

RE: Optical Fiber Cable, Individually sheathed fibers.

DEAR MR. SCHWECHTER:

This is in response to your letter of November 19, 1998, to the Director, Customs National Commodity Specialist Division, New York, on behalf of Alcoa Fujikura Ltd., (“Fujikura”), requesting a ruling on the tariff classification of multi-mode optical fiber ribbon cable (“ribbon cable”), under the Harmonized Tariff Schedule of the United States (HTSUS). Your letter was referred to this office for reply. Fujikura submitted a sample length of optical fiber ribbon cable, as well as, explanatory materials pertaining to optical fiber cables. Additional information was obtained from Fujikura’s internet website. In preparing this ruling, we also gave consideration to your letters of January 12th, April 8th & 14th, 1999, December 19, 2000, and February 23, 2001 response, to our December 28, 2000 request for further information.

FACTS:

An optical fiber ribbon cable is composed of multiple strands of coated glass optical fibers. Fujikura places 4, 6, 8, 10, and 12 individual optical fibers together to manufacture ribbon cable with different configurations. Optical fibers are extremely thin strands of ultra-pure glass designed to transmit light signals from a transmitter to a receiver. These light signals represent encoded electrical signals that include video, audio, or data information in any combination.

An optical fiber consists of three main regions. 1) The center region of the fiber is the glass core. This region actually carries the light. The optic core ranges in diameter from 8 microns to 100 microns in the most commonly used fibers. 2) Surrounding the optical fiber core is a region called the cladding. The cladding, typically, is also made of glass and has a diameter of 125 microns or 140 microns. 3) The third region of the optical fiber, includes the acrylate coating that provides protection to the individual optical fibers against microbending and abrasion.

Once light enters a glass fiber, the cladding layer prevents light loss as the beam of light zigzags along, inside, the glass core. Glass fibers can transmit messages or images by having beams of light directed through their cores over very short or very long distances, without significant distortion. The pattern of light waves forms a code that carries a message. At the receiving end, the light beams are converted back into electric current, and decoded. Since light beams are immune to electrical noise and can be carried greater distances before fading, this technology is used heavily in telecommunications.

As the glass fiber comes out of the furnace, it has a highly polished pristine surface with a theoretical strength in the range of 12–20 Giga-Pascals (GPa). To preserve this high strength, polymeric coatings are applied immediately after the drawing. Usually two layers of acrylate coatings are applied to the clad core: (1) a soft inner acrylate coating adjacent to the fiber to avoid microbending loss, and (2) a hard outer acrylate coating to resist abrasion. The coatings may be ultraviolet (UV) curable acrylates, UV-curable silicones, hot melts, heat-curable silicones or nylons. When dual coatings are applied, the coated fiber diameter is typically within a range of 235 – 250 microns.

Fujikura provides that its optical fibers are approximately 250 microns in diameter, with glass core and cladding, and dual UV acrylate coatings, in keeping with industry standards. The documentation provided shows that an additional layer, a thin coating of color is also added to the dual acrylate coating. The dual acrylate coating provides important protection and structural integrity to the bare glass fibers, responsible for each optical fiber's tensile strength, to the extent that bare glass fibers could not be used without it. The application of dual UV acrylate coatings/sheathing provides significant protection against abrasion of the optical fibers, enhances tensile strength and reduces the effects of long-term stress, in particular exposure to humid environments which can lead to failure due to a phenomenon called "static fatigue." Fujikura's sample, and documentation, show that after the optical fibers are manufactured, individual optical fibers are placed into a horizontal configuration, laid side-by-side, using highly controlled tensions and geometric alignment fixtures. The optical fibers with dual acrylate coatings are then subjected to a further coating process whereby a plastic resin material ("matrix") is applied to bond the entire grouping of fibers together. Fujikura states that "the matrix coating covers the entire outside edge of each individual fiber, such that the circumference of each of the fibers is coated with the plastic material. The matrix material also forms the outer casing and shape of the finished ribbon cable. The matrix material is cured and cooled to solidify the cable structure into its final shape. The finished optical fiber ribbon cable is then imported.

ISSUE:

Whether Fujikura's optical fiber ribbon cable using dual acrylate coatings and an additional color coating, is classifiable under heading 8544, HTSUS, as "optical fiber cables, made up of individually sheathed fibers," or under heading 9001, HTSUS, as "[o]ptical fibers and optical fiber bundles; optical fiber cables other than those of heading 8544; . . . [o]ptical fibers, optical fiber bundles and cables . . ."

LAW AND ANALYSIS:

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRIs). Under GRI 1, HTSUS, goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

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 generally indicative of the proper interpretation of these headings. Customs believes

the ENs should always be consulted. *See* T.D. 98–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The HTSUS provisions under consideration are as follows (emphasis added):

8544 Insulated (including enameled or anodized) wire, cable (including coaxial cable) and other insulated electric conductors, whether or not fitted with connectors; optical fiber cables, made up of individually sheathed fibers, whether or not assembled with electric conductors or fitted with connectors:

* * * * * 9001 Optical fibers and optical fiber bundles; optical fiber cables other than those of heading 8544; sheets and plates of polarizing material; lenses (including contact lenses), prisms, mirrors and other optical elements, of any material, unmounted, other than such elements of glass not optically worked:

((((((

EN 85.44 states that the heading also covers:

“optical fibre cables, made up of individually sheathed fibres, whether or not assembled with electric conductors or fitted with connectors. The sheaths are usually of different colours to permit identification of the fibres at both ends of the cable. Optical fibre cables are used mainly in telecommunications because their capacity for transmission of data is greater than that of electrical conductors.”

Heading 9001, HTSUS, covers *inter alia*, “optical fibers and optical fiber bundles: optical fiber cables other than those of heading 8544.” Section XVIII, Chapter 90, Note 1(h), states that “optical fiber cables of heading 8544” are not covered in Chapter 90. Optical fiber cables composed of optical fibers that are not “individually sheathed” would be classifiable under heading 9001. Therefore, the issue to resolve is, whether the instant cables are individually sheathed.

The legal notes and heading texts, as well as the ENs, do not provide a definition of the term: “individually sheathed.” In the absence of such guidance, tariff terms may be construed in accordance with their common and commercial meanings. *Nippon Kogasku (USA), Inc., v. United States*, 69 CCPA 89, 673 F.2d 380 (1982). Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities and other reliable resource materials. *C.J. Tower & Sons v. United States*, 69 CCPA 128, 673 F.2d 1268 (1982).

As a result of technological advances, optical fiber cables may not always be comprised of optical fibers that are covered with the traditional, thick, protective, removable plastic. However, the application of a thin primary inking or coating applied primarily for color-coding, would not constitute a “sheath” for purposes of heading 8544, HTSUS. Fujikura states that the “mere color coating itself does not enhance the structural integrity or provide additional physical protection to the optical fibers.”

Within the optical fiber cable industry, a “buffered fiber” is the general term used to describe “[a]n optical fiber that has a coating over the cladding for protection, increased visibility, and ease of handling.” *Communications Standard Dictionary*, 3rd Ed., p.98.

Fujikura states that its optical fibers are individually manufactured, clad and coated fibers, with UV dual acrylate layer/coatings and an additional color coating integrated into the production process. Its optical fibers are

color-coded for identification that allows them to be “stripped” or “broken out” from the ribbon cable by customers desiring to attach the ribbon cable to other cables.

The strength of an optical fiber is of such fundamental importance that it is subjected to a process called “proof testing.” This testing subjects an optical fiber to levels of controlled “proof stress” reflecting those stresses that it will encounter during manufacture, storage, installation, and service. As a result, an optical fiber’s strength can be quantified. Proof testing not only guarantees that an optical fiber possesses the strength to survive short-term stresses, but it also guarantees that an optical fiber will survive lower residual stress that it may be subjected to during its long service life (sometimes as long as 20–40 years). Proof testing can be performed in-line immediately after the glass optic fiber core and cladding are drawn and coated, or off-line, before the optical fiber is stored. This is significant because only optical fibers that survive proof testing, are those used and/or stored for further packaging into cables. Fujikura’s documentation shows that “proof testing” is performed on the optical fiber, after the glass core and cladding are drawn, and the dual UV acrylate and color coatings are applied, but prior to “ribbonizing” (before the matrix is applied).

Fujikura’s dual UV acrylate layers are applied to each individual optical fiber. Then a color coating is applied. Together the coatings measure approximately 62.5 microns in thickness. The initial layer of acrylate is a soft, low-modulus, UV curable acrylate with an approximate thickness of 30 microns. It provides a cushion-like protection against small bends and external forces that an optical fiber may experience over its active lifetime. The second layer of UV acrylate is a high-modulus, abrasion resistant coating also with an approximate thickness of 30 microns. This layer provides stronger mechanical protection of the glass fiber during handling, cable manufacturing and installation. Once the dual UV acrylate layers are applied the color coating is added.

The amount of dual acrylate and color coating applied to Fujikura’s optical fiber, 62.5 microns, reflects an industry standard. Fujikura has established that its incorporation and application of dual UV acrylate coatings protect the individual optical fibers from abrasions to the glass core and cladding that could cause short or long-term failures.

Insofar as the subject optical fiber is individually coated with 62.5 microns of protective dual acrylate, it is our opinion that optical fiber ribbon cable composed of this optical fiber and coated as described would be classifiable as “individually sheathed” under heading 8544, HTSUS. We believe that 62.5 microns of UV dual acrylate and color coatings do substantially add to the overall protection, security, and reliability of each individual optical fiber and should be considered sheathing.

Heading 9001, HTSUS, provides for optical fibers and optical fiber bundles; optical fiber cables other than those of heading 8544. EN 90.01 states, that this heading covers inter alia, optical fibres and optical fibre bundles, as well as optical fibre cables other than those of heading 8544. Thus, if the subject optical fiber cable is classifiable at heading 8544, it would not be classifiable at heading 9001. EN 90.01(A) describes “Optical fibre cables” classifiable at this heading. They “consist of a sheath containing one or more optical fibre bundles, the fibres of which are not individually sheathed.” Insofar as we have determined that the optical fibers used in Fujikura’s ribbon cable are, in fact “individually sheathed,” and the subject cable is not classifiable under

heading 9001. Further, EN 90.01(A) also states that, “Optical fibres” classifiable under heading 9001, consist of “concentric layers of glass or plastics of different refractive indices[.]” “[T]hose drawn from glass have a very thin coating of plastics, invisible to the naked eye, which renders the fibres less prone to fracture.” The dual acrylate coating and color coating are clearly visible to the naked eye, and are not proportionately “very thin” with respect to the diameter of the core and cladding. Fundamentally, however, Fujikura’s coating/sheathing protects the individual optical fiber more than by rendering it “less prone to fracture.”

It is not our view, that every coating, buffering, jacket, covering, or sheathing, merely because it is called a “sheathing,” or has some of the qualities exhibited by Fujikura’s dual protective coating, affords an optical fiber sufficient protection for it to be classifiable under heading 8544, as “individually sheathed.” However, in this case, Fujikura has adequately demonstrated that its combination of 62.5 microns of dual UV acrylate coating and additional layer of color does provide substantial sheathing protection to the individual optical fibers in its optical fiber cable. Therefore, at GRI 1, we find that the merchandise is classifiable under heading 8544, HTSUS. See HQ Rulings 962322, 963016, 963213, 963256, and 964632 of this date for similar rulings.

HOLDING:

The subject optical fiber ribbon cable with multi-mode individually sheathed fibers is classifiable under subheading 8544.70.00, HTSUS, which provides for: “[i]nsulated (including enameled or anodized) wire, cable (including coaxial cable) and other insulated electric conductors, whether or not fitted with connectors; optical fiber cables, made up of individually sheathed fibers, whether or not assembled with electric conductors or fitted with connectors: Optical fiber cables.”

Sincerely

JOHN DURANT,

Director

Commercial Rulings Division

[ATTACHMENT B]

HQ H098958
CLA-2 OT:RR:CTF:TCM H098958 CKG
CATEGORY: Classification
TARIFF NO.: 9001.10.00

MELVIN S. SCHWECHTER
DEWEY & LEBOEUF, LLP
1101 NEW YORK AVENUE, NW
WASHINGTON, DC 20005-4213

RE: Reconsideration of Headquarters Ruling Letter (HQ) 962445
concerning the tariff classification of fiber optic ribbon

DEAR MR. SCHWECHTER:

This letter is in relation to Headquarters Ruling Letter (HQ) 962445 issued to you on April 3, 2001, for your client Alcoa Fujikura Ltd. It has come to our attention that our decision on the classification, pursuant to the Harmonized Tariff Schedule of the United States (HTSUS), of fiber optic ribbons of various counts from 4–12 fibers is incorrect. In HQ 962445, CBP determined that fiber optic ribbon was classified in subheading 8544.70, HTSUS, as optical fiber cable. For the reasons set forth below, HQ 962445 is hereby revoked.

FACTS:

CBP described the merchandise in HQ 962445 as follows:

Fujikura provides that its optical fibers are approximately 250 microns in diameter, with glass core and cladding, and dual UV acrylate coatings, in keeping with industry standards. The documentation provided shows that an additional layer, a thin coating of color is also added to the dual acrylate coating. The dual acrylate coating provides important protection and structural integrity to the bare glass fibers, responsible for each optical fiber's tensile strength, to the extent that bare glass fibers could not be used without it. The application of dual UV acrylate coatings/sheathing provides significant protection against abrasion of the optical fibers, enhances tensile strength and reduces the effects of long-term stress, in particular exposure to humid environments which can lead to failure due to a phenomenon called "static fatigue." Fujikura's sample, and documentation, show that after the optical fibers are manufactured, individual optical fibers are placed into a horizontal configuration, laid side-by-side, using highly controlled tensions and geometric alignment fixtures. The optical fibers with dual acrylate coatings are then subjected to a further coating process whereby a plastic resin material ("matrix") is applied to bond the entire grouping of fibers together. Fujikura states that "the matrix coating covers the entire outside edge of each individual fiber, such that the circumference of each of the fibers is coated with the plastic material. The matrix material also forms the outer casing and shape of the finished ribbon cable. The matrix material is cured and cooled to solidify the cable structure into its final shape. The finished optical fiber ribbon cable is then imported.

LAW AND ANALYSIS:

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that most goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

The HTSUS headings under consideration are:

- 8544 Insulated (including enameled or anodized) wire, cable (including coaxial cable) and other insulated electric conductors, whether or not fitted with connectors; optical fiber cables, made up of individually sheathed fibers, whether or not assembled with electric conductors or fitted with connectors:
- 9001 Optical fibers and optical fiber bundles; optical fiber cables other than those of heading 8544; sheets and plates of polarizing material; lenses (including contact lenses), prisms, mirrors and other optical elements, of any material, unmounted, other than such elements of glass not optically worked:

In addition to the headings under consideration Note 1(m) to Section XVI, HTSUS, the section in which heading 8544, HTSUS, is located, provides that articles of Chapter 90, HTSUS, are excluded from Section XVI, HTSUS. Further, Note 1(h) to Chapter 90, HTSUS, excludes fiber optic cable of heading 8544, HTSUS.

Heading 9001, HTSUS, provides for optical fibers and optical bundles. The term “bundle” is not defined in the HTSUS. When a term is not defined by the HTSUS or the legislative history, its correct meaning is its common, or commercial, meaning. See *Rocknel Fastener, Inc. v. United States*, 267 F.3d 1354, 1356 (Fed. Cir. 2001). The *Oxford English Dictionary* (2nd Ed. 1989) defines the term “bundle” as “[a] collection of things bound or otherwise fastened together; a bunch; a package, parcel.”¹ In addition, the fiber optic industry has defined “bundle” as “[m]any individual fibers contained within a single jacket or buffer tube. Also a group of buffered fibers distinguished in some fashion from another group in the same cable core.” See *OFS Fitel, Inc.*, 2002, *Glossary of Optical Fiber Terms*.² Thus, based on the common and commercial definitions a fiber optic bundle is a collection of fiber optic fibers that are either completely or partially bound together within a single jacket or buffer tube.

In this case, the product is described as optical fiber ribbon ranging in counts from 4 to 12 individually sheathed optical fibers. The fibers are aligned side by side and are then coated with a plastic resin matrix which makes the products appear to be similar to a flat ribbon. With respect to this product, the individually sheathed fibers are bound together using the plastic matrix. The fibers are a collection of individual fibers within a single plastic jacket. The product falls squarely within the meaning of bundle provided by the fiber optic industry. Therefore, CBP finds that this product is described *eo nomine* in heading 9001, HTSUS. As such it is an article of Chapter 90, HTSUS, thereby excluding it from Section XVI, HTSUS.

¹ <http://www.oed.com/view/Entry/24748?rskey=IwD4pX&result=1&isAdvanced=false#eid>

² See <http://www.ofsoptics.com/resources/glossary.pdf>

Furthermore, the optical fiber ribbon is not fiber optic cable, which is described in heading 8544, HTSUS. The phrase “fiber optic cable” is not defined in the HTSUS. However, CBP has historically defined fiber optic cable as “[o]ne or more optical fibers enclosed within protective covering(s) and strength members³.” See HQ 964883, dated September 14, 2001; HQ 964996, dated December 5, 2001; and HQ 966619, dated October 21, 2003; quoting *The Fiber Optic Reference Guide*, David R. Goff, Focal Press, (1996) at p. 153. This definition is in accord with a more recent definition in the *Glossary of Optical Fiber Terms* by OFS Fitel, dated January 18, 2002⁴, which defines the phrase “fiber optic cable” as “[a]n optical fiber, multiple fiber, or fiber bundle which includes a cable jacket and strength members, fabricated to meet optical, mechanical, and environmental specifications.”⁵

Applying these definitions to the subject merchandise, CBP finds that the product does not meet the commercial definitions of fiber optic cables of heading 8544, HTSUS, because it lacks strength members and a protective outer jacketing.

Further, CBP finds that the marketplace recognizes the distinction between fiber optic ribbons and fiber optic ribbon cable. For example, OFS Fitel, distinguishes between its fiber optic ribbon⁶ and its fiber optic ribbon cable.⁷ Similarly, Sumitomo Electric Lightwave Corporation, also makes a distinction between its ribbon fibers⁸ and its fiber optic ribbon cable.⁹ CBP finds that this distinction is further evidence that there is a distinction made in the marketplace between fiber optic ribbon and fiber optic cable and that this distinction is based on the fact that fiber optic cable requires that the product have individually sheathed fibers, strength members, and an outer protective jacketing, while fiber optic ribbon is simply a bundle of individually sheathed fibers. Therefore, the subject merchandise is not described by heading 8544, HTSUS, and it is not excluded from Chapter 90, HTSUS, by application of Note 1(h) to Chapter 90. This conclusion is consistent with HQ 966619 where CBP held that a 12 count optical fiber ribbon was classified in heading 9001, HTSUS.

³ A “strength member” is an enclosure for the jacketed fiber, consisting usually of a flexible polymer such as aramid, which absorbs the tension needed to pull the cable and provides cushioning for the fibers.

⁴ See <http://www.ofsoptics.com/resources/glossary.pdf>

⁵ We note, however, that our conclusion that the instant glass fiber optic ribbon must possess strength members in order to be classified in heading 8544, HTSUS, does not extend to optical fiber cables constructed of plastic fibers. See HQ H251018 (proposed revocation of New York Ruling Letter (NY) N247006, published in Volume 50, Number 33 of the Customs Bulletin on August 17, 2016).

⁶ See <http://www.ofsoptics.com/resources/accuribbonopticalfiberribbons.pdf> which is marketed under its optical fiber section.

⁷ See e.g. <http://www.ofsoptics.com/resources/AccuRibbonDuctSaver%28web%29.pdf>, which is a cable containing fiber optic ribbons that are encased in an outer protective jacketing and strength members.

⁸ See http://www.sumitomoelectric.com/products/opticalfibercable/ribboncables/Ribbon/OpticalFiberRibbon_0308.pdf for optical fiber ribbon.

⁹ See e.g. <http://www.sumitomoelectric.com/products/opticalfibercable/ribboncables/litepipeinriser/RRJK.pdf> which is a fiber optic ribbon cable containing individually sheathed fiber optics that are surrounded by an outer protective jacketing and strength members.

HOLDING:

By application of GRI 1, the optical fiber ribbons are classified in heading 9001, HTSUS, more specifically in subheading 9001.10.00, HTSUS, which provides for “[o]ptical fibers and optical fiber bundles; optical fiber cables other than those of heading 8544; sheets and plates of polarizing material; lenses (including contact lenses), prisms, mirrors and other optical elements, of any material, unmounted, other than such elements of glass not optically worked: [o]ptical fibers, optical fiber bundles and cables.” The 2016 column one, general rate, of duty is 6.7% *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 on the internet at www.usitc.gov/tata/hts/.

EFFECT ON OTHER RULINGS:

HQ 962445, dated April 3, 2001, is hereby revoked.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**PROPOSED MODIFICATION OF THREE RULING LETTERS
AND REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF IMITATION WICKER
CHAIRS WITH METAL FRAMES**

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

ACTION: Notice of proposed modification of three ruling letters, and revocation of treatment relating to the tariff classification of imitation wicker chairs with metal frames.

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 HQ 952032, dated July 6, 1992, NY N050095, dated February 11, 2009, and NY N125879, dated October 29, 2010, concerning tariff classification of imitation wicker chairs with metal frames under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments on the correctness of the proposed actions are invited.

DATE: Comments must be received on or before September 1, 2017.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of 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: Claudia Garver, Chemicals, Petroleum, Metals and Miscellaneous Classification Branch, Regulations and Rulings, Office of Trade, at (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) (“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 three ruling letters pertaining to the tariff classification of imitation wicker chairs with metal frames. Although in this notice, CBP is specifically referring to HQ 952032, dated July 6, 1992 (Attachment A), NY N050095, dated February 11, 2009 (Attachment B), and NY N125879, dated October 29, 2010 (Attachment C), this notice covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the three identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

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

In HQ 952032, CBP classified three styles of chairs with metal frames covered in plastic imitation wicker in subheading 9401.5, HTSUS, which provides for “Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof: Of cane, osier, bamboo or similar materials.” In NY N050095, and NY N125879, CBP applied GRI 3(b) to classify various styles of imitation wicker chairs with metal frames in subheading 9401.79.00, HTSUS, which provides for “Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof: Other seats, with metal frames: Other.” CBP has reviewed HQ 952032, NY N050095, and NY N125879, and has determined the ruling letters to be in error. It is now CBP’s position that imitation wicker chairs with metal frames are properly classified, by operation of GRI 1, in heading 9401, HTSUS, specifically in subheading 9401.79.00, HTSUS, which provides for “Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof: Other seats, with metal frames: Other.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to modify HQ 952032, NY N050095, and NY N125879 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed HQ H192520, set forth as Attachment D to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: July 7, 2017

ALLYSON MATTANAH
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

HQ 952032

July 6, 1992

CLA-2 CO:R:C:M 952032 DWS

CATEGORY: Classification

TARIFF NO.: 9401.79.00; 9403.80.30; 9403.20.00

MS. GLENDA BACHMAN

PIER 1 IMPORTS

P.O. Box 961020

FORT WORTH, TX 76161-0020

RE: Combination Wicker and Wrought Iron Furniture; GRI 3(b);
HQ 086657; 9401.50.00

DEAR MS. BACHMAN:

This is in response to your letter to the Area Director of Customs, New York Seaport, of May 22, 1992, concerning the classification of combination wrought iron and wicker furniture under the Harmonized Tariff Schedule of the United States (HTSUS). Your request has been referred to Headquarters for a reply.

FACTS:

The merchandise consists of combination wrought iron and wicker furniture. Style number 1025789 is a wrought iron chair, the seat and back of which are covered with wicker. The wicker covers most of the iron frame except for a small portion at the front of the armrests and the back legs. The iron front legs are covered with a wicker skirt so that only the feet show. Style number 1025791 is a wrought iron framed settee. As in style 1025789, the entire frame, except for the bottom feet, back legs, and armrests are covered with wicker. Both styles are shown with cushioned seats which apparently are not imported. Style 1025813 is a wrought iron framed Bistro armchair. The entire frame is exposed except for a back rest and seat which are made of wicker. Style number 1025838 is a small, wrought iron nesting table. Style 1025841 is a large, wrought iron nesting table. Style 1025800 is a wrought iron Bistro table base, and style 1025826 is a wrought iron television table. All of these styles have wicker tops with the remaining portion being exposed wrought iron.

ISSUE:

Is the furniture to be classified as wicker furniture, or as wrought iron furniture?

LAW AND ANALYSIS:

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRI's), taken in order. GRI 1 provides that classification is determined according to the terms of the headings and any relative section or chapter notes.

With regard to the subject pieces of furniture, there are competing provisions in the HTSUS under which they may be classifiable. Concerning the chair, the Bistro armchair, and the settee, subheading 9401.50.00, HTSUS, provides for: "[s]eats of cane, osier, bamboo or similar materials", and subheading 9401.79.00, HTSUS, provides for: "[o]ther seats, with metal frames:

[o]ther.” Concerning the tables, subheading 9403.80.30, HTSUS, provides for: “[f]urniture of cane, osier, bamboo or similar materials”, and subheading 9403.20.20, HTSUS, which provides for: “[o]ther metal furniture.”

GRI 3(b) states that:

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

It is our position that the essential character of the tables and the Bistro armchair is imparted by the wrought iron components. The wrought iron gives the furniture its support and it makes up the majority of its weight. It is also the most prominent feature of the pieces which have the appearance of wrought iron with wicker “additions”. The wicker components, although providing some utilitarian purpose, are mainly present for decorative purposes.

However, it is our position that the essential character of the subject settee and chair is the wicker components. These two pieces of furniture are covered with wicker, except for the bottom feet. In appearance, they look to be wicker furniture, unlike the Bistro armchair and tables, which appear to be wrought iron furniture.

Regarding these two pieces, we note HQ 086657, dated July 19, 1990, which dealt with the classification of trunks which, although having wood frames and bottoms, were covered entirely with a fern or wicker plaiting material. In that ruling, the trunks were held classifiable under subheading 9403.80.30, HTSUS.

Consequently, under GRI 3(b), we find that the settee and chair are classifiable under subheading 9401.50.00, HTSUS, the tables are classifiable under subheading 9403.20.00, HTSUS, and the Bistro armchair is classifiable under subheading 9401.79.00, HTSUS.

HOLDING:

The settee and chair are classifiable under subheading 9401.50.00, HTSUS, which provides for: “[s]eats of cane, osier, bamboo or similar materials.” The general, column one rate of duty is 7.5 percent ad valorem.

The tables are classifiable under subheading 9403.20.00, HTSUS, which provides for: “[o]ther metal furniture.” The general, column one rate of duty is 4 percent ad valorem.

The Bistro armchair is classifiable under 9401.79.00, which provides for: “[o]ther seats, with metal frames: [o]ther.” The general, column one rate of duty is 4 percent ad valorem.

Sincerely,

JOHN DURANT,

Director

Commercial Rulings Division

[ATTACHMENT B]

N050095

February 11, 2009

CLA-2-94:OT:RR:E:NC:N2:233

CATEGORY: Classification

TARIFF NO.: 9401.79.0005; 9403.70.8010

Ms. MARTHA DE CASTRO
BED BATH & BEYOND
650 LIBERTY AVENUE
UNION, NJ 07083

RE: The tariff classification of wicker chairs, love seat and tables from China.

DEAR Ms. DE CASTRO:

In your letter dated January 26, 2009, you requested a tariff classification ruling.

Photographs and descriptions have been provided for four items of furniture. All four items are composed of a steel frame which is completely covered by polyethylene wicker. SKU number 16452912 is a set of chairs and SKU 1645904 is a love seat, both will be sold with a textile cushion seat with back pillows. SKU 16452920 is a rectangular coffee table and SKU 16452939 is a square-shaped accent table.

The subject furniture is composed of different components [plastic, metal, textile] and is considered a composite good. Regarding the essential character of the furniture, the Explanatory Notes to GRI 3 (b) (VIII) state that the factor which determines essential character will vary between different kinds of goods. It may for example, be determined by the nature of the materials or components, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods. When the essential character of a composite good can be determined, the whole product is classified as if it consisted only of the part that imparts the essential character to the composite good. In this case, the plastic wicker component imparts the essential character to the good.

The applicable subheading for the chair and love seat will be 9401.79.0005, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof: Other, Outdoor: With textile covered cushions or textile seating or backing material: Household." The rate of duty will be free.

The applicable subheading for the tables will be 9403.70.8010, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Other furniture and parts thereof: Furniture of plastics: Other, Household." The rate of duty will be free.

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

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

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

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

[ATTACHMENT C]

N125879

October 29, 2010

CLA-2-94:OT:RR:NC:N4:433

CATEGORY: Classification

TARIFF NO.: 9401.79.0005; 9403.20.0015

AMY MORGAN
CUSTOMS COMPLIANCE MANAGER
COSTCO WHOLESALE
999 LAKE DRIVE
ISSAQUAH, WA 98027

RE: The tariff classification of patio furniture from China.

DEAR MS. MORGAN:

In your letter dated October 1, 2010, you requested a tariff classification ruling.

Item number 538109 is described as a metal frame resin “wicker” furniture patio set. The set includes (A) two chairs, (B) two ottomans, (C) a sofa and (D) a table. The merchandise is described as follows:

(A) The chairs have an aluminum frame with only the arms and legs exposed. The seat and the back rest are wrapped with a plastic resin material designed to look like actual wicker. There is nothing between the aluminum frame and the resin wicker; no wadding, padding or furniture foam of any kind. There are textile seat and back cushions that are to be used with the chair, but the cushions are removable.

(B) The ottomans have an aluminum frame with only the legs exposed. The seat is wrapped with a resin wicker. There is nothing between the aluminum frame and the resin wicker; no wadding, padding or sheeting of any kind. There is a cushion to be used with the ottoman, but the cushion is removable and the ottoman is able to be sat upon or used without the cushion.

(C) The sofa has an aluminum frame with only the arms and legs exposed. The seat and back rest are wrapped with a resin wicker. There is nothing between the aluminum frame and the resin wicker; no wadding, padding or sheeting of any kind. There are cushions that are to be used with the sofa, but the cushions are removable and the sofa is able to be sat upon without the cushions.

(D) The table is made of 100% aluminum. The table top has aluminum slats which alternate angles in quarter sections for decorative purposes.

You suggest that because there is no wadding or padding between the frame and the resin wicker that the items should not be classified as upholstered seats under heading 9401 of the Harmonized Tariff Schedule of the United States (HTSUS). Provided manufacturer’s data indicates that the tolerance and weight capacity for each seat without the cushions is 400 pounds, while the cushions provide an uplift of +3% to 412 pounds.

Relative to the issue, of whether or not a “seat” is considered upholstered for tariff purposes, are the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) to heading 9401, HTSUS. The 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.

The ENs to heading 9401, HTSUS: Parts, Subheading Explanatory Notes, Subheadings 9401.61 (wooden frames) and 9401.71 (metal frames) state:

“Upholstered seats” are those having a soft layer of, for example, wadding, tow, animal hair, cellular plastics or rubber, shaped (whether or not fixed) to the seat and covered with a material such as woven fabric, leather or sheeting of plastics. Also classified as upholstered seats are seats the upholstering materials of which are not covered or have only a white fabric cover which is itself intended to be covered (known as upholstered seats “in muslin”), seats which are presented with detachable seat or back cushions and which could not be used without such cushions, and seats with helical springs (for upholstery). On the other hand, the presence of horizontally-acting tension springs, designed to attach to the frame a steel wire lattice, taut woven fabric, etc., is not sufficient to cause the seats to be classified as upholstered. Similarly, seats covered directly with materials such as woven fabric, leather, sheeting of plastics, without the interposition of upholstering materials or springs, and seats to which a single woven fabric backed with a thin layer of cellular plastics has been applied, are not regarded as upholstered seats.

According to the manufacturer’s specifications, the detachable seats and back cushions are not necessary for the functioning and use of the seats, ottomans and sofa. The seats are fully functional and can be used up to 400 pounds without cushions and 412 pounds with cushions. The difference of twelve pounds between cushioned seats and un-cushioned seats is negligible, and therefore the seats can be used without their cushions. In accordance with the ENs, at Subheading Note 9401.71, the two chairs, two ottomans and sofa, constructed with metal frames, are not considered upholstered for tariff purposes.

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

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

At GRI 3 (b) (VIII), ENs to the HTSUS, it states that the factor which determines essential character will vary between different kinds of goods. It may for example, be determined by the nature of the materials or components, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods. Further delineated under GRI 3 (b) (X), ENs, the term “goods put up in sets for retail sale” means goods which: (a) consist of at least two different articles which are *prima facie*, classifiable in different headings; (b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and (c) are put up in a manner suitable for sale directly to users without repacking.

The combination of items presented do not meet the tariff provision for sets, as defined by the ENs at GRI 3 (b) X in that the chairs, ottomans and sofa are all classified in the same tariff provision at subheading 9401.79.0005;

the aluminum table is not designed to be used with the chairs, ottomans or sofa, and therefore does not contribute to the gathering and entertaining of family and/or guest members; and due to the size of the items, the furniture pieces are not put up together for sale directly to users, but rather, are packaged in multiple boxes. Consequently, each individual item is separately classifiable.

Accordingly, the chairs, ottomans and sofa having aluminum frames covered largely in resin wicker are composite goods. When the essential character of a composite good can be determined, the whole product is classified as if it consisted only of the material or component that imparts the essential character to the composite good. In this case, the resin wicker component imparts the essential character to the chairs, ottomans and sofa, in that the synthetic wicker is the most prominent feature of the pieces giving the appearance of wicker-like furniture with aluminum accents. See Headquarters Ruling HQ 952032 dated July 6, 1992.

The applicable subheading for the chairs, ottomans, and sofa, covered largely in resin wicker, will be 9401.79.0005, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Seats....: Other seats, with metal frames; Other: Outdoor: With textile covered cushions or textile seating or back materials." The rate of duty will be free.

The applicable subheading for the aluminum table, will be 9403.20.0015, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Other furniture and parts thereof: Other metal furniture: Household: Other." The rate of duty will be free.

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

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

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

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

[ATTACHMENT D]

HQ H192520
CLA-2 OT:RR:CTF:TCM H192520 CkG
CATEGORY: Classification
TARIFF NO: 9401.79.00

SHAKETHA MILES
IMPORT COMPLIANCE SPECIALIST
PIER 1 IMPORTS
P.O. Box 961020
FORT WORTH, TX 76161-0020

RE: Modification of HQ 952032, NY N125879, and NY N050095;
classification of plastic imitation wicker chairs with metal frames

DEAR Ms. MILES:

This is in reference to your request of September 27, 2011, for the reconsideration of Headquarters Ruling Letter (HQ) 952032, issued to Pier 1 Imports on July 6, 1992. In HQ 952032, CBP classified several items of a plastic imitation wicker and metal furniture in subheading 9401.50.00, HTSUS¹, as seats of cane, bamboo, or similar materials, by application of GRI 3. You argue that the correct classification of item no. 1025789 is in subheading 9401.79.00, HTSUS, at GRI 1.

We have also considered New York Ruling Letters (NY) N050095, issued on February 11, 2009, to Bed, Bath & Beyond, and NY N125879, issued to Costco Wholesale on October 29, 2010, regarding the use of GRI 3 to classify chairs with metal frames and covered in plastic “wicker”. In accordance with the analysis below, we are modifying HQ 952032 with respect to the classification of item nos. 1025789, 1025791 and 1025813; NY N050095 with respect to the classification of item nos. 16452912 and 1645904; and NY N125879 with respect to the two chairs in the patio set identified as item # 538109.

FACTS:

HQ 952032 described items 1025789, 1025791 and 1025813 as follows:

The merchandise consists of combination wrought iron and wicker furniture. Style number 1025789 is a wrought iron chair, the seat and back of which are covered with wicker. The wicker covers most of the iron frame except for a small portion at the front of the armrests and the back legs. The iron front legs are covered with a wicker skirt so that only the feet show. Style number 1025791 is a wrought iron framed settee. As in style 1025789, the entire frame, except for the bottom feet, back legs, and armrests are covered with wicker. Both styles are shown with cushioned seats which apparently are not imported. Style 1025813 is a wrought iron framed Bistro armchair. The entire frame is exposed except for a back rest and seat which are made of wicker.

In your submission of September 28, 2011, you further clarify that the “wicker” material covering the seat and back of the iron-framed chairs at issue in HQ 952032 is a plastic material.

¹ “Seats of cane, osier, bamboo or similar materials” are provided for in the 2017 HTSUS at the 5-digit subheading level, with new six-digit subheadings 9401.52, 9401.53, and 9401.59, for seats of bamboo, rattan and “other”, respectively.

NY N050095 described the two seats at issue as follows:

All...items are composed of a steel frame which is completely covered by polyethylene wicker. SKU number 16452912 is a set of chairs and SKU 1645904 is a love seat, both will be sold with a textile cushion seat with back pillows.

In NY N125879, the subject merchandise was described as follows:

Item number 538109 is described as a metal frame resin “wicker” furniture patio set. The set includes (A) two chairs, (B) two ottomans, (C) a sofa and (D) a table. The merchandise is described as follows:

(A) The chairs have an aluminum frame with only the arms and legs exposed. The seat and the back rest are wrapped with a plastic resin material designed to look like actual wicker. There is nothing between the aluminum frame and the resin wicker; no wadding, padding or furniture foam of any kind. There are textile seat and back cushions that are to be used with the chair, but the cushions are removable.

ISSUE:

Whether the instant metal framed chairs are classified in subheading 9401.59, HTSUS, as seats of cane, osier, bamboo or similar materials, or in subheading 9401.79, HTSUS, as other seats with a metal frame.

LAW AND ANALYSIS:

Merchandise imported into the United States is classified under the HTSUS. Tariff classification is governed by the principals set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context with 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 determine 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 3 provides, in pertinent part, that composite goods consisting of different materials or made up of different components shall be classified as if they consisted of the material or component which gives them their essential character. GRI 6 provides that classification of goods in the subheading of a heading shall be determined according to the terms of those subheadings and any related subheading notes, and *mutatis mutandis*, to GRIs 1 through 5.

The HTSUS provisions under consideration are as follows:

9401:	Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof:
	Seats of cane, osier, bamboo or similar materials:
9401.52.00:	Of bamboo...
9401.53.00:	Of rattan...
9401.59.00:	Other...
	Other seats, with metal frames:
9401.71.00:	Upholstered...

9401.79.00:

Other...

* * * *

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the HTSUS. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of the headings. It is Customs and Border Protection (CBP) practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUS. See, T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

EN 94.01 provides, in pertinent part, as follows:

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

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

* * * *

There is no dispute that the instant chairs are classifiable in heading 9401, HTSUS, at GRI 1. The issue arises at the subheading level; i.e., whether the instant chairs are “of cane, osier, bamboo or similar materials” for the purposes of subheading 9401.5, HTSUS, or whether they are “other seats, with metal frames”, for the purposes of subheading 9401.7, HTSUS.

In HQ 952032, CBP determined that the chairs were classified in subheading 9401.50.00, HTSUS, as seats “of” similar materials to bamboo, cane, or osier, by application of GRI 3(b). You argue that the correct classification of style no. 1025789 is in subheading 9401.79.00, HTSUS, at GRI 1. We agree, and further find that items 1025789, 1025791 and 1025813, as non-upholstered seats with metal frames, are all *eo nomine* provided for, at GRIs 1 and 6, in subheading 9401.79, HTSUS. It is therefore not necessary to resort to GRI 3 and an essential character analysis.

First, we note that classification in subheading 9401.5 is incorrect, at GRI 1 or GRI 3, because the instant chairs are not composed, in whole or in part, of a material similar to cane, osier, bamboo or rattan. Bamboo, osier, cane and rattan are all natural plant fibers. The “wicker” material covering the chairs is made of plastic, crafted to resemble a natural plant material. “Wicker” is variously defined as:

1. a slender, pliant twig; osier; withe.
2. plaited or woven twigs or osiers as the material of baskets, chairs, etc.; *wickerwork*.
3. something made of *wickerwork*, as a basket.

<http://dictionary.cambridge.org/dictionary/english/wicker>.

As such, a “wicker” chair or other article describes an article made with the technique of weaving or braiding materials such as bamboo or rattan. Plastic wicker is typically made from PVC or polyethylene. Even if we consider articles made in this style with a synthetic material to constitute an article of wicker, the term “wicker” does not itself appear in the tariff. In order to be classified in subheading 9401.5, an article must be made of either “of” the specified materials, or a similar material. We do not find plastic or resin to be a material similar to wood or other natural plant fibers. CBP has consistently held that such material is classified as a plastic, and not as a wood or other plant fiber. *See e.g.*, NY N269023, dated October 16, 2015; NY N266674, dated August 12, 2015; NY N248506, dated December 12, 2013.

Thus, a chair with a frame of metal and backs or seats of plastic is not classified in subheading 9401.5, HTSUS, at either GRI 1 or GRI 3, because it does not meet the terms of the subheading. At GRI 1, subheading 9401.7 provides for “other” seats—i.e. seats not “of” bamboo or a similar material—with metal frames.

Although the HS does not define either the term “seat” or “frame”, the Explanatory Notes to heading 9401 indicates that “seat” and “chair” are used interchangeably in the context of this heading. Similarly, the Merriam-Webster Dictionary Online defines “seat” as “a chair, stool, or bench intended to be sat in or on”, and “chair” as “a seat typically having four legs and a back for one person; any of various devices that hold up or support.” *See* <https://www.merriam-webster.com/dictionary/seat>; <https://www.merriam-webster.com/dictionary/chair>. “Frame” in turn is defined as “the underlying constructional system or structure that gives shape or strength (as to a building).” <https://www.merriam-webster.com/dictionary/frame>. The frame is therefore the constructional system that gives shape or support to a chair (seat), but which will not in all instances be able to fulfill the purpose of a seat or chair; that is, to support or hold up a mass, esp. a person. Additional materials and components may cover the frame to make it more functional as an actual seat. Therefore, a chair with a metal frame and a seat or back of plastic is provided for, at GRI 1, in subheading 9401.7. The instant articles, as non-upholstered chairs with metal frames covered in plastic, fall within subheading 9401.79, HTSUS.

HQ 952032 cites to HQ 086657, dated July 13, 1990, in support of classification of the items at issue in subheading 9401.50.00, HTSUS. In HQ 086657, CBP classified trunks with wood frames and bottoms covered with a fern or wicker plaiting material in subheading 9403.80, HTSUS, as furniture of other materials, including cane, osier, bamboo or similar materials. This ruling is inapplicable to the instant merchandise because there is no indication that the plaiting material discussed in HQ 952032 was made of plastic. Furthermore, heading 9403, HTSUS, does not contain a subheading for furniture with frames or other components of metal or of any other material; the only subheadings under heading 9403, HTSUS, which reference materials provide for furniture “of” plastics, metal, or other materials, or for wooden furniture. Thus, any furniture of heading 9403 incorporating various such materials is appropriately classified pursuant to GRI 3. When, as is the case with heading 9401, a tariff provision explicitly references an item with components of a specific material, classification at GRI 1 is appropriate for that item.

In NY N050095 and NY N125879, the classification of the metal framed chairs with plastic imitation wicker in subheading 9401.79.00, HTSUS, was ultimately correct; however, as noted above, resort to GRI 3 was unnecessary, as the items are classified in subheading 9401.79.00, HTSUS, at GRI 1.

HOLDING:

By application of GRIs 1 and 6, style numbers 1025789, 1025791 and 1025813 (HQ 952032), item nos. 16452912 and 1645904 (NY N050095), and the two chairs of item # 538109 (NY N125879) are classified in heading 9401, HTSUS, specifically subheading 9401.79.00, HTSUS, which provides for “Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof: Other seats, with metal frames: Other.” The 2017, column one, general rate of duty is Free.

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

EFFECT ON OTHER RULINGS:

HQ 952032, dated July 6, 1992, is hereby modified with respect to items 1025789, 1025791 and 1025813.

NY N050095, dated February 11, 2009, is hereby modified with respect to the incorrect use of GRI 3 to classify items 16452912 and 1645904.

NY N125879, dated October 29, 2010, is hereby modified with respect to the incorrect use of GRI 3 to classify the two chairs of item # 538109.

Sincerely,

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 LAWN MOWER TIRES**

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 lawn mower tires.

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 Headquarters Ruling Letter (HQ) H156538, dated June 13, 2012, concerning the tariff classification of lawn mower tires under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments on the correctness of the proposed actions are invited.

DATE: Comments must be received on or before September 1, 2017.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of 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: Claudia Garver, Chemicals, Petroleum, Metals and Miscellaneous Classification Branch, Regulations and Rulings, Office of Trade, at (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) (“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 lawn mower tires. Although in this notice, CBP is specifically referring to Headquarters Ruling Letter (“HQ”) H156538, dated June 13, 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 HQ H156538, CBP determined that lawn mower tires did not qualify for duty free treatment under the special classification provision of subheading 9817.00.60, HTSUS, which provides for parts to be used in articles provided for in heading 8433, HTSUS. CBP has reviewed HQ H156538 and has determined the ruling letter to be in

error. It is now CBP's position that the instant lawn mower tires are eligible for duty free treatment under subheading 9817.00.60, HT-SUS.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke HQ H156538 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed HQ H264768, set forth as Attachment B to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: July 10, 2017

ALLYSON MATTANAH
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

HQ H156538

June 13, 2012

CLA-2 OT:RR:CTF:TCM H156538 CkG

CATEGORY: Classification

TARIFF NO: 4011.99.85

ATTN: AINEDA HANXARD
U.S. CUSTOMS AND BORDER PROTECTION
PORT OF ATLANTA
4341 INTERNATIONAL PARKWAY
SUITE 600
ATLANTA, 30354

RE: Application for Further Review of Protest No. 1704–10–100242;
classification of tires for lawn mowers

DEAR PORT DIRECTOR,

This is in response to the Application for Further Review of Protest No. 1704–10–100242 filed on behalf of Monitor Manufacturing Corp. (“Protestant”), contesting Customs and Border Protection’s (CBP) classification and liquidation of 97 entries of tires for lawn mowers in subheading 4011.99.85, Harmonized Tariff Schedule of the United States (HTSUS), as “other” pneumatic tires, of rubber.

FACTS:

At issue are 31 models of tires for use on lawn mowers, of the following styles: Kenda K358 Turf Rider, Kenda K401, Kenda K404, and the Kenda Super Turf K500. The tires are designed for low speed (normally 10 mph or less) turf application, and range in size from 13 to 24 inches in diameter, with a maximum load limit of 1340 lbs.

The subject merchandise was entered between April 3, 2009 and January 10, 2010, at the Port of Atlanta. CBP liquidated the entries on March 26, 2010, in subheading 4011.99.85, HTSUS. Protestant claims classification in subheading 4011.92.00, HTSUS, as “other” tires of a kind used on agricultural or forestry vehicles and machines, or in the alternative, in subheading 9817.00.60, as parts of a machine of heading 8433, HTSUS.

ISSUE:

1. Whether the subject tire styles are classified in subheading 4011.92.00, HTSUS, as tires of a kind used on agricultural or forestry vehicles and machines, or in subheading 4011.99.85, HTSUS, as other tires.
2. Whether the subject tires are subject to the special duty provision of subheading 9817.00.60, as parts of a machine of heading 8433, HTSUS.

LAW AND ANALYSIS:

Initially, we note that the matter protested is protestable under 19 U.S.C. §1514(a) (2) as a decision on classification. The protest was timely filed, within 180 days of liquidation of the first entry for entries made on or after

December 18, 2004. (Miscellaneous Trade and Technical Corrections Act of 2004, Pub.L. 108-429, § 2103(2) (B) (ii), (iii) (codified as amended at 19 U.S.C. § 1514(c) (3) (2006)).

Further Review of Protest No. 1704-10-100242 was properly accorded to Protestant pursuant to 19 C.F.R. § 174.24 because the decision against which the protest was filed is alleged to involve questions of law or fact which have not been ruled upon by the Commissioner of Customs or his designee or by the Customs courts; specifically, whether tires for lawn and garden vehicles are classifiable as tires of a kind used on agricultural vehicles, and whether such tires are parts of agricultural machinery pursuant to subheading 9817.00.60.

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

The HTSUS provisions under consideration are as follows:

4011:	New pneumatic tires, of rubber:
	Other:
4011.92.00:	Of a kind used on agricultural or forestry vehicles and machines . . .
4011.99:	Other:
4011.99.85:	Other . . .
	* * * *
9817.00.60:	Parts to be used in articles provided for in headings 8432, 8433, 8434 and 8436, whether or not such parts are principally used as parts of such articles and whether or not covered by a specific provision within the meaning of additional U.S. rule of interpretation 1(c) .
	* * * * *

Additional U.S. Rule of Interpretation 1(b) states:

A tariff classification controlled by the actual use to which the imported goods are put in the United States is satisfied only if such use is intended at the time of importation, the goods are so used and proof thereof is furnished within 3 years after the date the goods are entered;

Note 1 to Section XVI provides, in pertinent part, as follows:

This section does not cover:

(a) Transmission, conveyor or elevator belts or belting, of plastics of chapter 39, or of vulcanized rubber (heading 4010); or other articles of a kind used in machinery or mechanical or electrical appliances or for other technical uses, of vulcanized rubber other than hard rubber (heading 4016);

* * * * *

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

The General Explanatory Note to Section XVI provides, in pertinent part, as follows:

The Section **does not**, however, **cover** :

(a) Transmission or conveyor belts or belting, of plastics (**Chapter 39**); articles of unhardened vulcanised rubber (e.g., transmission or conveyor belts or belting) (**heading 40.10**), rubber tyres, tubes, etc. (**headings 40.11 to 40.13**) and washers, etc. (**heading 40.16**).

The EN to heading 8432, HTSUS, provides, in pertinent part:

This heading covers machines, whatever their mode of traction, used in place of hand tools, for one or more of the following classes of agricultural, horticultural or forestry work, viz.:

- (I) Preparing the soil for cultivation (clearing, breaking, tilling, ploughing, loosening, etc.).
- (II) Spreading or distributing fertilisers, including manure, or other products to improve the soil.
- (III) Planting or sowing.
- (IV) The working or maintenance of the soil during the growing period (hoeing, weeding, cleaning etc.).

* * * * *

At GRI 1, there is no dispute that the instant merchandise is classifiable in heading 4011, HTSUS, as new pneumatic tires of rubber. At issue is the proper eight-digit classification, which requires the application of GRI 6. GRI 6 requires that the GRI's be applied at the subheading level on the understanding that only subheadings at the same level are comparable.

Protestant claims classification of the instant tires in subheading 4011.92.00, HTSUS, as tires of a kind used on agricultural machines. Protestant argues that horticulture is a subcategory of agriculture, and therefore that mowers, as horticultural machinery, should also be considered agricultural machinery.

The term "agriculture" is not defined in the HTSUS or the Explanatory Notes. When a tariff term is not defined by the HTSUS or the legislative history, its correct meaning is its common, or commercial, meaning. *See Rocknel Fastener, Inc. v. United States*, 267 F.3d 1354, 1356 (Fed. Cir. 2001). The court has stated on many occasions that "[t]o ascertain the common meaning of a term, a court may consult 'dictionaries, scientific authorities, and other reliable information sources' and 'lexicographic and other materials.'" *Id.* The Merriam Webster Dictionary Online defines "agriculture" as "the science, art, or practice of cultivating the soil, producing crops, and raising livestock and in varying degrees the preparation and marketing of the resulting products: *farming*." *See* <http://www.merriam-webster.com/dictionary/agriculture>.

In addition, in *United States v. Boker & Co.*, 6 Ct. Cust. 243 (1915), the Court of Customs Appeals (the predecessor to the Court of Appeals for the Federal Circuit) construed the word “agriculture” to include only that which provides the substantial requirements of life and comfort:

While, therefore, “agriculture” in its broad application may extend into and include elements of horticulture, viticulture, arbor culture, and other allied industries and pursuits, in its primary significance it extends to and embraces only those parts of all such as pertain to human and incidental animal subsistence--the substantial requirements of life (food) and possibly man’s comfort (raiment), and not the merely pleasurable pursuits; the necessities and not the essentially pleasurable or ornamental.

United States v. Boker & Co., 6 Ct. Cust. 243 at 244–245.

Pursuant to the above definition, CBP has consistently held that the uses to which the instant tires are put, namely grooming and caring for lawns, are not considered agricultural pursuits because they do not provide for the substantial requirements of life and comfort but rather lead to the production of that which is essentially pleasurable or ornamental. See e.g., HQ 557232, dated September 28, 1993. CBP has thus declined to classify vehicles such as lawn mowers and tractors with multiple attachments for mowers, snow cleaners, harvesting, etc., as agricultural machinery. See HQ 956372, dated March 14, 1995; HQ 957627, dated July 25, 1995.

Furthermore, we note that “agricultural” and “horticultural” are specifically and separately referenced in the HTSUS, indicating that horticulture is not, for tariff purposes, simply a subset of agriculture. Heading 8432, HTSUS, for example, provides for “Agricultural, horticultural or forestry machinery.”¹ Subheading 8424.81, HTSUS, similarly provides for, in pertinent part, other agricultural or horticultural appliances. While horticulture and agriculture may overlap, they are considered to constitute distinct activities in the HTSUS.

We also note that agricultural machinery is specifically provided for in heading 8432, HTSUS, as “agricultural...machinery for soil preparation or cultivation...,” while grass mowers and mowers for lawns, parks and sports grounds are specifically provided for in a separate heading, 8433, HTSUS, as “grass or hay mowers.” The existence of a separate and specific provision for lawn mowers is clear evidence that they are not considered agricultural machinery. Similarly, the U.S. Tire and Rim Association (TRA), the standardizing body for the tire, rim, valve and allied parts industry for the United States, groups agricultural and lawn and garden tires into separate categories; in the Tire and Rim Association Yearbook, specifications and standards for agricultural tires are located in the Agricultural section, while standards for Lawn and Garden tires are placed in the Industrial section. See U.S. Tire and Rim Association 2009 Yearbook.

Lawn or garden care and agricultural work thus constitute separate, distinct activities under the HTSUS. We now examine the use to which the instant tires are put. Subheading 4011.69.00, HTSUS, is a “principal use” provision governed by Additional U.S. Rule of Interpretation 1(a), HTSUS, which provides that:

¹ Furthermore, the Explanatory Note to heading 8432, HTSUS, lists the activities which are considered agricultural *or* horticultural pursuits; lawn care is not included.

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

The Court of International Trade in *Group Italglass, U.S.A., Inc. v. United States*, 839 F. Supp. 866 (Ct. Int'l Trade 1993) stressed "that it is the principal use of the class or kind of good to which the imports belong and not the principal use of the specific imports that is controlling under the Rules of Interpretation." *Group Italglass*, 839 F. Supp. at 867.

The courts have provided factors, which are indicative, but not conclusive, to apply when determining whether merchandise falls within a particular class or kind. These include: general physical characteristics, the expectation of the ultimate purchaser, channels of trade, environment of sale (accompanying accessories, manner of advertisement and display), use in the same manner as merchandise which defines the class, economic practicality of so using the import, and recognition in the trade of this use. See *United States v. Carborundum Company*, 63 CCPA 98, C.A.D. 1172, 536 F. 2d 373 (1976), cert. denied, 429 U.S. 979 (1976). See also *Lennox Collections v. United States*, 20 C.I.T. 194, 196 (1996).

It is not in dispute that the instant tires are principally used with lawn mowers. Protestant notes that the tires are manufactured to the specifications of original equipment manufacturers for lawn mowers, such as John Deere, and that these specifications (size, shape and tread type) dedicate their use only on lawn mowers. Protestant further asserts that the tires it imports are assembled into lawn mower wheel assemblies and are sold only to lawn mower manufacturers or distributors or retailers of lawn mowers, as replacement tires for lawn mowers. The lawn mower tires imported by the Protestant are described only as lawn mower tires on the marketing material, including, Protestant asserts, in communications with buyers. Furthermore, Protestant asserts that the instant tires are suitable solely for lawn mowing, and not for any other pursuit. This is supported by the separate categorization of the two types of tires by the TRA, and also by the vastly different average specifications for agricultural and lawn and garden tires. The 2009 TRA Yearbook reveals vast differences in tire size and load ratings for lawn and garden tires versus agricultural tires. For example, the maximum load limit listed for lawn and garden tires in the yearbook is 2680 lbs. @10mph at the highest inflation pressure; for agricultural tires, e.g., tires for use on agricultural harvesting equipment, the maximum load limit is over 25,000 lbs. @10mph. The maximum load limit of the instant tires is 1340 lbs. While some overlap with lawn and garden tires in terms of size and load ratings exists at the lower end of the range for agricultural tires, on average agricultural tires are larger and designed to carry higher loads.

The tires at issue are thus of a kind principally used on lawn and garden tractors. Lawn and garden vehicles are not used for raising livestock, cultivating the soil, or raising crops. They are used to groom and care for lawns, which is an ornamental purpose. As such, tires for lawn and garden vehicles are not of a kind used on agricultural vehicles or machinery and are thus not classified in subheading 4011.92.00, HTSUS. As the tires at issue do not have a herring-bone tread they are classified in subheading 4011.99.85, HTSUS, as "other" pneumatic tires.

Protestant presents an alternative claim for duty free treatment under the special classification provision of subheading 9817.00.60, HTSUS, an actual use provision provided for in Additional U.S. Rule of Interpretation 1(b). Subheading 9817.00.60, HTSUS, provides for parts to be used in articles provided for in heading 8433, HTSUS. However, tires are not classifiable as parts of any machine of Section XVI, regardless of use, pursuant to Note 1(a) to that Section, which excludes articles of vulcanized rubber used in machinery or mechanical appliances from classification in that Section. The General EN to Section XVI further clarifies that this exclusion applies to rubber tires classified in heading 4011, HTSUS. While subheading 9817.00.60 notes that articles normally excluded from classification as parts by AUSRI 1(c) may still be covered by this subheading if actually used as parts, this exception does not extend to Section XVI Note 1(a).

Because classification in subheading 9817.00.60 is not met, Additional U.S. Rule of Interpretation 1(b) is not implicated.

HOLDING:

By application of GRI 1, the lawn and garden tires imported by Monitor Manufacturing Corp. are classified in heading 4011, HTSUS, specifically subheading 4011.99.85, HTSUS, which provides for “New pneumatic tires, of rubber: Other: Other: Other.” The 2010 column one, general rate of duty is 3.4% *ad valorem* duty.

You are instructed to deny the protest in full. In accordance with Sections IV and VI of the CBP *Protest/Petition Processing Handbook* (HB 3500–08A, December 2007, pp. 24 and 26), you are to mail this decision, together with the Customs Form 19, to the protestant no later than 60 days from the date of this letter. Any reliquidation of the entry in accordance with the decision must be accomplished prior to mailing of the decision. Sixty days from the date of the decision the Office of Regulations and Rulings will make the decision available to CBP personnel, and to the public on the CBP Home Page on the World Wide Web at www.cbp.gov, by means of the Freedom of Information Act, and other methods of public distribution.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

[ATTACHMENT B]

HQ H264768

CLA-2 OT:RR:CTF:CPM H264768 CkG

CATEGORY: Classification

TARIFF NO: 4011.90.80, 9817.00.60

MYRON PAUL BARLOW, Esq.
BARLOW & Co, LLC
550 M RITCHIE HIGHWAY, #114
SEVERNA PARK, MD 21146

RE: Revocation of HQ H156538; classification of tires for lawn mowers

DEAR MR. BARLOW,

This is in reference to Headquarters Ruling Letter (HQ) H156538, issued to the Port Director in Atlanta, Georgia on June 13, 2012. HQ H156538 was issued in response to the Application for Further Review of Protest No. 1704-10-100242 filed on behalf of Monitor Manufacturing Corp. (“Protestant”). In HQ H156538, CBP determined that 97 entries of tires for lawn mowers were classified in subheading 4011.99.85, Harmonized Tariff Schedule of the United States (HTSUS), as “other” pneumatic tires, of rubber. Since the issuance of that ruling, Customs and Border Protection (CBP) has reviewed the classification of these items and has determined that the cited ruling is in error.

HQ H156538 is a decision on a specific protest. A protest is designed to handle entries of merchandise which have entered the U.S. and been liquidated by CBP. A final determination of a protest, pursuant to Part 174, Customs Regulations (19 CFR 174), cannot be modified or revoked as it is applicable only to the merchandise which was the subject of the entry protested. Furthermore, CBP lost jurisdiction over the protested entries in HQ H156538 when notice of disposition of the protest was received by the protestant. See, *San Francisco Newspaper Printing Co. v. U.S.*, 9 CIT 517, 620 F. Supp. 738 (1935). However, CBP can modify or revoke a protest review decision to change the legal principles set forth in the decision. Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103-182, 107 Stat. 2057), 60 days after the date of issuance, CBP may propose a modification or revocation of a prior interpretive ruling or decision by publication and solicitation of comments in the CUSTOMS BULLETIN. This modification will not affect the entries which were the subject of Protest 1704-10-100242, but will be applicable to any entries of similar merchandise made 60 days after publication of the final notice of revocation in the CUSTOMS BULLETIN.

FACTS:

At issue are 31 models of tires for use on lawn mowers, of the following four styles: Kenda K358 Turf Rider, Kenda K401, Kenda K404, and the Kenda Super Turf K500. The tires are designed for low speed (normally 10 mph or less) turf application, and range in size from 13 to 24 inches in diameter, with a maximum load limit of 1340 lbs.

ISSUE:

3. Whether the subject tire styles are classified in subheading 4011.70.00, HTSUS, as tires of a kind used on agricultural or forestry vehicles and machines, or in subheading 4011.90.00, HTSUS, as other tires.

4. Whether the subject tires are subject to the special duty provision of subheading 9817.00.60, as parts of a machine of heading 8433, HTSUS.

LAW AND ANALYSIS:

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

The 2017 HTSUS provisions under consideration¹ are as follows:

4011:	New pneumatic tires, of rubber:
4011.70.00:	Of a kind used on agricultural or forestry vehicles and machines
4011.90:	Other:
4011.90.10:	Having a herring-bone or similar tread...
4011.90.20:	Radial...
4011.90.80:	Other...
	* * * *
9817.00.60:	Parts to be used in articles provided for in headings 8432, 8433, 8434 and 8436, whether or not such parts are principally used as parts of such articles and whether or not covered by a specific provision within the meaning of additional U.S. rule of interpretation 1(c) .
	* * * * *

Additional U.S. Rule of Interpretation 1(b) states, in pertinent part:

(b) A tariff classification controlled by the actual use to which the imported goods are put in the United States is satisfied only if such use is intended at the time of importation, the goods are so used and proof thereof is furnished within 3 years after the date the goods are entered;

U.S. Note 2(t) to Subchapter XVII of Chapter 98, Section XXII provides:

2. The provisions of headings 9817.00.50 and 9817.00.60 do not apply to:

(t) Articles provided for in subheadings 8419.81.50, 8419.81.90, 8427.10, 8427.20, 8427.90 and 8431.20, headings 8432, 8433 and 8434, subheadings 8435.10 and 8435.90, heading 8436, subheadings 8438.80, 8468.10, 8472.90.40 and 8479.89, subheadings 8482.10.10 through 8482.99.65 (other than subheading 8482.91) and subheadings 8483.10.50 and 8487.10

¹ Due to changes in the 2017 HTSUS, the relevant tariff provisions under heading 4011 for, *inter alia*, tires of a kind used on agricultural vehicles and machines and “other” tires, have been changed. Specifically, subheading 4011.92.00 is now subheading 4011.70.00, and subheading 4011.99.85 is now subheading 4011.90.80.

* * * * *

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

The General Explanatory Note to Section XVI provides, in pertinent part, as follows:

The Section **does not**, however, **cover**:

(a) Transmission or conveyor belts or belting, of plastics (Chapter 39); articles of unhardened vulcanised rubber (e.g., transmission or conveyor belts or belting) (heading *40.10*), rubber tyres, tubes, etc. (headings *40.11* to *40.13*) and washers, etc. (heading *40.16*).

The EN to heading 8433 provides, in pertinent part, as follows:

This heading covers machines used in place of hand tools, for the mechanical performance of the following operations:

- (A) Harvesting of agricultural crops (e.g., reaping, croplifting, gathering, picking, threshing, binding or bundling). Hay or grass mowers, and straw or fodder balers are also included in this heading.
- (B) Machines for cleaning, sorting or grading eggs, fruit or other agricultural produce, **other than** machinery of heading 84.37.

The provisions of Explanatory Note to heading 84.32 apply, *mutatis mutandis*, to this heading.

The EN to heading 8432, HTSUS, provides, in pertinent part:

This heading covers machines, whatever their mode of traction, used in place of hand tools, for one or more of the following classes of agricultural, horticultural or forestry work, viz.:

- (I) Preparing the soil for cultivation (clearing, breaking, tilling, ploughing, loosening, etc.).
- (II) Spreading or distributing fertilisers, including manure, or other products to improve the soil.
- (III) Planting or sowing.
- (III) The working or maintenance of the soil during the growing period (hoeing, weeding, cleaning etc.).

* * * * *

In HQ H156538, CBP determined that the instant tires were properly classified in subheading 4011.99.85 (now subheading 4011.90.80, HTSUS), as "other" pneumatic tires, and not, as protestant claimed, in subheading 4011.92.00 (now subheading 4011.70.00, HTSUS), as tires of a kind used on agricultural machines. As discussed in HQ H156538, the tires at issue are of a kind principally used on lawn and garden tractors. Lawn and garden vehicles are not used for raising livestock, cultivating the soil, or raising crops. They are used to groom and care for lawns, which is an ornamental purpose. As such, tires for lawn and garden vehicles are not of a kind used on

agricultural vehicles or machinery and are thus not classified in subheading 4011.70.00, HTSUS. As the tires at issue do not have a herring-bone tread they are classified in subheading 4011.90.80, HTSUS, as “other” pneumatic tires.

In HQ H156538, Protestant also presented an alternative claim for duty free treatment under the special classification provision of subheading 9817.00.60, HTSUS, an actual use provision provided for in Additional U.S. Rule of Interpretation 1(b). Subheading 9817.00.60, HTSUS, provides for parts to be used in articles provided for in heading 8433, HTSUS. CBP determined in HQ H156538 that the conditions of subheading 9817.00.60 were not met with respect to the instant articles, because they were not classifiable as parts of heading 8433, HTSUS. We have reconsidered this decision, and have determined that it was in error.

CBP requires that in order for an article to be classified in subheading 9817.00.60, it must satisfy the following three-part test²:

- 1) The article must not be among the long list of exclusions to heading 9817.00.50 or 9817.00.60 under Section XVII, Chapter 98, Subchapter XVII, U.S. Note 2³
- 2) The terms of subheading 9817.00.60 must be met in accordance with GRI 1; and
- 3) The merchandise must meet the actual use conditions required in accordance with sections 10.131-10.139 of the Customs Regulations (19 CFR §§10.131-10.139).

A good must satisfy each part of the test. If a good fails any part of the test, then it is treated according to its primary classification.

Articles provided for in heading 8433 are excluded from subheading 9817.00.60 pursuant to U.S. Note 2(t) to Subchapter XVII of Chapter 98. While the instant tires could be considered parts of an article of heading 8433, HTSUS, the exclusion in Note 2(t) refers only to “articles” and not “parts”, and the primary classification of the tires is not in heading 8433. Therefore, the lawn mower tires at issue do not fall within the exclusions enumerated in Section XXII, Chapter 98, Subchapter XVII, U.S. Note 2, and thus satisfy the first part of the test.

The instant tires also satisfy the terms of subheading 9817.00.60, which has two parts to it: the article under consideration must 1) qualify as a part; 2) to be used with an article of headings 8432, 8433, 8434, or 8436. With respect to the first part of the subheading, a part must be either: an integral, constituent, or component part, without which the article to which it is to be joined, could not function as such article (see *United States v. Willoughby Camera Stores*), or it must be dedicated solely for use with another article (see *United States v. Pompeo (Pompeo)*). In this case, the instant tires are both integral parts without which the lawn mowers could not function, and they are dedicated solely or principally for use with the lawn mowers. Although they would not be classified as parts in heading 8433 due to Additional Rule of Interpretation 1(c) and Note 1(a) to Section XVI, if the tires satisfy the

² See e.g., HQ 086211, dated March 24, 1990; HQ 950216 December 19, 1991; HQ H009832, dated January 16, 2009

³ If the primary classification of an article is within one of the provisions enumerated in Note 2, it has failed the first part of the test.

three part test articulated above, they are classified in subheading 9817.00.60 even if they would otherwise be excluded from classification in heading 8433, HTSUS.

As regards the second part of subheading 9817.00.60, lawn mowers are provided for in heading 8433, HTSUS, and therefore the lawn mower tires are parts to be used in an article provided for in heading 8433, HTSUS.

Finally, the protestant has also provided evidence that the instant lawn mower tires satisfy the actual use criteria required in accordance with sections 10.131-10.139 of the Customs Regulations (19 CFR §§10.131-10.139), so the third part of the three-part test above is satisfied.

In conclusion, the instant lawn mower tires are eligible for duty free treatment under subheading 9817.00.60, HTSUS.

HOLDING:

The Kenda K358 Turf Rider, Kenda K401, Kenda K404, and the Kenda Super Turf K500 tires are eligible for duty free treatment under subheading 9817.00.60, HTSUS, which provides for “Parts to be used in articles provided for in headings 8432, 8433, 8434 and 8436, whether or not such parts are principally used as parts of such articles and whether or not covered by a specific provision within the meaning of additional U.S. rule of interpretation 1(c).”

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 <http://www.usitc.gov/tata/hts/>.

EFFECT ON OTHER RULINGS:

H156538, dated June 13, 2012, is hereby revoked.

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

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

cc: U.S. Customs and Border Protection
Port of Atlanta
4341 International Parkway
Suite 600
Atlanta, GA 30354
Attn: Aineda Hanxard

DEPARTMENT OF THE TREASURY**RIN 1515–AE25****PROCEDURES TO ADJUST CUSTOMS COBRA USER FEES
TO REFLECT INFLATION**

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

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the U.S. Customs and Border Protection (CBP) regulations to reflect that customs user fees and limitations established by the Consolidated Omnibus Budget Reconciliation Act (COBRA) will be adjusted for inflation in accordance with the Fixing America’s Surface Transportation Act (FAST Act).

DATES: Comments must be received on or before August 16, 2017.

ADDRESSES: You may submit comments, identified by docket number, by one of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments via docket number US-CBP–2017–0025.

Mail: Trade and Commercial Regulations Branch, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, 90 K Street NE., 10th Floor, Washington, DC 20229–1177.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Participation” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Submitted comments may also be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Trade and Commercial Regulations Branch, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, 90 K Street NE., 10th Floor, Washington, DC Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Jeffrey Caine, Executive Director—Budget, 202–325–4054, jeffrey.caine@cbp.dhs.gov; or Bruce Ingalls, Director—Revenue Division, 317–298–1107, bruce.ingalls@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION:

Background

On December 4, 2015, the Fixing America’s Surface Transportation Act (FAST Act, Pub. L. 114–94) was signed into law. Section 32201 of the FAST Act amends section 13031 of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985 (19 U.S.C. 58c) by requiring certain customs COBRA user fees and corresponding limitations to be adjusted by the Secretary of the Treasury (“Secretary”) to reflect certain increases in inflation. The specific fees and corresponding limitations to be adjusted for inflation are set forth in Tables 1 and 2 below and include the commercial vessel arrival fees, commercial truck arrival fees, railroad car arrival fees, private vessel arrival fees, private aircraft arrival fees, commercial aircraft passenger arrival fees, dutiable mail fees, customs broker permit user fees, barges and other bulk carriers arrival fees, and merchandise processing fees as well as the corresponding limitations. (19 U.S.C. 58c(a) and (b)). Further, the FAST Act includes a particular measure of inflation for these purposes and special rules when considering adjustments.

According to the FAST Act, the customs COBRA user fees and limitations were to be adjusted on April 1, 2016, and by the end of each fiscal year to reflect the percent increase (if any) in the Consumer Price Index (CPI) for the preceding 12-month period compared to the CPI for fiscal year 2014. The statute permits the Secretary to ignore any CPI increase of less than one (1) percent from the time of the previous adjustment. As a result, if the increase in the CPI since the previous adjustment is less than one (1) percent, the Secretary has discretion to determine whether the fees should be adjusted.

On June 15, 2016, CBP published a notice in the *Customs Bulletin* announcing the April 2016 determination that no adjustment to the customs COBRA user fees and limitations was necessary based on the FAST Act provision as the increase of the CPI was less than one (1) percent. (*Customs Bulletin*, Vol. 50, No. 24, p. 13). CBP published a second notice in the *Customs Bulletin* on December 7, 2016, announcing that based on a less than one (1) percent increase in inflation no adjustment was necessary for fiscal year 2017. (*Customs Bulletin* Vol. 50, No. 49, p. 4).

The FAST Act specifies that the customs COBRA user fees and corresponding limitations should be adjusted to reflect the percentage of the increase (if any) in the average of the CPI for the preceding 12-month period compared to the CPI for fiscal year 2014. CBP has determined that the 12-month period for comparison will be June through May. This timeframe will allow for sufficient notice to the public of any adjustments prior to any changes becoming effective for each fiscal year. The statute further requires the Secretary to round the amount of any increase in the CPI to the nearest dollar. The rounding requirement applies to the difference in the CPI from the comparison year to the current year when determining whether an adjustment is necessary. The rounding requirement does not apply to the fee amount resulting from any adjustment. As noted above, if the difference in the CPI since the last adjustment is less than one (1) percent, the Secretary may elect not to adjust the fees and limitations. CBP proposes to use the Consumer Price Index—All Urban Consumers, U.S. All items, 1982–84 (CPI-U) which can be found on the U.S. Department of Labor, Bureau of Labor Statistics Web site: www.bls.gov/cpi/. CBP's Office of Finance will determine annually whether an adjustment to the fees and limitations is necessary and a notice specifying the amount of the fees and limitations will be published in the **Federal Register** for each fiscal year at least 30 days prior to the effective date of the new fees and limitations.

Explanation of Amendments

Part 24

Part 24 of Title 19 of the Code of Federal Regulations (CFR) sets forth the regulations regarding customs financial and accounting procedures. (19 CFR part 24). Section 24.22 describes the customs COBRA user fees and corresponding limitations for certain services (set forth in Table 1 below), which include the commercial vessel arrival fees, commercial truck arrival fees, railroad car arrival fees, private vessel arrival fees, private aircraft arrival fees, commercial aircraft passenger arrival fees, dutiable mail fees, customs broker permit user fees, barges and other bulk carriers arrival fees. (19 CFR 24.22). Section 24.23 describes the customs COBRA user fees and corresponding limitations for processing merchandise (set forth in Table 2 below). (19 CFR 24.23). CBP proposes to amend sections 24.22 and 24.23 to reflect the new requirements set forth in the FAST Act.

Specifically, CBP proposes to add a new specific authority citation for section 24.22 and to amend the specific authority citation for section 24.23 to include the American Jobs Creation Act of 2004 (Pub. L. 108–357) and the FAST Act. In addition, CBP proposes to add an

introductory paragraph to both sections explaining that the COBRA user fees and corresponding limitations are subject to adjustment annually to reflect the increase, if any, in the CPI-U pursuant to the FAST Act. The new introduction will also explain where to find the methodology that CBP will use to determine whether an adjustment to the fees and limitations is necessary as well as the means of notice and publication of any fee adjustments. CBP will announce the adjusted fee and limitation amounts by publishing a notice in the **Federal Register** annually for each fiscal year at least 30 days prior to the effective date of the new fees and limitations. The current amount for all customs COBRA user fees and corresponding limitations will be maintained on the CBP Web site at *www.cbp.gov*.

Proposed Amendments to § 24.22

CBP proposes to amend paragraphs (b)(1)(i), (b)(1)(ii), (b)(2)(i), (b)(2)(ii), (c)(1), (c)(2), (c)(3), (d)(1), (d)(2), (d)(3), (e)(1), (e)(2), (f), (g)(1)(i), (g)(1)(ii), (g)(2), (g)(5)(v), (i)(7), (i)(8) and (h) of section 24.22 to explain that the specific fee amounts and annual fee limitations (set forth in Table 1 below) are subject to adjustment in accordance with the terms in a new paragraph (k). (19 CFR 24.22). The new paragraph (k) will set forth the methodology for determining whether and by what amount the customs COBRA user fees should be adjusted pursuant to the FAST Act.

Table 1 below lists both the user fees and corresponding limitations currently set forth in section 24.22. (19 CFR 24.22). CBP proposes to add this table to the regulations as Appendix A to part 24.

TABLE 1—CUSTOMS COBRA USER FEES AND LIMITATIONS
IN 19 CFR 24.22

19 U.S.C. 58c	19 CFR 24.22	Customs COBRA user fee/ limitation	FY14 Base fee/ limitation (subject to adjustment in accordance with the FAST Act)
(a)(1)	(b)(1)(i).....	Fee: Commercial Vessel Arrival Fee	\$437
(b)(5)(A)	(b)(1)(ii)	Limitation: Calendar Year Maximum for Commercial Vessel Arrival Fees.	5,955
(a)(8)	(b)(2)(i).....	Fee: Barges and Other Bulk Carriers Arrival Fee	110

(b)(6)	(b)(2)(ii)	Limitation: Calendar Year Maximum for Barges and Other Bulk Carriers Arrival Fees.	1,500
(a)(2)	(c)(1)	Fee: Commercial Truck Arrival Fee	5.50
(b)(2)	(c)(2) and (3) ..	Limitation: Commercial Truck Calendar Year Prepayment Fee	100
(a)(3)	(d)(1)	Fee: Railroad Car Arrival Fee	8.25
(b)(3)	(d)(2) and (3) ..	Limitation: Railroad Car Calendar Year Prepayment Fee	100
(a)(4)	(e)(1) and (2) ..	Fee and Limitation: Private Vessel or Private Aircraft First Arrival/Calendar Year Prepayment Fee.	27.50
(a)(6)	(f)	Fee: Dutiable Mail Fee	5.50
(a)(5)(A)	(g)(1)(i)	Fee: Commercial Vessel or Commercial Aircraft Passenger Arrival Fee	5.50
(a)(5)(B)	(g)(1)(ii)	Fee: Commercial Vessel Passenger Arrival Fee (from Canada, Mexico, one of the territories and possessions of the United States, or one of the adjacent islands).	1.93
(a)(7)	(h)	Fee: Customs Broker Permit User Fee	138

CBP also proposes to amend paragraph (c) to clarify that there are two distinct fees that the current regulations describe as one fee. First, the CBP commercial truck arrival fee (currently \$5.50) and second the Animal and Plant Health Inspection Service/ Agricultural Quarantine Inspection (APHIS/AQI) fee (currently \$7.55) that CBP collects on behalf of APHIS. (19 CFR 24.22(c)). Specifically, CBP proposes to revise the header and the text in paragraph (c)(1) to state that there are two fees and to state in paragraph (c)(2) that the annual limitation on the CBP portion of the commercial truck arrival fee is \$100 once a prepayment in that amount is made. (19 CFR 24.22(c)).

In addition, CBP proposes to make technical updates to paragraph (g) to reflect the elimination of the user fee exemption for passengers arriving from Canada, Mexico or one of the adjacent islands pursuant to the United States-Colombia Trade Promotion Agreement Implementation Act. (Colombia TPA, Pub. L. 112-42, October 21, 2011). Section 601 of the Colombia TPA amended 19 U.S.C. 58c(b)(1)(A)(i) to

limit the fee exemption to passengers whose journey originated in a territory or possession of the United States, or originated in the United States and was limited to the territories and possessions of the United States. (19 U.S.C. 58c(b)(1)(A)(i)). CBP has been collecting the non-exempt user fees since the law became effective on November 5, 2011. CBP proposes corresponding updates to remove this exemption from the regulations found in paragraphs (g)(1)(i), (g)(1)(i)(A), (g)(1)(i)(B), (g)(1)(ii), (g)(1)(iii), the chart in paragraph (g)(2)(iv), and the collection procedures in paragraphs (g)(4)(ii)(A), (g)(4)(ii)(B), (g)(4)(ii)(C), (g)(4)(iii)(A), (g)(4)(iii)(B), and (g)(4)(iii)(C). (19 CFR 24.22(g)). CBP also proposes to remove the definition of “adjacent islands” from paragraph (g)(1)(iii) as references to adjacent islands have been removed from paragraph (g). (19 CFR 24.22(g)). Additionally, CBP proposes an amendment to paragraph (g)(2)(iii) to clarify that journeys between ports in the United States are not subject to the fee. (19 CFR 24.22(g)(2)(iii)).

CBP also proposes to amend paragraph (h) of section 24.22 by changing the name of the fee from broker permit fee to broker permit user fee and specifying the fee amount of \$138. (19 CFR 24.22(h)). Finally, CBP proposes to amend paragraph (h) by removing the cross-reference to section 111.96(c) and replacing it with a reference to new paragraph (k). (19 CFR 24.22(h) and 111.96(c).)

A new paragraph (k) is added setting forth the methodology to determine whether adjustments of fee and limitation amounts are necessary, and if so, how to calculate the adjustments. CBP will determine annually whether an adjustment to the fees and limitations is necessary and a notice specifying the amount of the fees and limitations will be published in the **Federal Register** annually for each fiscal year at least 30 days prior to the effective date of the new fees and limitations.

Steps for Adjusting Fees and Limitations

CBP proposes to use the following methodology in determining whether adjustment of the fees and corresponding limitations is necessary and, if so, by how much the amounts would be adjusted.

Step 1: Calculate the arithmetic average of the Consumer Price Index—All Urban Consumers, U.S. All items, 1982–84 = 100 (CPI-U) for the current year based on the most recent June–May period. This figure is referred to as (A).

Step 2: Use the figure 236.009 which is the arithmetic average of the CPI-U for FY 2014. This figure is referred to as (B).

Step 3: State the arithmetic average of CPI-U for the comparison year, which will be either (B) if the fees have never been adjusted in accordance with this paragraph (k), or the arithmetic average of the CPI-U for the last year in which fees were adjusted in accordance with this paragraph (k) (as set forth in the **Federal Register** notice that last adjusted the fee). This figure is referred to as (C).

Step 4: Calculate the difference between the arithmetic averages of the CPI-U of the comparison year (C) and the current year (A). This difference is referred to as (D). $(D) = (A) - (C)$.

Step 5: Round the difference (D) to the nearest whole number. This figure is referred to as (E).

Step 6: Calculate the percentage change in the arithmetic averages of the CPI-U of the comparison year (C) and the current year (A), which is referred to as (F). $(F) = ((E) \div (C)) \times 100\%$.

Step 7: If (F) is one (1) percent or more, proceed to the next step (8). If (F) is less than one (1) percent, no adjustment will be made.

Step 8: Calculate the difference in the arithmetic average of the CPI-U between the current year (the most recent June through May period) and the base year (FY 2014). This difference is referred to as (G). $(G) = (A) - (B)$.

Step 9: Calculate the percentage change in the CPI-U from the base year to the current year. This figure is referred to as (J). $(H) = ((G) \div (B)) \times 100\%$.

Step 10: Increase the fees and limitations that are subject to the rules of this paragraph by (H), calculating fees to the second decimal.

Proposed Amendments to § 24.23

In section 24.23, CBP proposes to amend paragraphs (b)(1)(i)(A), (b)(1)(i)(B), (b)(1)(ii), (b)(2)(i), (b)(2)(ii), (b)(2)(iii) and (b)(4) to add a reference to explain that the specific fee amounts and annual fee limitations (set forth in Table 2 below) are subject to adjustment in accordance with the terms in new paragraph (k) of section 24.22. (19 CFR 24.23(b).) Table 2 below indicates the customs COBRA user fees and corresponding limitations currently set forth in section 24.23. (19 CFR 24.23). CBP proposes to add this table to the regulations as Appendix B to part 24.

**TABLE 2—CUSTOMS COBRA USER FEES AND LIMITATIONS
IN 19 CFR 24.23**

19 U.S.C. 58c	19 CFR 24.23	Customs COBRA user fee/ limitation	FY14 Base fee/ limitation (subject to adjustment in accordance with the FAST Act)
(b)(9)(A) (ii)	(b)(1)(i)(A).....	Fee: Express Consignment Carrier/Centralized Hub Facility Fee, Per Individual Waybill/Bill of Lading Fee.	\$1
(b)(9)(B)(i).....	(b)(1)(i)(B)(2) ..	Limitation: Minimum Express Consignment Carrier/Centralized Hub Facility Fee.	0.35
(b)(9)(B)(i).....	(b)(1)(i)(B)(2) ..	Limitation: Maximum Express Consignment Carrier/Centralized Hub Facility Fee.	1
(a)(9)(B)(i); (b)(8)(A)(i)....	(b)(1)(i)(B)(1) ..	Limitation: Minimum Merchandise Processing Fee	25
(a)(9)(B)(i); (b)(8)(A)(i)....	(b)(1)(i)(B)(1) ..	Limitation: Maximum Merchandise Processing Fee	485
(b)(8)(A)(ii)	(b)(1)(ii)	Fee: Surcharge for Manual Entry or Release	3
(a)(10)(C)(i).....	(b)(2)(i).....	Fee: Informal Entry or Release; Automated and Not Prepared by CBP Personnel.	2
(a)(10)(C)(ii) ...	(b)(2)(ii)	Fee: Informal Entry or Release; Manual and Not Prepared by CBP Personnel.	6
(a)(10)(C)(iii) ..	(b)(2)(iii)	Fee: Informal Entry or Release; Automated or Manual; Prepared by CBP Personnel.	9
(b)(9)(A)(ii)	(b)(4)	Fee: Express Consignment Carrier/Centralized Hub Facility Fee, Per Individual Waybill/Bill of Lading Fee.	1

The Merchandise Processing Fee (MPF) is comprised of an *ad valorem* rate, a minimum fee amount, and a maximum fee amount. Adjusting the minimum and maximum fee amounts for the MPF pursuant to the FAST Act will reflect any increase in inflation. The value of the merchandise—to which the rate applies—will necessarily

increase on its own along with inflation, obviating the need separately to adjust the rate specified in 19 CFR 24.23(b)(1)(i)(A).

In addition, CBP proposes to amend paragraph (b)(4) to include the statutory minimum and maximum limitations on the fees for express consignment carrier facilities or centralized hubs. (19 CFR 24.23(b).) The statute provides for adjustment of this fee from an amount not less than \$0.35 to an amount not more than \$1 per individual airway bill or bill of lading. (19 U.S.C.58c(b)(9)(B)(i).) These fee limitations are also subject to adjustment pursuant to the FAST Act and therefore, must also be annually adjusted for inflation, if necessary. To include this second set of maximum and minimum fees, CBP proposes to split paragraph (b)(4) into three new paragraphs: (i) For general provisions, (ii) to describe the maximum and minimum fees, and (iii) for quarterly payment requirements. (19 CFR 24.23(b)). New paragraph (b)(4)(iii) will also reflect that two electronic payment methods, Fedwire and *pay.gov*, are available for submitting quarterly payments.

The figure of \$2,000 found at 19 U.S.C. 58c(b)(9)(A) is neither a fee nor a limitation on a fee, but a reference to the allowable value for informal entries authorized pursuant to 19 U.S.C. 1498, that are subject to the fee established by 19 U.S.C. 58c(b)(9). It is not subject to the adjustment for inflation under the FAST Act. (19 U.S.C. 1498 was amended in 1993, and the merchandise value limitation on informal entries authorized by 19 U.S.C. 1498 was raised from \$2,000 to \$2,500.)

Part 111

CBP proposes conforming amendments to Part 111. (19 CFR part 111.) Specifically, CBP proposes to remove the specific amount of the annual customs broker permit user fee (\$138), found in paragraph (c) of section 111.19 and paragraph (c) of section 111.96, and add a reference to section 24.23(h) in section 111.96(c). (19 CFR 24.23(h), 111.19(c) and 111.96(c).)

Executive Orders 12866, 13563 and 13771

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule has not been designated a “significant

regulatory action,” under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has not reviewed this rule. Furthermore, because this rule is not significant, the rule is not subject to the requirements of Executive Order 13771, meaning it is not necessary for CBP to identify two existing regulations to repeal.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996, requires agencies to assess the impact of regulations on small entities. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

This rule will affect a combination of individuals and businesses. While most of the businesses that pay the customs COBRA user fees are large corporations, the rule affects all businesses that pay these fees, so this rule will affect a substantial number of small entities. However, the impact will be small and in line with inflation; for example, with 2% inflation the commercial truck fee will increase by 11 cents. Therefore, CBP certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3507) an agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB. This rule does not involve any collection of information.

Signing Authority

This regulation is being issued in accordance with 19 CFR 0.1(a)(1) pertaining to the Secretary of the Treasury’s authority (or that of his delegate) to approve regulations related to certain customs revenue functions.

List of Subjects

19 CFR Part 24

Accounting, Claims, Customs duties and inspection, Harbors, Reporting and recordkeeping requirements, Taxes.

19 CFR Part 111

Administrative practice and procedure, Brokers, Customs duties and inspection, Penalties, Reporting and recordkeeping requirements

Proposed Amendments to the CBP Regulations

For the reasons set forth in the preamble, parts 24 and 111 of title 19 of the Code of Federal Regulations (19 CFR parts 24 and 111) are proposed to be amended as set forth below.

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

■ 1. The general authority citation for part 24 continues to read as follows, the specific authority citation for § 24.22 is added, and the specific authority citation for § 24.23 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1505, 1520, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 3717, 9701; Pub. L. 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*).

* * * * *

Section 24.22 also issued under Sec. 892, Pub. L. 108–357, 118 Stat. 1418 (19 U.S.C. 58c); Sec. 32201, Pub. L. 114–94, 129 Stat. 1312 (19 U.S.C. 58c).

Section 24.23 also issued under 19 U.S.C. 3332; Sec. 892, Pub. L. 108–357, 118 Stat. 1418 (19 U.S.C. 58c); Sec. 32201, Pub. L. 114–94, 129 Stat. 1312 (19 U.S.C. 58c).

* * * * *

■ 2. In § 24.22:

■ a. Add a new introductory text before paragraph (a);

■ b. In paragraph (b):

■ i. Paragraph (b)(1)(i) is amended by adding the words “, as adjusted in accordance with the terms of paragraph (k) of this section,” after the words “amount of \$437”;

■ ii. Paragraph (b)(1)(ii) is amended by adding the words “, as adjusted in accordance with the terms of paragraph (k) of this section,” after the words “total of \$,5,955 in fees”;

■ iii. Paragraph (b)(2)(i) is amended by adding the words “, as adjusted in accordance with the terms of paragraph (k) of this section,” after the words “fee of \$110”; and

■ iv. Paragraph (b)(2)(ii) is amended by adding the words “, as adjusted in accordance with the terms of paragraph (k) of this section,” after the words “\$1,500 in fees”;

■ c. In paragraph (c):

■ i. Paragraphs (c)(1) and (c)(2) are revised; and

■ ii. Paragraph (c)(3) is amended by adding the words “of the \$100 CBP fee, as adjusted in accordance with the terms of paragraph (k) of this section, and the APHIS/AQI fee set forth in 7 CFR 354.3” between the words “Prepayment” and “must be made” in the second sentence;

■ d. In paragraph (d):

■ i. Paragraph (d)(1) is amended by adding the words “, as adjusted in accordance with the terms of paragraph (k) of this section,” after the words “fee of \$8.25”;

■ ii. Paragraph (d)(2) is amended by adding the words “, as adjusted in accordance with the terms of paragraph (k) of this section,” after the words “prepayment of \$100”; and

■ iii. Paragraph (d)(3) is amended by adding the words “, as adjusted in accordance with the terms of paragraph (k) of this section,” after the words “fee of \$100”;

■ e. In paragraph (e):

■ i. Paragraph (e)(1) is amended by adding the words, as adjusted in accordance with the terms of paragraph (k) of this section,” after the words “sum of \$27.50; and

■ ii. Paragraph (e)(2) is amended by adding the words “, as adjusted in accordance with the terms of paragraph (k) of this section” to the end of the first sentence after the word “section”;

■ f. Paragraph (f) is amended by adding the words “, as adjusted in accordance with the terms of paragraph (k) of this section” after the words “amount of \$5.50”;

■ g. In paragraph (g):

- i. Paragraphs (g)(1)(i)–(iii) are revised;
- ii. Paragraph (g)(2)(i) is amended by:
 - A. Removing the text “Canada, Mexico, any” between the words “means” and “territories”; and
 - B. Removing the text “, and any adjacent islands” after the words “United States”;
- iii. Paragraph (g)(2)(iii) is amended by adding the words “and/or the United States” after the words “Specified Location”;
- iv. The chart in paragraph (g)(2)(iv) is revised;
- v. Paragraph (g)(4)(ii)(A) is amended by:
 - A. Removing the words “in and arrives” between the words “originates” and “from”;
 - B. Removing the words “Canada, Mexico,” between the words “other than” and “one of the territories”; and
 - C. Removing the words “, or an adjacent island” from the end of the sentence;
- vi. Paragraphs (g)(4)(ii)(B) and (C) are revised;
- vii. Paragraph (g)(4)(iii)(A) is amended by:
 - A. Removing the words “from Canada, Mexico,” between the words “United States” and “one of the territories” and adding in their place the words “that originated in”; and
 - B. Removing the comma and the words “or an adjacent island” from the end of the paragraph;
- viii. Paragraph (g)(4)(iii)(B) is amended by:
 - A. Removing the words “and the return arrival to the United States is from Canada, Mexico, one of” between the words “United States” and “the territories” and adding in their place the words “and was limited to”; and
 - B. Removing the comma and the words “or an adjacent island” following the words “United States” at the end of the sentence;
- ix. Paragraph (g)(4)(iii)(C) is revised; and

- x. Paragraph (g)(5)(v) is amended by adding the words “, as adjusted in accordance with the terms of paragraph (k) of this section,” after the words “vessel passenger fee” in each place that they appear;
- h. Paragraph (h) is revised;
- i. In paragraph (i),
 - i. Paragraph (7) is amended by adding the words “, as adjusted in accordance with the terms of paragraph (k) of this section” after the words “commercial aircraft passengers”; and
 - ii. Paragraph (8) is amended by adding the words “, as adjusted in accordance with the terms of paragraph (k) of this section” after the words “commercial vessel passengers”; and
- j. A new paragraph (k) is added.

The revisions to § 24.22 read as follows:

§ 24.22 Fees for certain services.

This section sets forth the terms and conditions for when the fees and corresponding limitations for certain services are required. The specific customs user fee amounts and corresponding limitations that appear in this section are not the actual fees or limitations but represent the base year amounts that are subject to adjustment each fiscal year in accordance with the Fixing America’s Surface Transportation Act (FAST Act) using Fiscal Year 2014 as the base year for comparison. (*See* Appendix A to part 24 for a table setting forth the fees and limitations subject to adjustment along with the corresponding statutory authority, the regulatory citation, the name of the fee or limitation, and the Fiscal Year 2014 base amount which reflects the statutory amounts that were adjusted by the American Jobs Creation Act of 2004 (Pub. L. 108–357).) The methodology for adjusting the fees and limitations to reflect the percentage, if any, of the increase in the average of the Consumer Price Index—All Urban Consumers, U.S. All items, 1982–84 (CPI-U) for the preceding 12-month period (June through May) compared to the Consumer Price Index for fiscal year 2014 is set forth in paragraph (k) of this section. CBP will determine annually whether an adjustment to the fees and limitations is necessary and a notice specifying the amount of the fees and limitations will be published in the **Federal Register** annually for each fiscal year at least 30 days prior to the effective date of the new fees and limitations. The fees and the limitations will also be maintained for the public’s convenience on the CBP Web site at *www.cbp.gov*. If a customs user has pre-paid or met the calendar year limit prior to the

effective date of the new fees and limitations, no additional fees will be required for that calendar year. If the customs user has not prepaid or met the calendar year limit prior to the effective date of the new fees and limitations, the customs user will be subject to the adjusted limitation or prepayment amount.

* * * * *

(c) *Fees for arrival of a commercial truck—*

(1) *Fees.* The fees for the arrival of a commercial truck consist of two separate fees. A CBP fee of \$5.50, as adjusted by the terms of paragraph (k) of this section, and an Animal and Plant Health Inspection Service/Agricultural Quarantine Inspection (APHIS/AQI) fee set forth in 7 CFR 354.3 for the services provided that CBP collects on behalf of APHIS. Upon arrival at a CBP port of entry, the driver or other person in charge of a commercial truck must tender the fees to CBP unless they have been prepaid as provided for in paragraph (c)(3) of this section. The fees will not apply to any commercial truck which, at the time of arrival, is being transported by any vessel other than a ferry. For purposes of this paragraph, the term “commercial truck” means any self-propelled vehicle, including an empty vehicle or a truck cab without a trailer, which is designed and used for the transportation of commercial merchandise or for the transportation or non-commercial merchandise on a for-hire basis.

(2) *CBP fee limitation.* No CBP fee will be collected under paragraph (c)(1) of this section for the arrival of a commercial truck during any calendar year once a prepayment of \$100, as adjusted by the terms of paragraph (k) of this section, has been made and a transponder has been affixed to the vehicle windshield as provided in paragraph (c)(3) of this section.

* * * * *

(g) * * *

(1) * * *

(i) Subject to paragraphs (g)(1)(ii) and (g)(3) of this section, a fee of \$5.50, as adjusted by the terms of paragraph (k) of this section, must be collected and remitted to CBP for services provided in connection with the arrival of each passenger aboard a commercial vessel or commercial aircraft from a place outside the United States except:

(A) When the journey of the arriving passenger originates in a territory or possession of the United States; or

(B) When the journey of the arriving passenger originates in the United States and was not limited to the territories and possessions of the United States.

(ii) Subject to paragraph (g)(3) of this section, a fee of \$1.93, as adjusted by the terms of paragraph (k) of this section, must be collected and remitted to CBP for services provided in connection with the arrival of each passenger aboard a commercial vessel whose journey originated in a territory or possession of the United States or whose journey originated in the United States and was limited to the territories and possessions of the United States.

(iii) For the purposes of this paragraph (g), the term “territories and possessions of the United States” includes American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.

- * * *
- (2) * * *
- (iv) * * *

Place where journey originates (see (g)(1)(iv))	Fee status for arrival from SL		Fee status for arrival from other than SL	
	Vessel	Aircraft	Vessel	Aircraft
SL	\$1.93, as adjusted by the terms of paragraph (k) of this section.	No fee	No fee	No fee.
Other than SL or U.S....	\$5.50, as adjusted by the terms of paragraph (k) of this section.	\$5.50, as adjusted by the terms of paragraph (k) of this section.	\$5.50, as adjusted by the terms of paragraph (k) of this section.	\$5.50, as adjusted by the terms of paragraph (k) of this section.
U.S.*	\$1.93, as adjusted by the terms of paragraph (k) of this section.	No fee	N/A.....	N/A.
U.S.* *	\$5.50, as adjusted by the terms of paragraph (k) of this section.	\$5.50, as adjusted by the terms of paragraph (k) of this section.....	\$5.50, as adjusted by the terms of paragraph (k) of this section.....	\$5.50, as adjusted by the terms of paragraph (k) of this section.

* * * * *

- (4) * * *
- (ii) * * *

(B) When a return ticket or travel document is issued (or a receipt or other document that indicates an infant traveling without a return ticket or travel document is issued) in connection with a journey which originates in the United States, includes a stop in a place other than the United States or one of the territories and possessions of the United States and the return arrival to the United States is from a place outside the United States; and

(C) When a passenger on a journey through the United States to a foreign destination arrives in the customs territory of the United States from a place outside the United States, unless that passenger’s journey originated in the territories and possessions of the United States.

(iii) * * *

(C) When a passenger on a journey through the United States to a foreign destination arrives in the customs territory of the United States from a place outside the United States and that passenger’s journey originated in one of the territories and possessions of the United States and is processed by CBP.

* * * * *

(h) *Annual customs broker permit user fee.* Customs brokers are subject to an annual user fee of \$138, as adjusted by the terms of paragraph (k) of this section, for each district permit and for a national permit held by an individual, partnership, association, or corporation. The annual user fee for each district permit must be submitted to the port through which the broker was granted the permit. The annual user fee for a national permit must be submitted to the port through which the broker’s license is delivered.

* * * * *

(k) Adjustment for inflation of *Customs Consolidated Omnibus Budget Reconciliation Act (COBRA) user fees*—(1) *Fee amounts.* CBP will determine annually whether an adjustment to the fees and limitations is necessary and a notice specifying the amount of the fees and limitations, as adjusted, will be published in the **Federal Register** annually for each fiscal year at least 30 days prior to the effective date of the new fees and limitations. The fee and limitation amounts will also be maintained for the public’s convenience on the CBP Web site at *www.cbp.gov*.

(2) *Methodology for annual adjustments of fees and limitation amounts for inflation.* CBP will determine the adjustments, if any, by making the following calculations:

(i) Calculate the arithmetic average of the Consumer Price Index—All Urban Consumers, U.S. All items, 1982–84 = 100 (CPI–U) for the current year based on the most recent June–May period. This figure is referred to as (A).

(ii) Use the figure 236.009 which is the arithmetic average of the CPI–U for FY 2014. This figure is referred to as (B).

(iii) State the arithmetic average of CPI–U for the comparison year which will be either (B) if the fees have never been adjusted in accordance with this paragraph (k), or the arithmetic average of the CPI–U for the last year in which fees were adjusted in accordance with this paragraph (k) as set forth in the **Federal Register** notice that last adjusted the fee. This figure is referred to as (C).

(iv) Calculate the difference between the arithmetic averages of the CPI–U of the comparison year (C) and the current year (A). This difference is referred to as (D). $(D) = (A) - (C)$.

(v) Round the difference (D) to the nearest whole number. This figure is referred to as (E).

(vi) Calculate the percentage change in the arithmetic averages of the CPI–U of the comparison year (C) and the current year (A) which is referred to as (F). $(F) = ((E) \div (C)) \times 100\%$.

(vii) If (F) is one percent or more, proceed to the next step (viii). If (F) is less than one percent, no adjustment will be made.

(viii) Calculate the difference in the arithmetic average of the CPI–U between the current year (the most recent June through May period) and the base year (FY 2014). This difference is referred to as (G). $(G) = (A) - (B)$.

(ix) Calculate the percentage change in the CPI–U from the base year to the current year. This figure is referred to as (H). $(H) = ((G) \div (B)) \times 100\%$.

(x) Increase the fees and limitations that are subject to the rules of this paragraph by (H), calculating fees and limitations to the second decimal.

■ 3. In § 24.23:

■ a. Add a new introductory text before paragraph (a).

■ b. In paragraph (b):

■ i. Paragraph (b)(1)(i)(A) is amended by adding the words “, as adjusted in accordance with the terms of § 24.22(k) of this part,” after the words “\$1.00 per individual air waybill or bill of lading fee”;

- ii. Paragraph (b)(1)(i)(B) is amended by adding the words “, as adjusted in accordance with the terms of § 24.22(k) of this part,” after the amounts “\$485” and “\$25”;
- iii. Paragraph (b)(1)(ii) is amended by adding the words “, as adjusted in accordance with the terms of § 24.22(k) of this part,” after the words “surcharge of \$3”;
- iv. Paragraph (b)(2)(i) is amended by adding the words “, as adjusted in accordance with the terms of § 24.22(k) of this part,” after the amount “\$2”;
- v. Paragraph (b)(2)(ii) is amended by adding the words “, as adjusted in accordance with the terms of § 24.22(k) of this part,” after the amount “\$6”;
- vi. Paragraph (b)(2)(iii) is amended by adding the words “, as adjusted in accordance with the terms of § 24.22(k) of this part,” after the amount “\$9”; and
- vii. Paragraph (b)(4) is revised.

The revisions to § 24.23 read as follows:

§ 24.23 Fees for processing merchandise.

This section sets forth the terms and conditions for when the fees for processing merchandise are required. The specific merchandise processing fee amounts and corresponding limitations that appear in this section are not the actual fees or limitations, but represent the base year amounts that are subject to adjustment each fiscal year in accordance with the Fixing America’s Surface Transportation Act (FAST Act) using Fiscal Year 2014 as the base year for comparison. (See Appendix B to part 24 for a table setting forth the fees and limitations subject to adjustment along with the corresponding statutory authority, the regulatory citation, the name of the fee or limitation, and the Fiscal Year 2014 base amount which reflects the statutory amounts that were adjusted by the American Jobs Creation Act of 2004 (Pub. L. 108–357).) The methodology for adjusting the fees and limitations to reflect the percentage, if any, of the increase in the average of the Consumer Price Index—All Urban Consumers, U.S. All items, 1982–84 (CPI-U) for the preceding 12-month period (June through May) compared to the Consumer Price Index for fiscal year 2014 is set forth in § 24.22(k) of this part. CBP will determine annually whether an adjustment to the fees and limitations is necessary and a notice specifying the amount of the fees and limitations

will be published in the **Federal Register** annually for each fiscal year at least 30 days prior to the effective date of the new fees and limitations. The fees and the limitations will also be maintained for the public’s convenience on the CBP Web site at *www.cbp.gov*.

* * * * *

(b) * * *

(4) *Express consignment carrier and centralized hub facilities.*

(i) *General.* Each carrier or operator using an express consignment carrier facility or a centralized hub facility must pay to CBP a fee in the amount of \$1.00, as adjusted in accordance with the terms of paragraph (k) of § 24.22 of this chapter, per individual air waybill or individual bill of lading for the processing of airway bills for shipments arriving in the United States. In addition, if merchandise is formally entered and valued at \$2,500 or less, the importer of record must pay to CBP the ad valorem fee specified in paragraph (b)(1) of this section, if applicable. An individual air waybill or individual bill of lading is the individual document issued by the carrier or operator for transporting and/or tracking an individual item, letter, package, envelope, record, document, or shipment. An individual air waybill is not a consolidation of several air waybills, and is not a master bill or other consolidated document. An individual air waybill or bill of lading is a bill representing an individual shipment that has its own unique bill number and tracking number, where the shipment is assigned to a single ultimate consignee, and no lower bill unit exists. Payment must be made to CBP on a quarterly basis and must cover the individual fees for all subject transactions that occurred during a calendar quarter.

(ii) *Maximum and minimum fees.* Subject to the provisions of paragraph (b)(1)(i)(A) and (b)(4) of this section relating to the express consignment carrier facility or centralized hub facility fee, the fee per individual air waybill or bill of lading charged under paragraph (b)(1)(i)(A) of this section must not exceed \$1, as adjusted in accordance with the terms of paragraph (k) of § 24.22 of this chapter, and must not be less than \$0.35, as adjusted by paragraph (k) of § 24.22 of this chapter.

(iii) *Quarterly payments.* The following additional requirements and conditions apply to each quarterly payment made under this section:

(A) The quarterly payment must conform to the requirements of § 24.1, must be submitted electronically via Fedwire or *pay.gov*, or mailed to Customs and Border Protection, Revenue Division/Attention: Reimbursables, 6650 Telecom Drive, Suite 100, Indianapo-

lis, Indiana 46278, and must be received by CBP no later than the last day of the month that follows the close of the calendar quarter to which the payment relates.

(B) The following information must be included with the quarterly payment:

(1) The identity of the calendar quarter to which the payment relates;

(2) The identity of the facility for which the payment is made and the port code that applies to that location and, if the payment covers multiple facilities, the identity of each facility and its port code and the portion of the payment that pertains to each port code; and

(3) The total number of individual air waybills and individual bills of lading covered by the payment, and a breakdown of that total for each facility covered by the payment according to the number covered by formal entry procedures, the number covered by informal entry procedures specified in §§ 128.24(e) and 143.23(j) of this chapter, and the number covered by other informal entry procedures.

(C) Overpayments or underpayments may be accounted for by an explanation in, and adjustment of, the next due quarterly payment to CBP. In the case of an overpayment or underpayment that is not accounted for by an adjustment of the next due quarterly payment to CBP, the following procedures apply:

(1) In the case of an overpayment, the carrier or operator may request a refund by writing to Customs and Border Protection, Revenue Division/Attention: Reimbursables, 6650 Telecom Drive, Suite 100, Indianapolis, Indiana 46278. The refund request must specify the grounds for the refund and must be received by CBP within one year of the date the fee for which the refund is sought was paid to CBP; and

(2) In the case of an underpayment, interest will accrue on the amount not paid from the date payment was initially due to the date that payment to CBP is made.

(D) The underpayment or failure of a carrier or operator using an express consignment carrier facility or a centralized hub facility to pay all applicable fees owed to CBP pursuant to paragraph (b)(4) of this section may result in the assessment of penalties under 19 U.S.C. 1592, liquidated damages, and any other action authorized by law.

* * * * *

■ 4. Add Appendix A and Appendix B to part 24 to read as follows:

**Appendix A to Part 24—Customs Cobra User Fees and
Limitations in 19 CFR 24.22**

19 U.S.C. 58c	19 CFR 24.22	Customs COBRA user fee/ limitation	FY14 base fee/ limitation (subject to adjustment in accordance with the FAST Act)
(a)(1)	(b)(1)(i).....	Fee: Commercial Vessel Arrival Fee	\$437
(b)(5)(A)	(b)(1)(ii)	Limitation: Calendar Year Maximum for Commercial Vessel Arrival Fees.	5,955
(a)(8)	(b)(2)(i).....	Fee: Barges and Other Bulk Carriers Arrival Fee	110
(b)(6)	(b)(2)(ii)	Limitation: Calendar Year Maximum for Barges and Other Bulk Carriers Arrival Fees.	1,500
(a)(2)	(c)(1)	Fee: Commercial Truck Arrival Fee	5.50
(b)(2)	(c)(2) and (3) ..	Limitation: Commercial Truck Calendar Year Prepayment Fee	100
(a)(3)	(d)(1)	Fee: Railroad Car Arrival Fee	8.25
(b)(3)	(d)(2) and (3) ..	Limitation: Railroad Car Calendar Year Prepayment Fee	100
(a)(4)	(e)(1) and (2) ..	Fee and Limitation: Private Vessel or Private Aircraft First Arrival/Calendar Year Prepayment Fee.	27.50
(a)(6)	(f)	Fee: Dutiable Mail Fee	5.50
(a)(5)(A)	(g)(1)(i).....	Fee: Commercial Vessel or Commercial Aircraft Passenger Arrival Fee	5.50
(a)(5)(B)	(g)(1)(ii)	Fee: Commercial Vessel Passenger Arrival Fee (from Canada, Mexico, one of the territories and pos- sessions of the United States, or one of the adja- cent islands).	1.93
(a)(7)	(h)	Fee: Customs Broker Permit User Fee	138

**Appendix B to Part 24—Customs Cobra User Fees and
Limitations in 19 CFR 24.23**

19 U.S.C. 58c	19 CFR 24.23	Customs COBRA user fee/ limitation	FY14 base fee/ limitation (subject to adjustment in accordance with the FAST Act)
(b)(9)(A) (ii)	(b)(1)(i)(A).....	Fee: Express Consignment Carrier/Centralized Hub Facility Fee, Per Individual Waybill/Bill of Lading Fee.	\$1
(b)(9)(B)(i).....	(b)(1)(i)(B)(2) ..	Limitation: Minimum Express Consignment Carrier/Centralized Hub Facility Fee.	0.35
(b)(9)(B)(i).....	(b)(1)(i)(B)(2) ..	Limitation: Maximum Express Consignment Carrier/Centralized Hub Facility Fee.	1
(a)(9)(B)(i); (b)(8)(A)(i)....	(b)(1)(i)(B)(1) ..	Limitation: Minimum Merchandise Processing Fee	25
(a)(9)(B)(i); (b)(8)(A)(i)....	(b)(1)(i)(B)(1) ..	Limitation: Maximum Merchandise Processing Fee	485
(b)(8)(A)(ii)	(b)(1)(ii)	Fee: Surcharge for Manual Entry or Release	3
(a)(10)(C)(i).....	(b)(2)(i).....	Fee: Informal Entry or Release; Automated and Not Prepared by CBP Personnel.	2
(a)(10)(C)(ii) ...	(b)(2)(ii)	Fee: Informal Entry or Release; Manual and Not Prepared by CBP Personnel.	6
(a)(10)(C)(iii) ..	(b)(2)(iii)	Fee: Informal Entry or Release; Automated or Manual; Prepared by CBP Personnel.	9
(b)(9)(A)(ii)	(b)(4)	Fee: Express Consignment Carrier/Centralized Hub Facility Fee, Per Individual Waybill/Bill of Lading Fee.	1

PART 111—CUSTOMS BROKERS

■ 5. The general authority citation for part 111 and the specific authority citation for § 111.96 continue to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1624, 1641.

* * * * *

Section 111.96 also issued under 19 U.S.C. 58c, 31 U.S.C. 9701.

* * * * *

§ 111.19 [Amended]

■ 6. In § 111.19(c):

- a. Remove the phrase “\$100 and \$138” in the first sentence; and
- b. Remove the amounts “\$100” and “\$138” in each place that they appear.

§ 111.96 [Amended]

■ 7. In § 111.96(c):

- a. In the first sentence, remove the words “of \$138” and add in their place the words “specified in § 24.22(h) of this chapter”; and
- b. Remove the figure “\$138” in each place that it appears.

Dated: July 10, 2017.

KEVIN K. MCALEENAN,
Acting Commissioner,
U.S. Customs and Border Protection.

TIMOTHY E. SKUD,
Deputy Assistant
Secretary of the Treasury.

[Published in the Federal Register, July 17, 2017 (82 FR 32661)]

19 CFR PART 101**EXTENSION OF PORT LIMITS OF SAVANNAH, GA
CORRECTION**

In proposed rule document 2017–13983, beginning on page 30807, in the issue of Monday, July 3, 2017, make the following correction:

On page 30808, in the first column, the coordinates listed in line seven of “III. Proposed Port Limits of Savannah, Georgia”, “080°04.998' W.” should read “080°54.998' W.”

[Published in the Federal Register, July 17, 2017 (82 FR 32669)]

**AGENCY INFORMATION COLLECTION ACTIVITIES:****E-Allegations Submission**

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

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

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted (no later than August 14, 2017) 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 *dhsdeskofficer@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, or via email *CBP_PRA@cbp.dhs.gov*. Please note that the contact information provided here is solely for questions regarding this notice. Individuals

seeking information about other CBP programs should contact the CBP National Customer Service Center at 877-227-5511, (TTY) 1-800-877-8339, or CBP Web site at <https://www.cbp.gov/>.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). This proposed information collection was previously published in the **Federal Register** (82 FR 15530) on March 29, 2017, 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. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: e-Allegations Submission.

OMB Number: 1651-0131.

Form Number: None.

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

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals.

Abstract: In the interest of detecting trade violations to customs laws, CBP established the e-Allegations Web site to provide a means for concerned members of the trade community to confidentially report violations to CBP. The e-Allegations site allows the public to submit pertinent information that assists CBP in its decision whether or not to pursue the alleged violations by initiating an investigation. The information

collected includes the name, phone number and email address of the member of the trade community reporting the alleged violation. It also includes a description of the alleged violation, and the name and address of the potential violators. This collection of this information is authorized by the Tariff Act of 1930, as amended (Title 19, United States Code, section 1202 *et seq.*), the Homeland Security Act of 2002 (Title 6, United States Code), and the Security and Accountability for Every Port Act of 2006 [“SAFE Port Act”] (Pub. L. 109–347, October 13, 2006). The e-Allegations Web site is accessible at <https://apps.cbp.gov/allegations/>.

Estimated Number of Respondents: 1,600.

Estimated Number of Total Annual Responses: 1,600.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 400.

Dated: July 11, 2017.

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

[Published in the Federal Register, July 14, 2017 (82 FR 32561)]

AGENCY INFORMATION COLLECTION ACTIVITIES:

Foreign Trade Zone Annual Reconciliation Certification and Record Keeping Requirement

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

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

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted (no later than August 14, 2017) 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 Bud-

get. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to dhsdeskofficer@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE., 10th Floor, Washington, DC 20229-1177, or via email CBP_PRA@cbp.dhs.gov. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877-227-5511, (TTY) 1-800-877-8339, or CBP Web site at <https://www.cbp.gov/>.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (82 FR 15529) on March 29, 2017, 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. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Foreign Trade Zone Annual Reconciliation Certification and Record Keeping Requirement.

OMB Number: 1651-0051.

Form Number: None.

Current Actions: CBP proposes to extend the expiration date of this information collection. There is no change to the burden hours, the information collected, or to the record keeping requirements.

Type of Review: Extension (without change).

Affected Public: Businesses or other for-profit institutions.

Abstract: In accordance with 19 CFR 146.4 and 146.25 foreign trade zone (FTZ) operators are required to account for zone merchandise admitted, stored, manipulated and removed from FTZs. FTZ operators must prepare a reconciliation report within 90 days after the end of the zone year for a spot check or audit by CBP. In addition, within 10 working days after the annual reconciliation, FTZ operators must submit to the CBP port director a letter signed by the operator certifying that the annual reconciliation has been prepared and is available for CBP review and is accurate. These requirements are authorized by Foreign Trade Zones Act, as amended (Pub. L. 104-201, 19 U.S.C. 81a *et seq.*)

Record Keeping Requirements Under 19 CFR 146.4

Estimated Number of Respondents: 276.

Estimated Time per Respondent: 45 minutes.

Estimated Total Annual Burden Hours: 207.

Certification Letter Under 19 CFR 146.25

Estimated Number of Respondents: 276.

Estimated Time per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 91.

Dated: July 11, 2017.

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

[Published in the Federal Register, July 14, 2017 (82 FR 32563)]

AGENCY INFORMATION COLLECTION ACTIVITIES:**Documents Required Aboard Private Aircraft**

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

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

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted (no later than August 14, 2017) 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 *dhsdeskofficer@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE., 10th Floor, Washington, DC 20229-1177, or via email *CBP_PRA@cbp.dhs.gov*. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877-227-5511, (TTY) 1-800-877-8339, or CBP Web site at <https://www.cbp.gov/>.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (82 FR 15530) on March 29, 2017, 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. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper

performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection:

Title: Documents Required Aboard Private Aircraft.

OMB Number: 1651-0058.

Form Number: None.

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

Type of Review: Extension (without change).

Affected Public: Individuals.

Abstract: In accordance with 19 CFR 122.27(c), a commander of a private aircraft arriving in the U.S. must present several documents to CBP officers for inspection. These documents include: (1) A pilot certificate/license; (2) a medical certificate; and (3) a certificate of registration. The information on these documents is used by CBP officers as an essential part of the inspection process for private aircraft arriving from a foreign country. These requirements are authorized by 19 U.S.C. 1433, as amended by Public Law 99-570.

Estimated Number of Respondents: 120,000.

Estimated Number of Annual Responses: 120,000.

Estimated Time per Response: 1 minute.

Estimated Total Annual Burden Hours: 1,992.

Dated: July 11, 2017.

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

AGENCY INFORMATION COLLECTION ACTIVITIES:**Cost Submission**

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

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

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted (no later than August 14, 2017) 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 *dhsdeskofficer@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE., 10th Floor, Washington, DC 20229-1177, or via email *CBP_PRA@cbp.dhs.gov*. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877-227-5511, (TTY) 1-800-877-8339, or CBP Web site at <https://www.cbp.gov/>.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq). This proposed information collection was previously published in the **Federal Register** (82 FR 16602) on April 5, 2017, 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. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper

performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Cost Submission.

OMB Number: 1651-0028.

Form Number: CBP Form 247.

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

Type of Review: Extension (without change).

Affected Public: Businesses.

Abstract: The information collected on CBP Form 247, Cost Submission, is used by CBP to assist in correctly calculating the duty on imported merchandise. This form includes details on actual costs and helps CBP determine which costs are dutiable and which are not. This collection of information is provided for by subheadings 9801.00.10, 9802.00.40, 9802.00.50, 9802.00.60 and 9802.00.80 of the Harmonized Tariff Schedule of the United States (HTSUS), and by 19 U.S.C. 1508 through 1509, 19 CFR 10.11-10.24, 19 CFR 141.88 and 19 CFR 152.106. CBP Form 247 may be found on the Forms page on *CBP.gov* at: <https://www.cbp.gov/newsroom/publications/forms>.

Estimated Number of Respondents: 1,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Time per Response: 50 hours.

Estimated Total Annual Burden Hours: 50,000.

Dated: July 11, 2017.

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

AGENCY INFORMATION COLLECTION ACTIVITIES:
CBP Regulations Pertaining to Customs Brokers

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

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

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted (no later than August 14, 2017) 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 *dhsdeskofficer@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE., 10th Floor, Washington, DC 20229-1177, or via email *CBP_PRA@cbp.dhs.gov*. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877-227-5511, (TTY) 1-800-877-8339, or CBP Web site at <https://www.cbp.gov/>.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (82 FR 16603) on April 5, 2017, 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. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper

performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: CBP Regulations Pertaining to Customs Brokers (19 CFR part 111).

OMB Number: 1651-0034.

Form Numbers: CBP Forms 3124 and 3124E.

Current Actions: CBP proposes to extend the expiration date of this information collection. There is an increase to the burden hours due to increased applicants. There is no change to the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals.

Abstract: Section 641 of the Tariff Act of 1930, as amended (19 U.S.C. 1641), and Part 111 of the CBP regulations govern the licensing and conduct of customs brokers. Specifically, an individual who wishes to take the broker exam must complete CBP Form 3124E, "Application for Customs Broker License Exam," or to apply for a broker license, CBP Form 3124, "Application for Customs Broker License." The procedures to request a local or national broker permit can be found in 19 CFR 111.19, and a triennial report is required under 19 CFR 111.30. CBP Forms 3124 and 3124E may be found on the Forms page on *CBP.gov* at: <https://www.cbp.gov/newsroom/publications/forms>. Further information about the customs broker exam and how to apply for it may be found at <http://www.cbp.gov/trade/broker>.

CBP Form 3124E, "Application for Customs Broker License Exam"

Estimated Number of Respondents: 2,300.

Total Number of Estimated Annual Responses: 2,300.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 2,300.

Estimated Total Annual Cost to the Public: \$460,000.

CBP Form 3124, "Application for Customs Broker License"

Estimated Number of Respondents: 750.

Total Number of Estimated Annual Responses: 750.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 750.

Estimated Total Annual Cost to the Public: \$150,000.

National Broker Permit Application (19 CFR 111.19)

Estimated Number of Respondents: 200.

Total Number of Estimated Annual Responses: 200.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 200.

Estimated Total Annual Cost to the Public: \$20,000.

Triennial Report (19 CFR 111.30)

Estimated Number of Respondents: 4,550.

Total Number of Estimated Annual Responses: 4,550.

Estimated Time per Response: .5 hours.

Estimated Total Annual Burden Hours: 2,275.

Estimated Total Annual Cost to the Public: \$455,000.

Dated: July 11, 2017.

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

[Published in the Federal Register, July 14, 2017 (82 FR 32562)]

AGENCY INFORMATION COLLECTION ACTIVITIES:**Entry and Manifest of Merchandise Free of Duty, Carrier's Certificate and Release**

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

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

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted (no later than August 14, 2017) 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 *dhsdeskofficer@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE., 10th Floor, Washington, DC 20229-1177, or via email *CBP_PRA@cbp.dhs.gov*. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877-227-5511, (TTY) 1-800-877-8339, or CBP Web site at <https://www.cbp.gov/>.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq). This proposed information collection was previously published in the **Federal Register** (82 FR 15528) on March 29, 2017, 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. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether

the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Entry and Manifest of Merchandise Free of Duty, Carrier's Certificate and Release.

OMB Number: 1651-0013.

Form Number: CBP Form 7523.

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

Type of Review: Extension (without change).

Affected Public: Businesses.

Abstract: CBP Form 7523, *Entry and Manifest of Merchandise Free of Duty, Carrier's Certificate and Release*, is used by carriers and importers as a manifest for the entry of merchandise free of duty under certain conditions. CBP Form 7523 is also used by carriers to show that articles being imported are to be released to the importer or consignee, and as an inward foreign manifest for a vehicle or a vessel of less than 5 net tons arriving in the United States from Canada or Mexico with merchandise conditionally free of duty. CBP uses this form to authorize the entry of such merchandise. CBP Form 7523 is authorized by 19 U.S.C. 1433, 1484 and 1498. It is provided for by 19 CFR 123.4 and 19 CFR 143.23. This form is accessible at <https://www.cbp.gov/newsroom/publications/forms?title=7523&=Apply>.

Estimated Number of Respondents: 4,950.

Estimated Number of Responses per Respondent: 20.

Estimated Total Annual Responses: 99,000.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 8,247.

Dated: July 11, 2017.

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

[Published in the Federal Register, July 14, 2017 (82 FR 32561)]