

# U.S. Customs and Border Protection



## DEPARTMENT OF THE TREASURY

### 19 CFR PARTS 159 AND 181

### CBP DEC. 17-08

## TECHNICAL CORRECTIONS TO U.S. CUSTOMS AND BORDER PROTECTION REGULATIONS

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

**ACTION:** Final rule.

**SUMMARY:** U.S. Customs and Border Protection (CBP) periodically reviews its regulations to ensure that they are current, correct, and consistent. Through this review process, CBP discovered some discrepancies. This document amends certain sections of title 19 of the Code of Federal Regulations to remedy these discrepancies.

**DATES:** The final rule is effective July 28, 2017.

**FOR FURTHER INFORMATION CONTACT:** Grace A. Kim, Regulations and Rulings, Office of Trade, (202) 325-7941.

### **SUPPLEMENTARY INFORMATION:**

#### **Background**

It is the policy of U.S. Customs and Border Protection (CBP) to periodically review title 19 of the Code of Federal Regulations (19 CFR) to ensure that it is accurate and up-to-date so that the importing and general public is aware of CBP programs, requirements, and procedures regarding import-related activities. As part of this review policy, CBP has determined that certain corrections to 19 CFR parts 159 and 181 are necessary.

#### **Discussion of Changes**

##### *Part 159*

Section 159.58 (19 CFR 159.58) concerns the suspension of liquidation by CBP when there are antidumping and countervailing duty

determinations. The references to part 353 of title 19 CFR in 19 CFR 159.58(a) and to part 355 of title 19 CFR in 19 CFR 159.58(b) are incorrect. On May 19, 1997, the U.S. Department of Commerce revised its regulations on antidumping and countervailing duty proceedings to conform to the Uruguay Round Agreements Act (62 FR 27296) (May 19, 1997) which resulted in a new part 351 and the deletion of parts 353 and 355. Accordingly, this document makes conforming changes to §§ 159.58(a) and 159.58(b) to reflect this revision.

### *Part 181*

Subpart D of Part 181 of title 19 deals with post-importation duty refund claims under the North American Free Trade Agreement (NAFTA). Section 181.33(d)(1) lists instances wherein a port director may deny a post-importation duty refund claim for preferential tariff treatment for imported goods under the NAFTA, and it references § 181.32(b)(3) in the context of the validity of a Certificate of Origin. This is not the correct reference. The proper reference should be to § 181.32(b)(2), which references the requirement to file a Certificate of Origin with respect to the imported goods. Accordingly, this document makes changes to § 181.33(d)(1) to reference § 181.32(b)(2) instead of § 181.32(b)(3).

### **Inapplicability of Notice and Delayed Effective Date**

As the technical corrections set forth in this document merely conform to existing law and regulation, CBP finds that good cause exists for dispensing with notice and public procedure as unnecessary under 5 U.S.C. 553(b)(B). For this same reason, pursuant to 5 U.S.C. 553(d)(3), CBP finds that good cause exists for dispensing with the requirement for a delayed effective date.

### **Regulatory Flexibility Act**

Because this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

### **Executive Order 12866**

These amendments do not meet the criteria for a “significant regulatory action” as specified in Executive Order 12866, as supplemented by Executive Order 13563.

### Signing Authority

This document is limited to technical corrections of the CBP regulations. Accordingly, it is being signed under the authority of 19 CFR 0.1(b)(1).

### List of Subjects

#### *19 CFR Part 159*

Alcohol and alcohol beverages, Antidumping (Liquidation of duties), Cigars and cigarettes, Computer technology, Countervailing duties (Liquidation of duties), Customs duties and inspection, Discriminating duties, Entry procedures, Foreign currencies, Import, Liquidation of entries for merchandise, Suspension of liquidation pending disposition of American manufacturer's cause of action, Value content.

#### *19 CFR Part 181*

Administrative practice and procedure, Canada, Customs duties and inspection, Exports, Imports, Mexico, Reporting and recordkeeping requirements, Trade agreements (North American Free-Trade Agreements).

### Amendments to the Regulations

For the reasons set forth above, parts 159 and 181 of the CBP regulations (19 CFR parts 159 and 181) are amended as set forth below.

### PART 159—LIQUIDATION OF DUTIES

■ 1. The general authority citation for part 159 continues to read as follows:

**Authority:** 19 U.S.C. 66, 1500, 1504, 1624.

\* \* \* \* \*

#### § 159.58 [Amended]

■ 2. Section 159.58 is amended:

■ a. In paragraph (a) by removing the term “part 353” and adding in its place the term “part 351”; and

■ b. In paragraph (b) by removing the term “part 355” and adding in its place the term “part 351”.

**PART 181—NORTH AMERICAN FREE TRADE AGREEMENT**

■ 3. The authority citation for part 181 continues to read as follows:

**Authority:** 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624, 3314.

Subpart D of part 181 also issued under 19 U.S.C. 1520(d).

**§ 181.33 [Amended]**

■ 4. Section 181.33(d)(1) is amended by removing the citation “§ 181.32(b)(3)” and adding in its place the citation “§ 181.32(b)(2)”.

Dated: July 24, 2017.

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

[Published in the Federal Register, July 28, 2017 (82 FR 35064)]

  
**COMMERCIAL CUSTOMS OPERATIONS ADVISORY  
COMMITTEE (COAC)**

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

**ACTION:** Committee Management; Notice of Federal Advisory Committee Meeting.

**SUMMARY:** The Commercial Customs Operations Advisory Committee (COAC) will hold its quarterly meeting on Wednesday, August 23, 2017, in San Diego, California. The meeting will be open to the public.

**DATES:** The COAC will meet on Wednesday, August 23, 2017, from 9:00 a.m. to 1:00 p.m. PDT. Please note that the meeting may close early if the committee has completed its business.

*Pre-Registration:* Meeting participants may attend either in person or via webinar after pre-registering using one of the methods indicated below:

For members of the public who plan to attend the meeting in person, please register by 5:00 p.m. EDT by August 22, 2017, either online at [https://apps.cbp.gov/te\\_reg/index.asp?w=115](https://apps.cbp.gov/te_reg/index.asp?w=115); by email to [tradeevents@dhs.gov](mailto:tradeevents@dhs.gov); or by fax to (202) 325-4290. You must register prior to the meeting in order to attend the meeting in person.

For members of the public who plan to participate via webinar, please register online at [https://apps.cbp.gov/te\\_reg/index.asp?w=114](https://apps.cbp.gov/te_reg/index.asp?w=114) by 5:00 p.m. EDT by August 22, 2017.

Please feel free to share this information with other interested members of your organization or association.

Members of the public who are pre-registered and later need to cancel, please do so by August 22, 2017, utilizing the following links: [https://apps.cbp.gov/te\\_reg/cancel.asp?w=115](https://apps.cbp.gov/te_reg/cancel.asp?w=115) to cancel an in person registration or [https://apps.cbp.gov/te\\_reg/cancel.asp?w=114](https://apps.cbp.gov/te_reg/cancel.asp?w=114) to cancel a webinar registration.

**ADDRESSES:** The meeting will be held at the Omni Hotel, 675 L Street, San Diego, CA 92101. For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Ms. Florence Constant-Gibson, Office of Trade Relations, U.S. Customs & Border Protection, at (202) 344-1440, as soon as possible.

To facilitate public participation, we are inviting public comment on the issues the committee will consider prior to the formulation of recommendations as listed in the “Agenda” section below.

Comments must be submitted in writing no later than August 10, 2017, and must be identified by Docket No. USCBP-2017-0028, and may be submitted by *one (1)* of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Email:* [Tradeevents@dhs.gov](mailto:Tradeevents@dhs.gov). Include the docket number in the subject line of the message.
- *Fax:* (202) 325-4290, Attention: Florence Constant-Gibson.
- *Mail:* Ms. Florence Constant-Gibson, Office of Trade Relations, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Room 3.5A, Washington, DC 20229.

*Instructions:* All submissions received must include the words “Department of Homeland Security” and the docket number (USCBP-2017-0028) for this action. Comments received will be posted without alteration at <http://www.regulations.gov>. Please do not submit personal information to this docket.

*Docket:* For access to the docket or to read background documents or comments, go to <http://www.regulations.gov> and search for Docket Number USCBP-2017-0028. To submit a comment, click the “Comment Now!” button located on the top-right hand side of the docket page.

There will be multiple public comment periods held during the meeting on August 23, 2017. Speakers are requested to limit their comments to two (2) minutes or less to facilitate greater participation. Contact the individual listed below to register as a speaker. Please

note that the public comment period for speakers may end before the time indicated on the schedule that is posted on the CBP Web page, <http://www.cbp.gov/trade/stakeholder-engagement/coac>.

**FOR FURTHER INFORMATION CONTACT:** Ms. Florence Constant-Gibson, Office of Trade Relations, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Room 3.5A, Washington, DC 20229; telephone (202) 344-1440; facsimile (202) 325-4290 OR Ms. Valarie Neuhart, Acting Director and Designated Federal Officer, can also be reached at (202) 344-1440.

**SUPPLEMENTARY INFORMATION:** Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. Appendix. The Commercial Customs Operations Advisory Committee (COAC) provides advice to the Secretary of Homeland Security, the Secretary of the Treasury, and the Commissioner of U.S. Customs and Border Protection (CBP) on matters pertaining to the commercial operations of CBP and related functions within the Department of Homeland Security and the Department of the Treasury.

### **Agenda**

The COAC will hear from the following subcommittees on the topics listed below and then will review, deliberate, provide observations, and formulate recommendations on how to proceed:

1. The Trade Modernization Subcommittee will discuss and deliver recommendations related to the subcommittee's International Engagement and Trade Facilitation Working Group which is identifying examples of best practices in the U.S. and abroad that facilitate trade. The subcommittee will also discuss the progress of the E-Commerce Working Group and will deliver recommendations related to the subcommittee's Section 321 Working Group. The Section 321 Working Group has focused on facilitative methods for the processing of low value "de-minimis" shipments while maintaining security and compliance.
2. The One U.S. Government Subcommittee will discuss the progress of the Fish & Wildlife Service Working Group and will present recommendations in this area. The subcommittee will also discuss the progress of the Automated Commercial Environment core functions and the Single Window Effort, including the North American Single Window progress.
3. The Global Supply Chain Subcommittee will present their involvement in the present draft of an updated supply chain security Customs-Trade Partnership Against Terrorism (C-TPAT) best practice framework, provide an update to on-going input work regarding

the C-TPAT minimum security criteria, and a progress report with recommendations from the Pipeline Working Group.

4. The Trusted Trader Subcommittee will continue the discussion for an enhanced Trusted Trader program that includes engagement with CBP to include relevant partner government agencies with a potential for international interoperability. A review of the pilot program status and benefits will also be undertaken in parallel to determine the optimum benefits that would be assigned to Trusted Trader participants.

5. The Trade Enforcement & Revenue Collection (TERC) Subcommittee will discuss the progress made on TERC recommendations and updates from the Anti-Dumping and Countervailing Duty, Bond, Forced Labor, and Intellectual Property Rights Working Groups.

6. The Exports Subcommittee will discuss the Post Departure Filing (PDF) working group's progress in developing additional recommendations for an implementation plan of the PDF Proposal and will include steps to initiate a proof of concept that incorporates the PDF model in conjunction with the Ocean Export Manifest pilot. The subcommittee will also discuss the progress of the Truck Manifest Sub-Working Group recommendations presented at the March 1, 2017 public meeting, and progress on issues with the ongoing manifest pilots.

Meeting materials will be available by August 20, 2017, at: <http://www.cbp.gov/trade/stakeholder-engagement/coac/coac-public-meetings>.

Dated: July 27, 2017.

BRADLEY HAYES,  
*Executive Director,*  
*Office of Trade Relations.*

[Published in the Federal Register, August 3, 2017 (82 FR 36152)]



## 19 CFR PART 177

### REVOCATION OF TWO RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF NURSING/BREAST PADS

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

**ACTION:** Notice of revocation of two ruling letters, and of revocation of treatment relating to the tariff classification of nursing/breast pads.

**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 two ruling letters concerning tariff classification of nursing/breast pads 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. 23, on June 7, 2017. No comments were 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 16, 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 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. 51, No. 23, on June 7, 2017, proposing to revoke two ruling letters pertaining to the tariff classification of nursing/breast pads. As stated in the proposed notice, this action will cover New York Ruling Letter (“NY”) N245827, dated September 27, 2013, and NY N213901, dated May 16, 2012, 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 two 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 N245827 and NY N213901, CBP classified nursing pads in heading 6307, HTSUS, which provides for “Other made up articles, including dress patterns.” CBP has reviewed NY N245827 and NY N213901 and has determined the ruling letters to be in error. It is now CBP’s position that nursing/breast pads are properly classified, by operation of GRI 1, in heading 9619, HTSUS, which provides for “Sanitary towels (pads) and tampons, diapers and diaper liners for babies and similar articles, of any material.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY N245827 and NY N213901 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter (“HQ”) H283476, 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: July 20, 2017

IEVA K. O'ROURKE

*for*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

Attachment

HQ H283476

July 20, 2017

CLA-2 OT:RR:CTF:FTM H283476 PJG

CATEGORY: Classification

TARIFF NO.: 9619.00.64; 9619.00.74

Ms. KRISTINA SCHMITT

NUK - USA

728 BOOSTER BOULEVARD

REEDSBURG, WISCONSIN 53959

RE: Revocation of NY N245827, NY N213901, NY J84296, HQ 965723, HQ 965746, HQ 965719, HQ 963488, NY D82853, NY C81609, and HQ 953391; Modification of HQ 965035, and NY 854729; Revoked or Modified by Operation of Law; tariff classification of nursing/breast pads

DEAR Ms. SCHMITT:

On September 27, 2013, U.S. Customs and Border Protection (“CBP”) issued to you, on behalf of NUK – USA, New York Ruling Letter (“NY”) N245827. The ruling pertains to the tariff classification of reusable nursing pads under the Harmonized Tariff Schedule of the United States (“HTSUS”). We have since reviewed NY N245827 and determined it to be in error. Accordingly, NY N245827 is revoked. We are also revoking one other ruling with substantially similar merchandise: NY N213901, dated May 16, 2012. Finally, we are revoking or modifying ten additional rulings by operation of law, as discussed below.

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 June 7, 2017, in Volume 51, Number 23, of the *Customs Bulletin*. No comments were received in response to this notice.

**FACTS:**

In NY N245827, the nursing pads (product number 885131629098) were described as follows:

The nursing pad is faced with 100% woven cotton, the inner lining is non-woven 45% polyester and 55% rayon, and backed with 100% woven polypropylene. The nursing pads are designed to be placed in the brassiere of nursing mothers to absorb excess milk. The reusable nursing pads can be washed for repeated use.

In NY N245827, CBP classified the nursing pads under subheading 6307.90.9889, HTSUSA, which provides for “Other made up articles, including dress patterns: Other: Other: Other: Other: Other.”

**ISSUE:**

Whether the subject nursing pads are classifiable in heading 6307, HTSUS, as other made up articles, or 9619, HTSUS, as similar articles to sanitary towels (pads).

**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:

<b>6307</b>	Other made up articles, including dress patterns: * * *
<b>9619.00</b>	Sanitary towels (pads) and tampons, diapers and diaper liners for babies and similar articles, of any material: * * * Other, of textile materials: Knitted or crocheted: * * *
<b>9619.00.64</b>	Of man-made fibers * * *
	Other: * * *
<b>9619.00.74</b>	Of man-made fibers

GRI 3(a) and (b) provide as follows:

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

- (a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.
- (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

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

The EN to 96.19 states, in pertinent part:

This heading covers sanitary towels (pads) and tampons, napkins (diapers) and napkin liners for babies and similar articles, including absorbent hygienic nursing pads, napkins (diapers) for adults with incontinence and pantyliners, of any material.

In general, the articles of this heading are disposable. Many of these articles are composed of (a) an inner layer (e.g., of nonwovens) designed to wick fluid from the wearer's skin and thereby prevent chafing; (b) an absorbent core for collecting and storing fluid until the product can be disposed of; and (c) an outer layer (e.g., of plastics) to prevent leakage of fluid from the absorbent core. The articles of this heading are usually shaped so that they may fit snugly to the human body. This heading also includes similar traditional articles made up solely of textile materials, which are usually re-usable following laundering.

This heading **does not cover** products such as disposable surgical drapes and absorbent pads for hospital beds, operating tables and wheelchairs or non-absorbent nursing pads or other non-absorbent articles (in general, classified according to their constituent material).

The EN to GRI 3(b) states, in pertinent part:

(VI) This second method relates only to :

- (i) Mixtures.
- (ii) Composite goods consisting of different materials.
- (iii) Composite goods consisting of different components.
- (iv) Goods put up in sets for retail sales.

It applies only if Rule 3 (a) fails.

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

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

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

\* \* \*

Prior to 2012, nursing/breast pads were usually classified in headings based on their material composition. *See, e.g.*, HQ 965746 (Sept. 4, 2002); HQ 965719 (Sept. 3, 2002); HQ 965035 (July 31, 2002); and HQ 965711 (July 24,

2002)<sup>1</sup>. In HQ 965711, U.S. Customs stated that in classifying nursing pads, it would “focus ... on the material or substance that provides a nursing pad with its absorbent capability” and also consider “the other materials or substances which make-up a particular style of nursing pads.”

In the 2012 Basic Edition of the HTSUS, heading 9619, HTSUS, was introduced to provide for “Sanitary towels (pads) and tampons, diapers and diaper liners for babies and similar articles, of any material.” Although this heading does not specifically provide for absorbent nursing/breast pads, the EN 96.19 describes these articles. The subject absorbent nursing pads are articles that include an inner layer designed to wick breast milk from the woman’s skin for the purpose of preventing chafing as well as leakage onto the woman’s clothing. The absorbent core of the subject nursing pads collects and stores the fluid. The subject nursing pads are also faced with 100% woven cotton, which faces the breast and wicks the milk away from the skin, and are backed with 100% woven polypropylene to prevent any leakage onto clothing.

The EN indicates that the articles that are classifiable in heading 9619, HTSUS, may be disposable or re-usable. Therefore, while it is unnecessary to ascertain whether the subject merchandise is disposable or reusable for purposes of classifying the merchandise in heading 9619, HTSUS, we note that the subject reusable nursing pads are not precluded from classification in heading 9619, HTSUS, because of their reusable characteristic. We conclude, therefore, that the subject merchandise is classifiable in heading 9619, HTSUS.

To determine the appropriate subheading for the subject merchandise, GRI 6 refers us to GRI rules 1 through 5. Since the subject nursing pads are faced with 100% woven cotton, the inner lining is non-woven 45% polyester and 55% rayon, and they are backed with 100% woven polypropylene, the appropriate subheading for the subject merchandise cannot be determined pursuant to GRI 1. GRI 2(a) does not provide assistance. In accordance with the guidance provided by GRI 2(b), “[t]he classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.” Applying GRI 3(a) in the context of the subheading, we find that three subheadings, specifically, subheading 9619.00.71, HTSUS (Of cotton), subheading 9619.00.74 (Of man-made fibers), and subheading 9619.00.90, HTSUS (Other), refer to only part of the materials that comprise the subject merchandise. As such, we refer to GRI 3(b), which 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.”

Consistent with HQ 965711, we find “that the inner absorbent component ... is the component that gives the nursing pad its essential character.” As stated in HQ 965711, “[t]he absorbent component plays the greatest role in the nursing pad, the absorption of excess milk during lactation. It is also the component that provides the nursing pad with its greatest bulk.” Therefore, it is our determination that the essential character of the subject merchandise is the absorbent material, which in this case is comprised of non-woven

---

<sup>1</sup> In that ruling, Customs noted that it had previously ruled that nursing pads were classifiable under heading 6217, HTSUS, as “Other made up clothing accessories” but after further review, Customs concluded that nursing pads are in fact not clothing accessories and do not belong in heading 6217, HTSUS.

45% polyester and 55% rayon. Since the rayon and the polyester are both man-made fibers, it is unnecessary to determine the essential character of the absorbent material. We conclude that the subject nursing pads are classified in subheading 9619.00.74, HTSUS, which provides for “Sanitary towels (pads) and tampons, diapers and diaper liners for babies and similar articles, of any material: Other, of textile materials: Other: Of man-made fibers.”

As new heading 9619, HTSUS (2012), covers nursing/breast pads, the ten pre-2012 rulings that classified nursing/breast pads according to their constituent materials are revoked or modified by operation of law.

**HOLDING:**

Under the authority of GRIs 1, 3(b)<sup>2</sup>, and 6 the nursing pads in NY N245827 are classified in heading 9619, HTSUS, specifically in subheading 9619.00.74, HTSUS, which provides for “Sanitary towels (pads) and tampons, diapers and diaper liners for babies and similar articles, of any material: Other, of textile materials: Other: Of man-made fibers.” The 2017 column one, general rate of duty is 16 percent *ad valorem*.

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

**EFFECT ON OTHER RULINGS:**

NY N245827, dated September 27, 2013, and NY N213901, dated May 16, 2012, are REVOKED.

NY J84296, dated May 5, 2003, HQ 965723, dated September 18, 2002, HQ 965746, dated September 4, 2002, HQ 965719, dated September 3, 2002, HQ 963488, dated May 2, 2000, NY D82853, dated October 16, 1998, NY C81609, dated November 19, 1997, and HQ 953391, dated April 23, 1993, are REVOKED by operation of law.

HQ 965035, dated July 31, 2002, and NY 854729, dated September 28, 1990, are MODIFIED by operation of law with regard to the classification of the nursing/breast pads.

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*

---

<sup>2</sup> With regard to NY C81609, only the style nursing pad that is composed of cotton woven fabric and includes a coated nylon fabric on one side is classified pursuant to GRI 3(b). The other style nursing pad which only consists of cotton woven fabric is classified pursuant to GRI 1.

**19 CFR PART 177****REVOCAION OF ONE RULING LETTER AND  
REVOCAION OF TREATMENT RELATING TO THE  
TARIFF CLASSIFICATION OF NURSING/BREAST PADS**

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

**ACTION:** Notice of revocation of one ruling letter, and of revocation of treatment relating to the tariff classification of nursing/breast pads.

**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 one ruling letter concerning the tariff classification of nursing/breast pads 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. 23, on June 7, 2017. No comments were received in response to that notice.

**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after **[60 DAYS FROM PUBLICATION DATE]**.

**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 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. 51, No. 23, on June 7, 2017, proposing to revoke one ruling letter pertaining to the tariff classification of nursing/breast pads. As stated in the proposed notice, this action will cover New York Ruling Letter ("NY") N264127, dated May 11, 2015, as well as any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

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

In NY N264127, CBP classified nursing/breast pads in heading 6307, HTSUS, which provides for "Other made up articles, including dress patterns." CBP has reviewed NY N264127 and has determined the ruling letter to be in error. It is now CBP's position that nursing/breast pads are properly classified, by operation of GRI 1, in heading 9619, HTSUS, which provides for "Sanitary towels (pads) and tampons, diapers and diaper liners for babies and similar articles, of any material."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY N264127 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter (“HQ”) H283468, 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: July 20, 2017

IEVA K. O’ROURKE  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

Attachment

HQ H283468

July 20, 2017

CLA-2 OT:RR:CTF:FTM H283468 PJG

CATEGORY: Classification

TARIFF NO.: 9619.00.64

MS. KEIRA O'MARA  
MAMA DESIGNS LIMITED  
12 WYCHALL LANE  
KINGS NORTON  
BIRMINGHAM  
B38 8TA  
UNITED KINGDOM

RE: Revocation of NY N264127, and HQ 965711; Modification of HQ 088425; Revoked or Modified by Operation of Law; tariff classification of nursing/breast pads

DEAR MS. O'MARA:

On May 11, 2015, U.S. Customs and Border Protection ("CBP") issued to you New York Ruling Letter ("NY") N264127. The ruling pertains to the tariff classification under the Harmonized Tariff Schedule of the United States ("HTSUS") of nursing/breast pads. We have since reviewed NY N264127 and determined it to be in error. Accordingly, NY N264127 is revoked. Finally, we are also revoking or modifying two additional rulings by operation of law, as discussed below.

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 June 7, 2017, in Volume 51, Number 23, of the *Customs Bulletin*. No comments were received in response to this notice.

**FACTS:**

In NY N264127, the nursing/breast pads were described as follows:

... disc-shaped, washable breast pads that are used to absorb and prevent leakage of breast milk on the bra and clothing of breast feeding mothers. You state the double layered pads are made up of viscose derived from bamboo to absorb the milk. The outer layer is coated with polyurethane to prevent any leakage onto clothing.

In NY N264127, CBP classified the nursing/breast pads under subheading 6307.90.9889, HTSUSA, which provides for "Other made up articles, including dress patterns: Other: Other: Other: Other: Other."

You also state that the subject merchandise is constructed of knit fabric.

**ISSUE:**

Whether the subject nursing/breast pads are classifiable in heading 6307, HTSUS, as other made up articles, or 9619, HTSUS, as similar articles to sanitary towels (pads).

**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:

<b>6307</b>	Other made up articles, including dress patterns: * * *
<b>9619.00</b>	Sanitary towels (pads) and tampons, diapers and diaper liners for babies and similar articles, of any material: * * * Other, of textile materials: Knitted or crocheted: * * * Of man-made fibers * * * Other: * * *
<b>9619.00.64</b>	Of man-made fibers * * *
<b>9619.00.74</b>	Of man-made fibers

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

The EN to 96.19 states, in pertinent part:

This heading covers sanitary towels (pads) and tampons, napkins (diapers) and napkin liners for babies and similar articles, including absorbent hygienic nursing pads, napkins (diapers) for adults with incontinence and pantyliners, of any material.

In general, the articles of this heading are disposable. Many of these articles are composed of (a) an inner layer (e.g., of nonwovens) designed to wick fluid from the wearer’s skin and thereby prevent chafing; (b) an absorbent core for collecting and storing fluid until the product can be disposed of; and (c) an outer layer (e.g., of plastics) to prevent leakage of fluid from the absorbent core. The articles of this heading are usually shaped so that they may fit snugly to the human body. This heading also includes similar traditional articles made up solely of textile materials, which are usually re-usable following laundering.

This heading **does not cover** products such as disposable surgical drapes and absorbent pads for hospital beds, operating tables and wheelchairs or non-absorbent nursing pads or other non-absorbent articles (in general, classified according to their constituent material).

Prior to 2012, nursing/breast pads were usually classified in headings based on their material composition. *See, e.g.*, HQ 965746 (Sept. 4, 2002); HQ 965719 (Sept. 3, 2002); HQ 965035 (July 31, 2002); and HQ 965711 (July 24, 2002)<sup>1</sup>. In HQ 965711, U.S. Customs stated that in classifying nursing pads, it would “focus ... on the material or substance that provides a nursing pad with its absorbent capability” and also consider “the other materials or substances which make-up a particular style of nursing pads.”

In the 2012 Basic Edition of the HTSUS, heading 9619, HTSUS, was introduced to provide for “Sanitary towels (pads) and tampons, diapers and diaper liners for babies and similar articles, of any material.” Although this heading does not specifically provide for absorbent nursing/breast pads, the EN 96.19 describes these articles. The subject absorbent nursing/breast pads are articles that include an inner layer designed to wick breast milk from the woman’s skin for the purpose of preventing chafing as well as leakage onto the woman’s clothing. The absorbent core of the subject nursing/breast pads collects and stores the fluid. The outer layer of the subject nursing/breast pads are coated with polyurethane to prevent any leakage onto clothing. The EN indicates that the articles that are classifiable in heading 9619, HTSUS, may be disposable or re-usable. Therefore, it is unnecessary to ascertain whether the subject merchandise is disposable or reusable for purposes of classifying the merchandise in heading 9619, HTSUS.

We conclude that the subject merchandise is classifiable in heading 9619, HTSUS, and specifically under subheading 9619.00.64, HTSUS, which provides for “Sanitary towels (pads) and tampons, diapers and diaper liners for babies and similar articles, of any material: Other, of textile materials: Knitted or crocheted: Of man-made fibers.”

As new heading 9619, HTSUS (2012), covers nursing/breast pads, the two pre-2012 rulings that classified nursing/breast pads according to their constituent materials are revoked or modified by operation of law.

### **HOLDING:**

Under the authority of GRIs 1 and 6 the nursing/breast pads are classified in heading 9619, HTSUS, specifically in subheading 9619.00.64, HTSUS, which provides for “Sanitary towels (pads) and tampons, diapers and diaper liners for babies and similar articles, of any material: Other, of textile materials: Knitted or crocheted: Of man-made fibers.” The 2017 column one, general rate of duty is 14.9 percent *ad valorem*.

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

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

NY N264127, dated May 11, 2015, is REVOKED.

HQ 965711, dated July 24, 2002, is REVOKED by operation of law with regard to the classification of the nursing/breast pads.

HQ 088425, dated May 20, 1991, is MODIFIED by operation of law with regard to the classification of the nursing pads.

<sup>1</sup> In that ruling, Customs noted that it had previously ruled that nursing pads were classifiable under heading 6217, HTSUS, as “Other made up clothing accessories” but after further review, Customs concluded that nursing pads are in fact not clothing accessories and do not belong in heading 6217, HTSUS.

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*

## MODIFICATION OF A RULING LETTER RELATED TO THE CLASSIFICATION OF CERTAIN POLYESTER YARN

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

**ACTION:** Notice of modification of a ruling letter and revocation of treatment relating to the classification of certain textured polyester elastomeric yarn.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is modifying one ruling letter concerning the classification of certain textured polyester elastomeric yarn. 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. 23, on June 7, 2017. No comments were 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 16, 2017.

**FOR FURTHER INFORMATION CONTACT:** Cynthia Reese, Valuation and Special Programs Branch, Regulations and Rulings, Office of Trade, at (202) 325–0046.

### 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 modifying New York Ruling Letter (NY) N273725, dated December 22, 2016, concerning the classification of a polyester elastomeric yarn and eligibility of certain jeans for preferential tariff treatment under the U.S. – Colombia Trade Promotion Act. The ruling erred with regard to the classification of the polyester elastomeric yarn. This modification is specific to NY N273725, dated December 22, 2016, and does not cover any other rulings.

In NY N273725, CBP classified certain polyester elastomeric yarn in subheading 5402.31.6000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for synthetic filament yarn, not put up for retail sale, textured yarn, of nylon or other polyamides, measuring per single yarn not more than 500 decitex, multiple (folded) or cabled yarn. CBP reviewed the decision and determined it erred with regard to the classification of the yarn as the yarn was of polyester, and not, of nylon. As a yarn of textured polyester, the subject yarn is properly classified in subheading 5402.33.60, HTSUS, which provides for “Synthetic filament yarn (other than sewing thread), not put up for retail sale, including synthetic monofilament of less than 67 decitex: Textured yarn: Of polyesters: Multiple (folded) or cabled yarn.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is modifying NY N273725 with regard to the classification of the textured polyester elastomeric yarn as set forth in Headquarters Ruling Letter (HQ) HQ H284749, 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 any transactions following NY N273725.

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

Dated: July 20, 2017

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

Attachment

HQ H284749

July 20, 2017

OT:RR:CTF:VS H284749 CMR

CATEGORY: Classification

MR. GERARDO AGUILAR  
KALTEX GROUP  
350 5TH AVENUE  
NEW YORK, NY 10118

RE: Modification of NY N273725, dated December 22, 2016; Component that Determines the Classification; U.S. – Colombia Trade Promotion Agreement; Classification; Textured Polyester Elastomeric Yarn

DEAR MR. AGUILAR:

This is in response to your correspondence of January 26, 2017, requesting Customs and Border Protection (CBP) review our decision in New York Ruling Letter (NY) N273725, dated December 22, 2016, wherein we determined that certain non-originating yarn was classified in subheading 5402.31.60, Harmonized Tariff Schedule of the United States (HTSUS) and that certain jeans produced with such non-originating yarn in Colombia, did not qualify for preferential tariff treatment under the U.S. – Colombia Trade Promotion Agreement (CTPA). Specifically, you request we review the ruling and address the application of Chapter 62, Chapter Rule 2 of the Annex 3-A, “Textile and Apparel Specific Rules of Origin,” of the CTPA.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice of the proposed modification of NY N273725 was published on June 7, 2017, in the *Customs Bulletin*, Volume 51, No. 23. CBP received no comments in response to the notice.

**FACTS:**

In NY N273725, CBP determined that the non-originating polyester yarn was classified in subheading 5402.31.6000, HTSUS, which provides for synthetic filament yarn, not put up for retail sale, textured yarn, of nylon or other polyamides, measuring per single yarn not more than 500 decitex, multiple (folded) or cabled yarn. The polyester yarn, known as an air entangled yarn, is made in Mexico of an elastomeric filament core with a textured polyester filament yarn covering the core in a spiral direction. A report provided by the Office of Laboratory Services described the yarn as “composed of elastomeric core yarn (13 percent by weight) which is covered by textured polyester filament (97 percent by weight) by air entanglement process.”

The ruling determined that the sample garment, a pair of women’s denim fabric jeans, produced from fabric manufactured in Colombia of the polyester elastomeric yarn and cotton yarns made in Colombia from U.S. or Colombian cotton fibers, did “not qualify for preferential treatment under the CTPA because (a) it will not be wholly obtained or produced entirely in the territory of Colombia or of the United States; (b) one or more of the non-originating materials used in the production of the good will not undergo the change in tariff classification required by General Note 34; and (c) it will not [be] produced entirely in the territory of Colombia or of the United States, or both.

Your request for review of NY N273725 centers on the application of Chapter 62, Chapter Rule 2 of the Annex 3-A, “Textile and Apparel Specific Rules of Origin.” You interpret that language of that provision to apply to only the cotton yarn used in the production of the jeans at issue as you believe the component that determines the classification of the jeans is the cotton yarn.

#### **ISSUE:**

What is the component that determines the classification of the women’s denim fabric jeans for the purpose of determining its eligibility for preferential tariff treatment under the CTPA?

#### **LAW AND ANALYSIS:**

The U.S.- Colombia Trade Promotion Agreement Implementation Act, Public Law 112–42, 125 Stat. 462, is implemented in the Harmonized Tariff Schedule of the United States at General Note (GN) 34. Chapter 62, Chapter Rule 2 of the Annex 3-A, “Textile and Apparel Specific Rules of Origin,” is implemented in GN 34(o)/Chapter 62/Rule 2. The rule states, with regards to goods of Chapter 62:

For purposes of determining whether a good of this chapter is originating, the rule applicable to that good shall only apply to the component that determines the tariff classification of the good and such component must satisfy the tariff change requirements set out in the rule for that good. If the rule requires that the good must also satisfy the tariff change requirements for visible lining fabrics listed in chapter rule 1 for this chapter, such requirement shall only apply to the visible lining fabric in the main body of the garment, excluding sleeves, which covers the largest surface area, and shall not apply to removable linings.

The rule of origin set forth in GN 34(o)/62.29, which applies to the jeans at issue provides:

A change to subheadings 6204.61 through 6204.69 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308, 5310 through 5311 or 5401 through 5402, subheadings 5403.20, 5403.33 through 5403.39, 5403.42 through heading 5408, or headings 5508 through 5516, 5801 through 5802 or 6006 through 6006, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of Colombia or of the United States, or both.

The submitted sample jeans were described in NY N273725 as featuring “a left over right front fly opening with a zipper closure and a metal button on a flat waistband, five belt loops, a rear yoke, two rear patch pockets, front pockets, and hemmed leg openings.” This office was not provided with the sample garment; however, from the description we can discern that among the components used to produce the garment are the cotton/polyester woven fabric, a zipper, a metal button and sewing thread. Of these components, it is the woven fabric which is the component that determines the classification of the good. Therefore, the woven fabric must make the tariff shift change set forth in the tariff shift rule, quoted above. As the woven fabric is in chief weight of cotton, it is classifiable as a cotton woven fabric in Chapter 52. However, the tariff shift rule quoted above, *i.e.*, GN 34(o)/62.29, does not allow a change from non-originating cotton woven fabrics to the finished jeans. As

such, the cotton woven fabric must originate in order for the jeans to qualify for preferential tariff treatment.<sup>1</sup> The tariff shift rule for the cotton fabric states:

A change to headings 5208 through 5212 from any heading outside that group, except from headings 5106 through 5110, 5205 through 5206 or 5401 through 5402, subheadings 5403.20, 5403.33 through 5403.39 or 5403.42 through heading 5404 or headings 5509 through 5510.

As the tariff shift rule for the cotton fabric does not allow a change from non-originating polyester elastomeric yarn classified within heading 5402, HTSUS, the cotton woven fabric of which the jeans are manufactured is non-originating. Therefore, NY N273725 correctly concluded that the jeans at issue do not qualify for preferential tariff treatment under the CTPA.

Nonetheless, we note that an error occurred in NY N273725 regarding the classification of the polyester elastomeric yarn produced in Mexico. In the ruling, the yarn was classified in subheading 5402.31.60, HTSUS, which provides for, among other things, textured yarn of nylon. As stated in that ruling, and in your submission, the yarn is not of nylon, but of polyester filament with an elastomeric core yarn. The polyester elastomeric yarn is produced by an air entanglement process, similar to that used to produce a yarn classified in Headquarters Ruling Letter (HQ) 966051, dated March 3, 2003, as a multiple yarn in heading 5402, HTSUS. Therefore, while the polyester elastomeric yarn was properly classified as a multiple yarn, as it is of polyester, it is classified in subheading 5402.33.60, HTSUS.

#### **HOLDING:**

NY N273725 correctly held that the jeans at issue do not qualify for preferential tariff treatment under the CTPA. However, the polyester elastomeric yarn is correctly classified in subheading 5402.33.60, HTSUS, which provides for “Synthetic filament yarn (other than sewing thread), not put up for retail sale, including synthetic monofilament of less than 67 decitex: Textured yarn: Of polyesters: Multiple (folded) or cabled yarn.” NY N273725, dated December 22, 2016, is hereby modified in accordance with this decision.

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*

---

<sup>1</sup> In addition, if we consider accumulation under GN 34(f) and look to the non-originating polyester yarn, it is also excepted under the rule, so that, a change from a non-originating yarn of heading 5402, HTSUS, to heading 6204.62, HTSUS, *i.e.*, the subheading in which the jeans are classified, is not allowed to confer preferential tariff treatment.

**PROPOSED REVOCATION OF THREE RULING LETTERS  
AND REVOCATION OF TREATMENT RELATING TO THE  
TARIFF CLASSIFICATION OF VACUUM TRUCKS  
DESIGNED FOR LIQUID AND SEMI-LIQUID WASTE  
REMOVAL**

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

**ACTION:** Notice of proposed revocation of three ruling letters, and revocation of treatment relating to the tariff classification of vacuum trucks designed for liquid and semi-liquid waste removal.

**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 three ruling letters concerning tariff classification of vacuum trucks designed for liquid and semi-liquid waste removal 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 15, 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:** Laurance W. Frierson, Electronics, Machinery, Automotive and International Nomenclature Branch, Regulations and Rulings, Office of Trade, at (202) 325–0371.

**SUPPLEMENTARY INFORMATION:**

**BACKGROUND**

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

103–182, 107 Stat. 2057) (“Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility**.” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations.

Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the public and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information 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 three ruling letters pertaining to the tariff classification of vacuum trucks designed for liquid and semi-liquid waste removal. Although in this notice, CBP is specifically referring to Headquarters Ruling Letter (“HQ”) H235508, dated August 27, 2014, (Attachment A), New York Ruling Letter (“NY”) N268924, dated October 9, 2015, (Attachment B), and HQ 958847, dated June 20, 1996, (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 ruling letters HQ H235508, NY N268924, and HQ 958847, CBP classified several vacuum trucks designed for liquid and semi-liquid waste removal in heading 8704, HTSUS, which provides for “Motor vehicles for the transport of goods.” CBP has reviewed HQ H235508, NY N268924, and HQ 958847 and has determined the ruling letters to be in error. It is now CBP’s position that the vacuum trucks designed for liquid and semi-liquid waste removal are properly classified, by operation of GRI 1, in heading 8705, HTSUS, specifically in subheading 8705.90.00, HTSUS, which provides for “Special purpose motor vehicles, other than those principally designed for the transport of persons or goods (for example, wreckers, mobile cranes, fire fighting vehicles, concrete mixers, road sweepers, spraying vehicles, mobile workshops, mobile radiological units): Other.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke ruling letters HQ H235508, NY N268924, and HQ 958847 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed HQ H287200, 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 21, 2017

GREG CONNOR  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

Attachments

## [ATTACHMENT A]

HQ H235508

August 27, 2014

CLA-2 OT:RR:CTF:TCM H235508 ASM

CATEGORY: Classification

TARIFF NO.: 8704.23.0000

PORT DIRECTOR

U.S. CUSTOMS AND BORDER PROTECTION

PORT OFFICE BOX 789

GREAT FALLS, MONTANA 59403-0789

RE: Application for Further Review of Protest No. 3304-12-100022;  
Tariff Classification of Vacuum Trucks

DEAR PORT DIRECTOR:

This is in reference to a Protest and Application for Further Review (AFR), Protest No. 3304-12-100022, filed on behalf of Clean Harbors Environmental Services, Inc. (Protestant), regarding Custom and Border Protection's (CBP's) classification of certain "Vacuum Trucks" under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA).

**FACTS:**

The items under consideration have been identified by Protestant as "Vacuum Tank Trucks" and are described in the Protestant's written submission as follows:

The vacuum trucks at issue are truck-mounted, heavy-duty industrial vacuum loaders designed to pneumatically convey solids, liquids, sludge, or slurry through suction lines typically 2-4" in diameter, with 3" being the norm. The typical pump used in the environmental cleanup industry is a rotary vane vacuum pump, which is a positive-displacement pump that consists of vanes mounted to a rotor that rotates inside of a cavity. These rotary vane vacuum pumps are used in vacuum applications such as the environmental cleanup applications here. The pumps are mounted either directly on the truck with a "power take-off" drive, or on the trailer with a "pony" motor that engages the main engine.

The vacuum trucks are used for street cleanups, sewers, septic systems, individual septic systems, and cleanup of contaminated water and soil. They are also used in the petroleum industry for cleaning of storage tanks and spills, and are an important part of drilling oil and natural gas wells. In that capacity, vacuum trucks are used to remove drilling mud, drilling cuttings, cement, spills, and for removal of brine water from production tanks.

These trucks are specifically designed to transport wet or dry hazardous and non-hazardous materials. They can also transport water to the jobsite, where they utilize hoses and other vacuum apparatus to clean and remove debris and other waste from the jobsite. The design consists of vacuum tanks mounted onto a chassis.

The subject Vacuum Trucks were originally entered under 9801.00.1071, HTSUSA, as U.S. Goods Returned (Duty Free). However, the trucks were liquidated under 8704.23.0000, HTSUSA, which provides for "Motor vehicles for the transport of goods".

Protestant claims that the subject merchandise should have been classified in heading 8705.90, HTSUSA, which provides for “Special purpose motor vehicles, other than those principally designed for the transport of persons or goods”.

**ISSUE:**

Whether this merchandise is classified as a motor vehicle for the transport of goods in heading 8704, HTSUS, or as a special purpose motor vehicle other than those principally designed for the transport of persons or goods of heading 8705, HTSUS?

**LAW AND ANALYSIS:**

Initially, we note that this matter 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. (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)).

Protestant asserts that further review of the protest is warranted pursuant to 19 CFR §§174.24(b) on the grounds that this matter involves question of law or fact which have not previously been ruled upon by the Commissioner of Customs or the Customs Court.

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

The following provisions are under consideration in classifying the subject article:

8704	Motor vehicles for the transport of goods: Other, with compression-ignition internal combustion piston engine (diesel or semi-diesel):
8704.23.0000	G.V.W exceeding 20 metric tons
8705	Special purpose motor vehicles, other than those principally designed for the transport of persons or goods (for example, wreckers, mobile cranes, fire fighting vehicles, concrete mixers, road sweepers, spraying vehicles, mobile workshops, mobile radiological units):
8705.90.0000	Other

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).

In relevant part, the ENs for 8704 provide:

This heading covers in particular:

Ordinary lorries (trucks) and vans (flat, tarpaulin-covered, closed, etc.); delivery trucks and vans of all kinds, removal vans; lorries (trucks) with automatic discharging devices (tipping lorries (trucks), etc.); tankers (whether or not fitted with pumps); . . . lifting or **excavating machinery** ... (*emphasis supplied*)

\* \* \*

The classification of certain motor vehicles in this heading is determined by certain features which indicate that the vehicles are designed for the transport of goods rather than for the transport of persons (**heading 87.03**).

\* \* \*

The heading also covers:

\* \* \*

(3) **Self-loading vehicles** equipped with winches, elevating devices, etc., but designed essentially for transport purposes

\* \* \*

In relevant part, the ENs for 8705 provide:

This heading covers a range of motor vehicles, specially constructed or adapted, equipped with various devices that enable them to perform certain non-transport functions, i.e., the primary purpose of a vehicle of this heading is **not** the transport of persons or goods.

\* \* \*

Similarly, this heading **excludes** self-propelled wheeled machines in which the chassis and the working machine are specially designed for each other and form an integral mechanical unit (e.g., self-propelled motor graders). In this case, the machine is not simply mounted on a **motor vehicle chassis**, but is completely integrated with a chassis that cannot be used for other purposes and may incorporate the essential automobile features above.

In Headquarters' Ruling Letter (HQ) 958847, dated June 20, 1996, a vacuum tank truck designed to pick-up and transport a variety of liquid wastes, slurries, industrial spills and hazardous liquids was classified in heading 8704, HTSUS. The description of the trucks in HQ 958847 is virtually identical to the vehicles now at issue in this Protest which are also principally designed to collect, remove, and transport waste, liquid, and debris.

Although HQ 958847 classifies substantially similar merchandise, Protestant insists that we have ruled otherwise on numerous occasions. For instance, Protestant cites to (HQ) 954178, dated September 7, 1993, where we classified a six wheeled truck (1985 Model) with a fully enclosed cab and chassis to which a 2,700 liter tank was attached as a special purpose motor vehicle in heading 8705, HTSUS. In classifying this vehicle, CBP noted that the vehicle was equipped with a tank that had been fitted with a mechanical pump, manual pump, wide beam extruders or spray nozzles, spraying hoses and piping with brush attachments, plus a control apparatus. The vehicle

was designed to spray water for street cleaning and other general purpose cleaning operations, as well as neutralizing and detoxifying agents to cleanse vehicles, streets and areas that have become biologically, chemically or radiologically contaminated. In this instance, CBP reasoned that the truck was analogous to those motor pump vehicles that are set forth in the ENS to 8705, e.g., lorries used for cleansing streets, gutters, airfield runways, etc., including sprinklers and sprinkle sweepers, among others. Although the vehicle in HQ 954178 was capable of carrying liquid to the job site by way of a tank affixed to the chassis, the primary function of this liquid was to enable the specialized equipment, i.e., pumps, extruders, spray nozzles, spray hoses, and piping with brush attachments, to perform very specific spraying, cleaning, and decontamination operations. Furthermore, there is no specific mention of a vacuum apparatus or a storage tank with which to transport debris, liquid, waste, etc. In contrast, based on the description provided by the Protestant, the vehicles which are the subject of this Protest do not contain sweepers or brush attachments. Rather, they are industrial vacuum loaders that collect, remove, and transport fluids, sludge slurry and other waste through suction lines and vacuum hoses so that it may be *transported away* from the jobsite. *See also* New York Ruling Letter (NY) I84386, dated August 2, 2002, where we classified a vacuum sweeper with double side brooms in heading 8705.

Protestant also cites to NY 886868, dated June 8, 1993, where we classified a sewer inspection motor vehicle containing the camera equipment necessary to perform the inspection in heading 8705, HTSUS. While this vehicle transports cameras to and from the jobsite, it is for the sole purpose of inspecting sewer pipes. As such, those trucks are described by the terms of heading 8705, HTSUS, as specialized motorized vehicles principally designed for a purpose other than the transport of goods.

The vehicles at issue in this Protest share none of these specialized features and are principally designed to perform as industrial vacuum loaders that collect fluids, sludge slurry and other waste through suction lines so that it may be *transported away* from the jobsite and properly disposed of. The collection and transport functions of the instant trucks are more akin to garbage trucks of heading 8704, HTSUS, than to special purpose trucks of heading 8705, HTSUS. *See* EN 87.04 and HQ 085125, dated November 15, 1989. The vacuum and storage equipment makes up the bulk of the truck. Furthermore, the instant trucks do not contain other cleaning apparatus such as brooms or sweepers. Hence they are classified in heading 8704, HTSUS, as trucks for the transport of goods. *See also*, HQ 085900, dated February 20, 1990, and HQ 083669, dated May 8, 1989, classifying a mobile security shredder in heading 8704, HTSUS, deeming the principal function of a vehicle that brought the paper shredding equipment to the job site and transported the shredded paper to the landfill or recycling site as a vehicle for the transport of goods in heading 8704, HTSUS.

In view of the foregoing, it is our decision that the Port correctly classified the subject vehicles as “Motor Vehicles for the transport of goods” in heading 8704, HTSUS.

**HOLDING:**

The subject vehicles were properly reclassified in subheading 8704.23.0000, HTSUSA, which provides for “Motor vehicles for the transport of goods: Other, with compression-ignition internal combustion piston engine (diesel or semi-diesel): G.V.W. exceeding 20 metric tons”. The general column one rate of duty at the time of entry was 25 percent *ad valorem*.

You are instructed to DENY the protest.

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 CBP Form 19, to the protestant no later than 60 days from the date of this letter. Any reliquidation of the entry or entries in accordance with the decision must be accomplished prior to mailing the decision.

Sixty days from the date of the decision, the Office of International Trade, 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](http://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]

N268924

October 9, 2015

CLA-2-87:OT:RR:NC:N1:101

CATEGORY: Classification

TARIFF NO.: 8704.23.0000

DONALD S. STEIN, ATTORNEY  
GREENBERG TRAUIG, LLP  
2101 L STREET, NW, SUITE 1000  
WASHINGTON, DC 20037-1593

RE: The tariff classification of hydro vacuum loaders from an unspecified country

DEAR MR. STEIN,

In your letter dated September 11, 2015, you requested a tariff classification ruling on behalf of Clean Harbors Industrial Services (“Clean Harbors”) of Norwell, Massachusetts.

The two (2) items under consideration have been identified as the Foremost FVS1600 and the Tornado which are industrial vacuum loaders. The Gross Vehicle Weight (G.V.W.) of each loader is 62,500 pounds.

Industrial vacuum loaders are designed to collect and remove/transport fluids, sludge slurry and other waste. These trucks are specifically designed to transport wet or dry hazardous and non-hazardous materials. They transport water to the jobsite, where they utilize hoses and other vacuum apparatus to clean and remove debris and other waste from the jobsite. Their design consists of vacuum tanks mounted onto a chassis.

You suggested classification in subheading 8705.90.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Special purpose motor vehicles, ***other than those principally designed for the transport of persons or goods*** (for example, wreckers, mobile cranes, fire fighting vehicles, concrete mixers, road sweepers, spraying vehicles, mobile workshops, mobile radiological units): Other.”

The Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System (HTSUS), which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and the GRIs. The ENs to 87.05 states:

“This heading covers a range of motor vehicles, specially constructed or adapted, equipped with various devices that enable them to **perform certain non-transport functions**, i.e., the primary purpose of a vehicle of this heading is **not** the transport of persons or goods.”

In addition, Notes (7) and (9) state respectively:

“Crane lorries (trucks), not for the transportation of goods, consist of a motor vehicle chassis on which a cab and a rotating crane are permanently mounted. *However, Lorries (trucks) with self-loading devices are excluded* (heading 87.04)”.

“Lorries (trucks) with stacking mechanisms (i.e., with a platform which moves on a vertical support and is generally powered by the vehicle engine). But the heading ***excludes self-loading*** motor vehicles equipped with winches, elevating devices, etc., but which are constructed essentially for the transport of goods (**heading 87.04**)”.

HQ Ruling H235508 dated August 27, 2014, references a similar issue with “Clean Harbors” of Norwell, Massachusetts.

The applicable classification subheading for the Tornado and the Foremost FVS1600 Hydro Vacuum Excavators (HVEs) will be 8704.23.0000, HTSUS, which provides for “Motor vehicles for the transport of goods: Other, with compression-ignition internal combustion piston engine (diesel or semi-diesel): G.V.W. exceeding 20 metric tons.” The general rate of duty will be 25%.

Duty rates are provided for your convenience and are subject to change. The text of the most recent Harmonized Tariff Schedule of the United States and the accompanying duty rates are provided on the 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 Matthew Sullivan at [matthew.sullivan@cbp.dhs.gov](mailto:matthew.sullivan@cbp.dhs.gov).

*Sincerely,*

GWENN K. KIRSCHNER

*Director*

*National Commodity Specialist Division*

## [ATTACHMENT C]

HQ 958847

June 20, 1996

CLA-2 RR:TC:MM 958847 LTO

CATEGORY: Classification

TARIFF NO.: 8704.21.00; 8704.22.50; 8704.23.00;  
8704.31.00; 8704.32.00

PORT DIRECTOR  
U.S. CUSTOMS SERVICE  
111 WEST HURON STREET  
ROOM 603  
BUFFALO, NEW YORK 14202

RE: IA 3/96; Vacuum tank trucks; HQs 087028, 087143 revoked

DEAR PORT DIRECTOR:

The following is our decision regarding IA 3/96, which concerns the classification of vacuum tank trucks under the Harmonized Tariff Schedule of the United States (HTSUS). In HQ 087028, dated August 13, 1990, and HQ 087143, dated August 15, 1990, Customs classified nearly identical vacuum tank trucks.

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 revocations of HQ 087028 and HQ 087143 was published May 15, 1996, in the Customs Bulletin, Volume 30, Number 20. No comments were received.

**FACTS:**

The Presvac Systems Ltd. vacuum tank trucks are liquid waste removal systems that consist of a vacuum tank with pump mounted on a truck chassis. The trucks are designed to pick up and transport a variety of liquid wastes, slurries, industrial spills and hazardous liquids. The trucks are generally powered by compression-ignition internal combustion (diesel) engines, although, in limited cases, they are powered by spark-ignition internal combustion piston engines.

**ISSUE:**

Whether the vacuum tank trucks are classifiable under subheading 8704.90.00, HTSUS, which provides for other motor vehicles for the transport of goods.

**LAW AND ANALYSIS:**

The General Rules of Interpretation to the HTSUS govern the classification of goods in the tariff schedule. GRI 1 states in pertinent part that “for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes . . . .”

The vacuum tank trucks are classifiable within heading 8704, HTSUS, which provides for motor vehicles for the transport of goods. However, the following subheadings, at the five-digit level, remain under consideration:

8704.2 Other, with compression-ignition internal combustion piston engine (diesel or semi-diesel)

8704.3 Other, with spark-ignition internal combustion piston engine

8704.9 Other

In HQ 087028, dated August 13, 1990, and HQ 087143, dated August 15, 1990, Customs classified nearly identical vacuum tank trucks under subheading 8704.90.00, HTSUS. Subheading 8704.9, HTSUS, covers motor vehicles for the transport of goods other than (1) dumpers for off-highway use (subheading 8704.1, HTSUS), (2) those powered by compression-ignition internal combustion engines (diesel or semi-diesel) and (3) those powered by spark-ignition internal combustion piston engines. For example, subheading 8704.9, HTSUS, would encompass motor vehicles for the transport of goods, other than dumpers for off-highway use, which are powered by electricity, propane, steam, etc.

The subject trucks are generally powered by compression-ignition internal combustion (diesel) engines, although, in limited cases, they are powered by spark-ignition internal combustion piston engines. They are never powered by an alternative source of power or engine design. Accordingly, the trucks cannot be classified under subheading 8704.90.00, HTSUS. Those powered by diesel engines are classifiable under subheading 8704.21.00 (gross vehicle weight ("G.V.W.") not exceeding five metric tons), 8704.22.50 (G.V.W. exceeding five metric tons but not exceeding 20 metric tons) or 8704.23.00 (G.V.W. exceeding 20 metric tons), HTSUS, while those powered by spark-ignition internal combustion engines are classifiable under subheading 8704.31.00 (G.V.W. not exceeding five metric tons) or 8704.32.00 (G.V.W. exceeding five metric tons), HTSUS. HQ 087028 and 087143 are revoked.

#### **HOLDING:**

The vacuum tank trucks powered by diesel engines are classifiable under subheading 8704.21.00, 8704.22.50 or 8704.23.00, HTSUS, while those powered by spark-ignition internal combustion engines are classifiable under subheading 8704.31.00 or 8704.32.00, HTSUS.

In accordance with 19 U.S.C. 1625(c)(1), this ruling will become effective 60 days after publication in the Customs Bulletin. Publication of rulings or decisions pursuant to 19 U.S.C. 1625(c)(1) does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

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

*Sincerely,*

JOHN DURANT,  
*Director*

*Tariff Classification Appeals Division*

## [ATTACHMENT D]

HQ H287200  
CLA-2 OT:RR:CTF:TCM H287200 LWF  
CATEGORY: Classification  
TARIFF NO.: 8705.90.00

JOHN F. FARRAHER, JR.  
GREENBERG TRAURIG, LLP  
ONE INTERNATIONAL PLACE  
BOSTON, MA 02110

Re: Revocation of Headquarters Ruling Letter (HQ) H235508, dated August 27, 2014, New York Ruling Letter (NY) N268924, dated October 9, 2015, and HQ 958847, dated June 20, 1996; classification of certain vacuum trucks designed for liquid and semi-liquid waste removal

DEAR MR. FARRAHER:

This letter is in reference to Headquarters Ruling Letter (HQ) H235508, issued by U.S. Customs and Border Protection (CBP) in response to a Protest and Application for Further Review (AFR), Protest No. 3304-12-100022, filed on behalf of your client, Clean Harbors Environmental Services, Inc. (“Clean Harbors”), regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of certain vacuum trucks designed for liquid and semi-liquid waste removal.

In ruling letter HQ H235508, CBP classified vacuum trucks, consisting of a truck cab and chassis equipped with a tank, a rotary vane pump, and suction hoses, under heading 8704, HTSUS, which provides for, “motor vehicles for the transport of goods.” CBP has reviewed ruling letter HQ H235508, and has determined that the classification analysis set forth in the decision is incorrect. Accordingly, for the reasons set forth below, CBP is revoking ruling letter HQ H235508.

Similarly, CBP has reviewed New York Ruling Letter (NY) N268924, dated October 9, 2015, and ruling letter HQ 958847, dated June 20, 1996, both of which concern the classification of vacuum trucks that are substantially similar to the vehicles at issue in ruling letter HQ H235508. Consistent with the below analysis, CBP has determined that ruling letters NY N268924 and HQ 958847 are also incorrect and therefore require revocation.

**FACTS:**

The vacuum trucks identified in ruling letter HQ H235508 consist of large, specially-designed vehicles that are used for the collection and transport of liquid and semi-solid waste materials. Each truck consists, in relevant part, of a truck cab and chassis equipped with a tank, a rotary vane pump, and suction hoses. During operation, the rotary vane pump is used to generate vacuum pressure inside the vehicle tank, creating a strong vacuum pressure that is suitable for lifting waste material off the ground and into the tank via connected suction hoses.

Due to the extra vacuum pressure produced by the rotary pump, the vacuum truck tank is specially constructed of a thick and heavier steel than the tanks that are used on common tanker trucks. Additionally, the vacuum truck tanks are also constructed with internal baffles that enable the separation of solid waste material from liquid waste, which allows for the separate unloading of solids and liquids. These features enable the vacuum trucks

to perform waste clean-up functions, which are typically employed in sewer, septic, environmental, and industrial applications. Similarly, in the petroleum industry, vacuum trucks are often used to remove drilling mud, drilling cuttings, cement, spills, and brine water from production tanks.

In ruling letter NY N268924, CBP provided the following description of the vacuum trucks:

The two (2) items under consideration have been identified as the Foremost FVS1600 and the Tornado which are industrial vacuum loaders. The Gross Vehicle Weight (G.V.W.) of each loader is 62,500 pounds.

Industrial vacuum loaders are designed to collect and remove/transport fluids, sludge slurry and other waste. These trucks are specifically designed to transport wet or dry hazardous and non-hazardous materials. They transport water to the jobsite, where they utilize hoses and other vacuum apparatus to clean and remove debris and other waste from the jobsite. Their design consists of vacuum tanks mounted onto a chassis.

\* \* \* \* \*

In ruling letter HQ 958847, CBP provided the following description of the vacuum trucks:

The [vacuum trucks] are liquid waste removal systems that consist of a vacuum tank with pump mounted on a truck chassis. The trucks are designed to pick up and transport a variety of liquid wastes, slurries, industrial spills and hazardous liquids. The trucks are generally powered by compression-ignition internal combustion (diesel) engines, although, in limited cases, they are powered by spark-ignition internal combustion piston engines.

\* \* \* \* \*

#### **ISSUE:**

Whether the vacuum trucks are classifiable under heading 8704, HTSUS, as vehicles for the transport of goods, or under heading 8705, HTSUS, as special purpose motor vehicles.

#### **LAW AND ANALYSIS:**

Merchandise imported into the United States is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context which requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provision of law for all purposes. GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in their appropriate order.

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 Harmonized System and are generally indicative of the proper interpretation of the heading. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

With respect to the tariff classification of the vacuum truck vehicles at issue, the relevant HTSUS provisions state, as follows:

8704 Motor vehicles for the transport of goods

8705 Special purpose motor vehicles, other than those principally designed for the transport of persons or goods (for example, wreckers, mobile cranes, fire fighting vehicles, concrete mixers, road sweepers, spraying vehicles, mobile workshops, mobile radiological units)

\* \* \* \* \*

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While not legally binding, the ENs provide a commentary on the scope of each heading of the HTS and are thus useful in ascertaining the proper classification of merchandise. It is CBP's practice to follow, whenever possible the terms of the ENs when interpreting the HTSUS. *See* T.D. 89-90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The ENs to heading 87.04, HS, provide in relevant part, as follows:

This heading covers in particular:

[...]

[T]ankers (whether or not fitted with pumps);

[...]

[R]efuse collectors whether or not fitted with loading, compressing, damping, etc., devices.

\* \* \* \* \*

The ENs to heading 87.05, HS, provide in relevant part, as follows:

This heading covers a range of motor vehicles, specially constructed or adapted, equipped with various devices that enable them to perform certain non-transport functions, i.e., the primary purpose of a vehicle of this heading is not the transport of persons or good.

This heading includes:

[...]

(4) Lorries (trucks) used for cleansing streets, gutters, airfield runways, etc., (e.g., sweepers, sprinklers, sprinklersweepers and cesspool emptiers).

\* \* \* \* \*

In ruling letter HQ H235508, dated August 27, 2014, CBP examined a Protest/Application for Further Review ("Protest/AFR") filed by Clean Harbors that argued its vacuum trucks issue were classifiable as special purpose motor vehicles under heading 8705, HTSUS, because the vehicles were used for the collection and removal of wet and dry waste materials from industrial sites. At the Protest/AFR level, CBP rejected Clean Harbors' claim for classification under heading 8705, HTSUS, and affirmed the Port's classification of the vacuum trucks under heading 8704, HTSUS, as vehicles for the transport of goods.

Specifically, CBP found that the vacuum trucks at issue did not include any special equipment for performing a clean-up function, and notably, lacked additional specialized equipment, such as spray nozzles, spray hoses, or piping with brush attachments that are typical of special purpose vehicles of heading 8705, HTSUS. *See* CBP Ruling Letter HQ H235508, dated August 27, 2014. By contrast, CBP described that the vacuum trucks as “industrial vacuum loaders that collect, remove, and transport fluids, sludge slurry and other waste through suction lines and vacuum hoses so that it may be transported away from the jobsite.” *Id.* (Emphasis original.) In light of the identified waste transport function, CBP therefore determined that the vacuum trucks were most-akin to the exemplar, “refuse collectors,” found in EN 87.04, HS, and denied Clean Harbors protest by classifying the vehicles under heading 8704, HTSUS.

Upon review of ruling letter HQ H235508, however, this office has re-evaluated CBP’s classification of the Clean Harbor vacuum trucks and determined that the vehicles are properly classified under heading 8705, HTSUS, as special purpose motor vehicles, other than those principally designed for the transport of persons or goods. The re-examination has revealed additional information relating to the physical characteristics of the vacuum trucks, which render the vehicles suitable for special purposes beyond the transport of goods. Specifically, the vacuum trucks are equipped with a rotary pump that is designed to enable the vehicles to collect both solid and liquid waste from the ground and industrial waste holding containers. Additionally, due to the strong vacuum pressures generated by the rotary pump, the tanks of the vehicles are constructed and reinforced with thicker, heavier steel than the tanks used on common tankers. The tanks also feature internal baffles that are designed to facilitate the separation of solid waste material from liquid waste. These design characteristics contribute to the special construction of the vacuum trucks, which enable the vehicle to perform the non-transport function of waste collection and clean-up.

This office is careful to acknowledge, however, that the presence of a rotary pump alone is not enough to conclude that the vacuum trucks are specially constructed or equipped to perform a non-transport function. For example, the EN to heading 87.04, HS, specifically identifies “tankers (whether or not fitted with pumps)” as a vehicle of heading 87.04. *See also* EN 87.05, HS (stating that heading 87.05, HS, excludes “self-loading motor vehicles equipped with winches, elevating devices, etc., but which are constructed essentially for the transport of goods.”). In this regard, CBP has determined that the presence of rotary pumps on the Clean Harbor vacuum trucks, when combined with the vehicles’ other design features, contribute to the non-transport function of waste collection and clean-up. *See* EN 87.05, HS (specifically identifying trucks used for cleansing streets and gutters (for example, sweepers and cesspool emptiers) as performing a non-transport functions). In light of the foregoing, CBP has determined that the vacuum trucks at issue are classifiable in heading 8705, HTSUS, as special purpose motor vehicles.

#### **HOLDING:**

By application of GRI 1, the vacuum trucks are classified under heading 8705, HTSUS, specifically in subheading 8705.90.00, which provides for “Special purpose motor vehicles, other than those principally designed for the transport of persons or goods (for example, wreckers, mobile cranes, fire

fighting vehicles, concrete mixers, road sweepers, spraying vehicles, mobile workshops, mobile radiological units): Other.” The 2017 column one, general rate of duty is *Free*.

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

**EFFECT ON OTHER RULINGS:**

CBP ruling letters HQ H235508, dated August 27, 2014, NY N268924, dated October 9, 2015, and HQ 958847, dated June 20, 1996, are hereby **REVOKED** in accordance with the above analysis.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

**Cc:** Donald S. Stein, Attorney  
Greenberg Traurig, LLP  
2101 L Street, NW, Suite 1000  
Washington, DC 20037–1593

**REVOCAION OF ONE RULING LETTER AND  
MODIFICATION OF ONE RULING LETTER, AND  
REVOCAION OF TREATMENT RELATING TO THE  
TARIFF CLASSIFICATION OF NAME BADGE  
COMPONENTS**

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

**ACTION:** Notice of revocation of one ruling letter and modification of one ruling letter, and revocation of treatment relating to the tariff classification of name badge components.

**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 one ruling letter and modifying one ruling letter concerning the tariff classification of name badge components 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. 23, on June 17, 2017. No comments were 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 16, 2017.

**FOR FURTHER INFORMATION CONTACT:** Tatiana Salnik Matherne, Tariff Classification and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325–0351.

**SUPPLEMENTARY INFORMATION:**

**BACKGROUND**

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (“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. 51, No. 23, on June 7, 2017, proposing to revoke one ruling letter and modify one ruling letter pertaining to the tariff classification of name badge components. As stated in the notice, this action will cover Headquarters Ruling Letter (HQ) H217623, dated July 25, 2012, and HQ 562821, dated October 30, 2003, as well as any rulings on this merchandise which may exist, but have not been specifically 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 HQ H217623, CBP found that the name badge components at issue were retail sets classified under subheading 8505.11.00, HT-SUS, which provides for "Electromagnets; permanent magnets and articles intended to become permanent magnets after magnetization; electromagnetic or permanent magnet chucks, clamps and similar holding devices; electromagnetic couplings, clutches and brakes; electromagnetic lifting heads; parts thereof: Permanent magnets and articles intended to become permanent magnets after magnetization: Of metal." In HQ 562821, CBP found, in relevant part, that the metal magnets encased in plastic were classified under subheading

8505.19.00, HTSUS, which provided for “Electromagnets; permanent magnets and articles intended to become permanent magnets after magnetization; electromagnetic or permanent magnet chucks, clamps and similar holding devices; electromagnetic couplings, clutches and brakes; electromagnetic lifting heads; parts thereof: Permanent magnets and articles intended to become permanent magnets after magnetization: Other.” CBP has reviewed HQ H217623 and HQ 562821, and has determined those ruling letters to be in error with regard to their classification as retail sets and with regard to the classification of the magnets.

It is now CBP’s position that the name badge components at issue are each classified separately, and not as GRI 3(b) sets. Each component is classified as follows: (1) the non-adhesive, peel-off transparent and paper label sheets are classified in heading 4821, HTSUS, and specifically in subheading 4821.90.40, HTSUS, which provides for “Paper and paperboard labels of all kinds, whether or not printed: Other: Other”; (2) the name plates of aluminum are classified in heading 7616, HTSUS, and specifically in subheading 7616.99.51, HTSUS, which provides for “Other articles of aluminum: Other: Other: Other”; (3) the name plates of steel are classified in heading 7326, HTSUS, and specifically in subheading 7326.90.86, HTSUS, which provides for “Other articles of iron or steel: Other: Other: Other: Other”; (4) the plastic protective lens covers are classified in heading 3926, HTSUS, and specifically in subheading 3926.90.99, HTSUS, which provides for “Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other”; (5) the rectangular rare earth magnets are classified in heading 8505, HTSUS, and specifically in subheading 8505.11.00, HTSUS, which provides for “Electromagnets; permanent magnets and articles intended to become permanent magnets after magnetization; electromagnetic or permanent magnet chucks, clamps and similar holding devices; electromagnetic couplings, clutches and brakes; electromagnetic lifting heads; parts thereof: Permanent magnets and articles intended to become permanent magnets after magnetization: Of metal”; and (6) the specifically designed software which enables the consumer to design templates, store information and print the names to be placed on badges is classified in heading 8523, HTSUS, and specifically in subheading 8523.49.40, HTSUS, which provides for “Discs, tapes, solid-state non-volatile storage devices, “smart cards” and other media for the recording of sound or of other phenomena, whether or not recorded, including matrices and masters for the production of discs, but excluding products of Chapter 37: Optical media: Other: Other: For reproducing representations of instructions, data, sound, and

image, recorded in a machine readable binary form, and capable of being manipulated or providing interactivity to a user, by means of an automatic data processing machine; proprietary format recorded discs.”

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking HQ H217623 and modifying HQ 562821, and revoking or modifying any other ruling not specifically identified, to reflect the analysis contained in Headquarters Ruling Letter (“HQ”) H269117, 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: July 19, 2017

IEVA K. O’ROURKE  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

Attachment

HQ H269117

July 19, 2017

CLA-2 OT:RR:CTF:FTM H269117 TSM

CATEGORY: Classification

TARIFF NO.: 4821.90.40, 7616.99.50, 7326.90.85,  
3926.90.99, 8505.11.00, 8523.49.40.

MR. PHILIP YALE SIMONS  
SIMONS & WISKIN  
102 SOUTH BROADWAY  
SOUTH AMBOY, NJ 08879

RE: Revocation of HQ H217623; Modification of HQ 562821; Tariff  
Classification of name badge components.

DEAR MR. SIMONS:

This is in reference to Headquarters Ruling Letter (HQ) H217623, issued to Imprint Plus on July 25, 2012, concerning the tariff classification of different components which are put together for creating name badges. In that ruling, CBP found that the components used for creating professional name badges were retail sets classified under subheading 8505.11.00, HTSUS,<sup>1</sup> which provides for “Electromagnets; permanent magnets and articles intended to become permanent magnets after magnetization ... : Permanent magnets and articles intended to become permanent magnets after magnetization: Of metal.” Upon additional review, we have found this to be incorrect. For the reasons set forth below we hereby revoke HQ H217623.

This is also in reference to HQ 562821, dated October 30, 2003. In that ruling, CBP classified the components used for creating professional name badges, imported in bulk, as follows: the steel plates in heading 7326 as other articles of iron or steel; the brass plates in heading 7419 as other articles of copper; the aluminum plates in heading 7616 as other articles of aluminum; the plastic covers in heading 3926 as other articles of plastics; the magnets in heading 8505 (and specifically in subheading 8505.19.00) as magnets of materials other than metal; and the safety pins in heading 7319 as safety pins. Upon additional review, we have found this ruling to be incorrect with respect to the tariff classification of the magnets. For the reasons set forth below we hereby modify HQ 562821.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), a notice was published in the *Customs Bulletin*, Volume 51, No. 23, on June 7, 2017, proposing to revoke HQ H217623, modify HQ 562821, and revoke any treatment accorded to substantially identical transactions. No comments were received in response to this notice.

**FACTS:**

HQ H217623, dated July 25, 2012, describes the subject merchandise as follows:

---

<sup>1</sup> Although HQ H217623 stated that the components used for creating professional name badges are classified under subheading 8505.11.11, HTSUS, rather than subheading 8505.11.00, HTSUS, we note that this is a typographical error, as subheading 8505.11.11 did not exist in the HTSUS.

The instant merchandise consists of different materials which are put together for creating professional name badges. The name-badge kits are sold and packaged in a sealed retail cardboard box, which states that the kits allow a person to design and print a professional name badge, with graphics and logo, quickly and easily. Each kit contains a test sheet, non-adhesive peel-off transparent and paper label sheets, name plates of aluminum or steel, plastic protective lens covers, and rectangular rare earth magnets made of metal. The kits also contain paper instructions and a CD-ROM containing software for designing templates and printing the name badges on a laser jet or ink jet printer.

Once the individual name tags are printed on the inserts, the user places the individual label on the enclosed metal plate and slides the clear plastic lens cover onto the metal plate. The rare earth magnets secure the name tags to one's clothing. We note that the magnets have a relatively high magnetic strength.

The name badge and labels for the YouWho kit are 3" x 1" in dimensions. The Mighty Badge Kits badges are 3" x 1.5" in dimensions. The kits are sold in various configuration colors (e.g. gold or silver), sizes, and shapes (e.g. oval or square). You indicate that the metal plates in the YouWho kits are composed of steel, while the metal plates in the Mighty Badge Kit are composed of aluminum.

The kits contain materials to make a limited number of badges, but the retail packaging box notes that the name tags may be reused. For example, the instant YouWho Professional Name Badge System ("YouWho") kit contains two metal badges, two lens covers and two magnets, but there are sixteen labels on the insert sheets.

HQ 562821, dated October 30, 2003, describes the subject merchandise as follows:

The facts as presented in the ruling request are as follows: Parts for use in making metal nametags are exported in bulk form from Canada to the United States. The parts consist of metal plates manufactured in Canada by stamping and cutting coiled or plate steel, brass or aluminum; plastic covers manufactured in Canada; and magnets and safety pins manufactured in China. No information was submitted with respect to whether the materials used to manufacture the parts in Canada are originating or non-originating.

The parts used to make the nametags are shipped together in the same carton but in separate packages. The individual parts are normally shipped in quantities sufficient to assemble a pre-determined number of nametags.

#### **ISSUE:**

What is the tariff classification of the components used for creating professional name badges?

#### **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.

GRI 2 provides in pertinent part as follows:

- (b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.

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

- (a) ...when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods... those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.
- (b) Mixtures, composite goods consisting of different materials or made up of different components,...which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

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

The ENs to GRI 2(b) state the following:

- (X) Rule 2 (b) concerns mixtures and combinations of materials or substances, and goods consisting of two or more materials or substances. The headings to which it refers are headings in which there is a reference to a material or substance (e.g., heading 05.07 - ivory), and headings in which there is a reference to goods of a given material or substance (e.g., heading 45.03 - articles of natural cork). It will be noted that the Rule applies only if the headings or the Section or Chapter Notes do not otherwise require (e.g., heading 15.03 - lard oil, **not ... mixed**).

Mixtures being preparations described as such in a Section or Chapter Note or in a heading text are to be classified under the provisions of Rule 1.

- (XI) The effect of the Rule is to extend any heading referring to a material or substance to include mixtures or combinations of that material or substance with other materials or substances. The effect of the Rule is also to extend any heading referring to goods of a given material or substance to include goods consisting partly of that material or substance.

(XII) It does not, however, widen the heading so as to cover goods which cannot be regarded, as required under Rule 1, as answering the description in the heading; this occurs where the addition of another material or substance deprives the goods of the character of goods of the kind mentioned in the heading.

(XIII) As a consequence of this Rule, mixtures and combinations of materials or substances, and goods consisting of more than one material or substance, if prima facie classifiable under two or more headings, must therefore be classified according to the principles of Rule 3.

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

(X) For the purposes of this Rule, the term “goods put up in sets for retail sale” shall be taken to mean goods which:

- (a) consist of at least two different articles which are, prima facie, classifiable in different headings...;
- (b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and
- (c) are put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or cases or on boards).

The HTSUS provisions under consideration are as follows:

8505	Electromagnets; permanent magnets and articles intended to become permanent magnets after magnetization; electromagnetic or permanent magnet chucks, clamps and similar holding devices; electromagnetic couplings, clutches and brakes; electro-magnetic lifting heads; parts thereof:			
	Permanent magnets and articles intended to become permanent magnets after magnetization:			
8505.11.00	Of metal	*	*	*
8505.19	Other:	*	*	*
8505.19.30	Other	*	*	*
8523	Discs, tapes, solid-state non-volatile storage devices, “smart cards” and other media for the recording of sound or of other phenomena, whether or not recorded, including matrices and masters for the production of discs, but excluding products of Chapter 37:			
	Optical media:	*	*	*
8523.49	Other:	*	*	*
	Other:			

8523.49.40

For reproducing representations of instructions, data, sound, and image, recorded in a machine readable binary form, and capable of being manipulated or providing interactivity to a user, by means of an automatic data processing machine; proprietary format recorded discs

\* \* \*

In HQ H217623, CBP found that the components used for creating professional name badges met the definition of “goods put up as sets for retail sale” provided in EN (X) to GRI 3(b), and were classified as such under subheading 8505.11.00, HTSUS. As referenced above, EN (X) to GRI 3(b) provides that “goods put up in sets for retail sale” are those that:

- (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 (e.g., in boxes or cases or on boards).

While it is clear that the name badge components at issue meet the first two requirements, since they are different articles prima facie classifiable in different headings, which are designed to be put together into complete name badges, upon further review we find that they do not meet the third requirement of the test. The language in the ENs “in a manner suitable for sale directly to users” clarifies the term “retail” in the GRI. The term “put up” is defined as “a. to construct; erect. ...d. to display; show...” Random House College Dictionary, p. 1075 (1973 ed.). Both the GRI and the EN use the term “for sale,” which term is defined as “offered to be sold; made available to purchasers.” *Id.*, at p. 1162. The term “sale,” alone, is the complete transaction of property for money or credit. *Id.* Therefore, the language “put up for sale” refers to constructing or showing goods offered to be sold.

Taken as a whole, criterion (c) requires that goods be constructed or shown in a manner suitable to be offered for sale directly to users without repacking. In this case, the name badge components are sold before they are “put up in a manner suitable for sale directly to users without repacking.” The components are purchased, and then they are assembled into individual kits, in accordance with the retail purchaser’s specific order. Therefore, we find that the name badge components at issue are not suitable for sale directly to users without repacking. Accordingly, we conclude that the name badge components are not “goods put up in sets for retail sale” and that each component must be classified individually. *See* HQ 967364, dated December 23, 2004 (made to order laptop and accessories kits are not classified as sets).

As referenced above, in HQ 562821, dated October 30, 2003, CBP classified the component parts used for creating professional name badges, imported in bulk, as follows: the steel plates in heading 7326 as other articles of iron or steel (and specifically in subheading 7326.90.85, HTSUS)<sup>2</sup>; the brass plates

<sup>2</sup> Subheading 7326.90.85 of the HTSUS 2003 corresponds to subheading 7326.90.86 of the HTSUS 2017.

in heading 7419 as other articles of copper (and specifically in subheading 7419.99.50, HTSUS); the aluminum plates in heading 7616 as other articles of aluminum (and specifically in subheading 7616.99.50, HTSUS)<sup>3</sup>; the plastic covers in heading 3926 as other articles of plastics and articles of other materials of heading 3901 to 3914 (and specifically in subheading 3926.90.98, HTSUS)<sup>4</sup>; the magnets in heading 8505 as permanent magnets (and specifically in subheading 8505.19.00, HTSUS)<sup>5</sup>; and the safety pins in heading 7319 as safety pins (and specifically in subheading 7319.20.20, HTSUS). Upon additional review, we affirm HQ 562821 with regard to the classification of the steel, brass and aluminum plates, the plastic covers, and the safety pins.

In HQ 562821, the metal magnets encased in plastic, were classified in subheading 8505.19.00, HTSUS, which provided for magnets of materials other than metal. Upon additional review, we found that classification to be incorrect. The magnets at issue consist of the following components: (1) two metal inflexible magnets and (2) plastic holders, holding the magnets. The function of the magnets encased in plastic is to hold the name badges in place, which is accomplished by the two metal magnets. The plastic holders function as mere casing for the magnets. Applying GRI 2(b), we find that the fact that the magnets are encased in plastic does not deprive the good of having the character of a magnet of metal. *See* EN XII to GRI 2(b). Accordingly, it follows that the subject magnets encased in plastic are classified in subheading 8505.11.00, HTSUS, which provides for magnets of metal.

We next consider the tariff classification of the software designed to be used with the name badges at issue. The software is contained on a CD-ROM and allows the consumer to design name badge templates. Specifically, the software allows the consumer to store, change or edit all information so that producing badges is easy. Heading 8523, HTSUS, provides for discs for the recording of sound and other phenomena. Since the CD-ROM discs at issue contain software designed for use with the name badges under consideration, they are classified in subheading 8523.49.40, HTSUS, which provides for “Discs, tapes, solid-state non-volatile storage devices, “smart cards” and other media for the recording of sound or of other phenomena, whether or not recorded, including matrices and masters for the production of discs, but excluding products of Chapter 37: Optical media: Other: Other: For reproducing representations of instructions, data, sound, and image, recorded in a machine readable binary form, and capable of being manipulated or providing interactivity to a user, by means of an automatic data processing machine; proprietary format recorded discs.”

### **HOLDING:**

By application of GRIs 1, 2(b) and 6, we find that the name badge components must be classified individually. Specifically, we find that the rare earth magnets and specifically designed software are classified as follows:

<sup>3</sup> Subheading 7616.99.50 of the HTSUS 2003 corresponds to subheading 7616.99.51 of the HTSUS 2017.

<sup>4</sup> Subheading 3926.90.98 of the HTSUS 2003 corresponds to subheading 3926.90.99 of the HTSUS 2017.

<sup>5</sup> Subheading 8505.19.00 of the HTSUS 2003 corresponds to subheading 8505.19.30 of the HTSUS 2017.

- (1) The rectangular rare earth magnets are classified in heading 8505, HTSUS, and specifically in subheading 8505.11.00, HTSUS, which provides for “Electromagnets; permanent magnets and articles intended to become permanent magnets after magnetization; electromagnetic or permanent magnet chucks, clamps and similar holding devices; electromagnetic couplings, clutches and brakes; electromagnetic lifting heads; parts thereof: Permanent magnets and articles intended to become permanent magnets after magnetization: Of metal.” The 2017 column one, general rate of duty is 2.1% *ad valorem*.
- (2) The specifically designed software which enables the consumer to design templates, store information and print the names to be placed on badges is classified in heading 8523, HTSUS, and specifically in subheading 8523.49.40, HTSUS, which provides for “Discs, tapes, solid-state non-volatile storage devices, “smart cards” and other media for the recording of sound or of other phenomena, whether or not recorded, including matrices and masters for the production of discs, but excluding products of Chapter 37: Optical media: Other: Other: For reproducing representations of instructions, data, sound, and image, recorded in a machine readable binary form, and capable of being manipulated or providing interactivity to a user, by means of an automatic data processing machine; proprietary format recorded discs.” The 2017 column one, general rate of duty is free.

**EFFECT ON OTHER RULINGS:**

HQ H217623, dated July 25, 2012, is hereby REVOKED; HQ 562821, dated October 30, 2003, is hereby MODIFIED with regard to the rare earth magnets and the software.

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

*Sincerely,*

LEVA K. O’ROURKE

*for*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

**19 CFR PART 177****MODIFICATION OF TWO RULING LETTERS AND  
REVOCACTION OF TREATMENT RELATING TO THE  
TARIFF CLASSIFICATION OF EARTHMOVER TIRES**

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

**ACTION:** Notice of modification of two ruling letters and of revocation of treatment relating to the tariff classification of earthmover 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) is modifying New York Ruling Letters (NY) I86839, dated September 25, 2002, and NY I85323, dated September 13, 2002, concerning the tariff classification of earthmover tires 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. 23, on June 7, 2017. No comments were 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 16, 2017.

**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, a notice was published in the *Customs Bulletin*, Vol. 51, No. 23, on June 7, 2017, proposing to modify two ruling letters pertaining to the tariff classification of earthmover tires. As stated in the proposed notice, this action will cover New York Ruling Letters (NY) I86839, dated September 25, 2002, and NY I85323, dated September 13, 2002, as well as any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

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

In NY I86839 and NY I85323, CBP classified four models of earthmover tires—the XMP (part no. 123406), the X-QUARRY (part no. 123887) the XH D1 (part no. 123031) and the XHAUL (part no. 205207)—in subheading 4011.20.10, HTSUS, which provides for “New pneumatic tires of rubber: Of a kind used on buses or trucks: Radial.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is modifying NY I86839 and NY I85323 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter (“HQ”) H272344, 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: July 24, 2017

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

Attachment

HQ H272344

July 24, 2017

CLA-2 OT:RR:CTF:TCM H272344 CkG

CATEGORY: Classification

TARIFF NO.: 4011.20.10, 4011.80.20

MARGARET WILSON-McDOWELL  
CUSTOMS/DRAWBACK ADMINISTRATOR  
MICHELIN NORTH AMERICA, INC.  
ONE PARKWAY SOUTH P.O. BOX 19001  
GREENVILLE, SOUTH CAROLINA 29602-9001

Re: Modification of NY I86839 and NY I85323; classification of certain off-the-road earthmover tires

DEAR Ms. WILSON-McDOWELL:

This is in response to your request of November 04, 2015, for reconsideration of New York Ruling Letters (NY) I86839, dated September 25, 2002, and I85323, dated September 13, 2002, with respect to four models of tires: the XMP (part no. 123406), the X-QUARRY (part no. 123887) the XH D1 (part no. 123031) and the XHAUL (part no. 205207). In NY I86839, CBP classified the XMP tread tire (part no. 123406), the X-QUARRY tread tire (part no. 123887) and the XH D1 tread tire (part no. 123031) in subheading 4011.20.10, HTSUS, which provides for “New pneumatic tires of rubber: Of a kind used on buses or trucks: Radial.” In NY I85323, CBP classified the XHAUL tire as a tire of a kind used on buses or trucks, in subheading 4011.20.10, HTSUS. The same XMP, X-QUARRY, and XH D1 tires (part nos. 123406, 123887 and 123031) were also classified in subheading 4011.20, HTSUS, in New York Ruling Letter NY I80691, dated April 26, 2002. We have reconsidered NY I86839, NY I85323 and NY I80691, and for the reasons set forth below, we find that the classification of the X-QUARRY, XH D1 and the XHAUL tires in subheading 4011.20, HTSUS, was incorrect.

We note that your request also includes one model of tire with an X-Traction tread, part no. 166905, which was not at issue in any of the cited rulings. CBP classified several tire models with an X-Traction tread, including part no. 166905, in NY N272481, dated March 1, 2016. In NY N272481, CBP classified three models of tires with an X-Traction tread in subheading 4011.94.40, HTSUS, as tires of a kind used on construction or industrial handling vehicles and machines. NY N272481 is consistent with our current views.<sup>1</sup>

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to modify NY I86839 and NY I85323 was published on June 7, 2017, in Volume 51, Number 23 of the Customs Bulletin. No comments were received in response to this notice.

<sup>1</sup> The HTSUS subheading 4011.94 no longer exists in the 2017 HTSUS; it has been replaced by subheading 4011.80, HTSUS, which similarly provides for “New pneumatic tires, of rubber: Of a kind used on construction, mining or industrial handling vehicles and machines.”

**FACTS:**

The subject merchandise consists of four models of earthmover tires: XMP Tread Pattern (part no. 123406); X-QUARRY Tread Pattern (part no. 123887); XH D1 Tread Pattern (part no. 123031); and XHAUL Tread Pattern (part no. 205207).

The XMP Tread tire is marked on the sidewall with the TRA code E2 and the size designation 14.00R25 (indicating that the section width<sup>2</sup> of the tire is 14 inches, the tire is of radial construction, and it has a rim diameter of 25 inches. The “E2” TRA code refers to tires for “Earthmover” vehicles, with a “Traction” tread.<sup>3</sup>

The X-Quarry Tread tire is marked on the sidewall with the TRA code E4 and the size designation 24.00R25 (24 inch section width radial tire with a rim diameter of 25 inches). The “E4” code refers to earthmover tires with a “Rock (deep tread)”. A technical data sheet obtained from Michelin describes the application of the X-Quarry tire as “quarry transport”.

The XH D1 Tread tire is marked on the sidewall with the TRA code E4 and the size designation 18.00R25 (18 inch section width radial tire with a rim diameter of 25 inches). A technical data sheet obtained from Michelin describes the application of the XH D1 tire as “transport”.

The XHAUL Tread tire is marked on the sidewall with the TRA code E4 and the size designation 18.00R33 (18 inch section width radial tire with a rim diameter of 33 inches).

In NY I86839, we noted that “The Earthmover Tire XMP Tread is used on Logging Trucks, which comprise a tractor unit with 2 or 3 axles, and one or more trailers. The tractor fitted with the XMP Tread is equally capable of on-the-road or off-the-road applications. The X-Quarry Tread and the XH D1 Tread are used on trucks that work in quarries, open pit or surface mines – never on open roads or highways. The X-Quarry Tread is for use on a “Rigid Dumper”; while the XH D1 Tread is for use on a “Rigid Dumper and Logging Truck.”

**ISSUE:**

Whether the instant tires are classified in subheading 4011.20, HTSUS, as tires “of a kind used on buses or trucks”, or in subheading 4011.80, HTSUS, as tires “of a kind used on construction, mining or industrial handling vehicles and machines.”

**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

<sup>2</sup> A tire’s section width (also called “cross section width”) is the measurement of the tire’s width from its inner sidewall to its outer sidewall (excluding any protective ribs, decorations or raised letters) at the widest point.

<sup>3</sup> The Tire & Rim Association (TRA) coding system assigns letter and number codes to tires according to their designated use. Thus, the TRA designates “L” as the code for “loaders and dozers”, “E” is defined as “earthmoving application”, and “G” is defined as the code for “graders”. Within each letter code, there are additional designations. For earthmover “E” tires, these include: 1 for “Ribbed”, 2 for “Traction”, 3 for “Rock”, 4 for “Rock (deep tread)”, and 5 for “Rock (very deep tread)”.

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 at issue provide, in pertinent part, as follows:

4011	New pneumatic tires, of rubber:
4011.20	Of a kind used on buses or trucks
4011.20.10	Radial...
...	
4011.80	Of a kind used on construction, mining or industrial handling vehicles and machines:
4011.80.10:	Having a “herring-bone” or similar tread...
	Other:
4011.80.20:	Radial...
	* * * *

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

EN 87.04 provides, in pertinent part, as follows:

This heading also covers :

(1) **Dumpers**, sturdily built vehicles with a tipping or bottom opening body, designed for the transport of excavated or other materials. These vehicles, which may have a rigid or articulated chassis, are generally fitted with off-the-road wheels and can work over soft ground. Both heavy and light dumpers are included in this group; the latter are sometimes characterised by a two-way seat, two seats facing in opposite directions or by two steering wheels, to enable the vehicles to be steered with the driver facing the body for unloading.

...

### **Subheading Explanatory Notes.**

#### **Subheading 8704.10**

These dumpers can generally be distinguished from other vehicles for the transport of goods (in particular, tipping lorries (trucks)) by the following characteristics...”

- the dumper body is made of very strong steel sheets; its front part is extended over the driver’s cab to protect the cab; the whole or part of the floor slopes upwards towards the rear;
- in some cases the driver’s cab is half-width only;
- lack of axle suspension;
- high braking capacity;
- limited speed and area of operation;
- special earth-moving tyres;

- because of their sturdy construction the tare weight/payload ratio does not exceed 1 : 1.6;
- the body may be heated by exhaust gases to prevent materials from sticking or freezing.

It should be noted, however, that certain dumpers are specially designed for working in mines or tunnels, for example, those with a bottom-opening body. These have some of the characteristics mentioned above, but do not have a cab or an extended protective front part of the body.

\* \* \* \*

Heading 40.11 provides for “New pneumatic tires, of rubber.” There is no dispute that the instant tires are classified therein. The issue arises at the six-digit subheading level.

Subheading 4011.20 provides for “New pneumatic tires, of rubber: Of a kind used on buses or trucks.” Subheading 4011.80 provides for “New pneumatic tires, of rubber: Of a kind used on construction, mining or industrial handling vehicles and machines.

Subheading 4011.20 is a “principal use” provision, governed by Additional U.S. Rule of Interpretation 1(a), HTSUS, which provides that: In the absence of special language or context which otherwise requires—a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use.

Trucks are motor vehicles for the transport of goods that are classifiable in Chapter 87. Dump trucks are trucks classifiable in heading 87.04, as motor vehicles for the transport of goods. However, we note that the EN to heading 40.11 as well as the international legal text of the Harmonized System uses the word “lorries” in subheading 4011.20 instead of “trucks”. In this regard, we note that Article 3 of the International Convention on the Harmonized Commodity Description and Coding System, states in pertinent part, as follows:

Subject to the exceptions enumerated in Article 4:

Each Contracting Party undertakes... that, in respect of its Customs tariff and statistical nomenclatures:

it shall use all the headings and subheadings of the Harmonized System without addition or modification, together with their related numerical codes;

it shall apply the General Rules for the interpretation of the Harmonized System and all the Section, Chapter and Subheading Notes, and shall not modify the scope of the Sections, Chapters, headings or subheadings of the Harmonized System...

\* \* \* \*

In complying with the undertakings of Article 3, each Contracting Party may make such textual adaptations as may be necessary to give effect to the Harmonized System in its domestic law. That the text of subheading 4011.20 in the HTSUS refers to “trucks” as opposed to “lorries” is indicative of a textual adaptation to give effect to a term (“lorries”) that is not commonly used in American English. Accordingly, the scope of subheading 4011.20,

HTSUS, is informed by the legal text of the Harmonized Commodity Description and Coding System as well as EN 40.11.

We further note that the Explanatory Note to subheading 8704.10 draws a distinction between “dumpers” and “lorries” (trucks), stating that “These dumpers can generally be distinguished from other vehicles for the transport of goods (in particular, tipping lorries (trucks)) by the following characteristics”, such as, i.e., “special earth-moving tires.”

The CBP Informed Compliance Publication (ICP) on Classification of Tires further notes that “There are numerous machines identified as classifiable in chapter 84 that move on tires but are not trucks. These would include excavating machines of heading 8429, construction machines and snow plows of heading 8430, agricultural machines of heading 8432 and harvesting machines of heading 8433. Although they all may be designed in some instances to roll on tires, they are not trucks, but machines, and their tires would be classifiable further on in heading 4011.”

The Tire and Rim Association (TRA) Yearbook provides the following explanation of its “Earthmover” designation:

Earthmover: transportation usually occurs over unimproved surfaces at speeds up to 40 mph and short distances, up to 2.5 miles, one way. Equipment in this category is mainly haulage trucks and scrapers.

Thus, the reference to buses and lorries in the legal text of the HS and the Explanatory Notes indicates that the contemplated class or kind of tires classified in 4011.20 would be the kind of tires meant to be used on-road or on-the highways passenger or commercial vehicles.

It therefore follows that under the general, colloquial category of “dump trucks”, some are trucks or lorries equipped with tires of subheading 4011.20, HTSUS, and some are specialized “dumpers” and other machines using tires of subheadings 4011.70–4011.90. Those earthmoving tires for dump trucks having limited speed and area of operation, which are generally used over unimproved surfaces, for short distances only, and designed for specific applications such as construction or mining—fall within the latter category.

However, as we noted in HQ H192148, “Dumper tires with characteristics for use other than normal on road use or mixed on-road off-road use should be classified in subheading 4011.6 or 4011.9.” Thus, dump truck tires, even those bearing the TRA code “E”, are not precluded from classification in subheading 4011.20, HTSUS, if they are designed for vehicles capable of on-road use or mixed on and off road use. Such tires and the vehicles for which they are designed are capable of higher speeds and broader area of operation than those described in the ENs or the ICP above. Our holding in HQ H192148 is therefore limited to dumper tires for off-road use. Dump truck or dumper tires designed for on-road or mixed use are of a kind used on trucks, and thus within the scope of subheading 4011.20, HTSUS.

In NY I86839, we noted that the XMP (part no. 123406) tread tire was designed for mixed on and off road use, whereas the X-QUARRY and XH D1 tires were never used on open roads or highways. The XMP tire tread is further described in the Michelin reference manual for earthmover tires as “Radial tire for utility transport and logging operations designed for high speed applications” See [http://llantasyequipos.com.mx/catalogos/industrial/MICHELIN\\_OTR\\_tire\\_data\\_reference\\_manual.pdf](http://llantasyequipos.com.mx/catalogos/industrial/MICHELIN_OTR_tire_data_reference_manual.pdf). In contrast, the XH D1 is touted as a “Deep tread traction tyre for rigid dump truck in quarrying and harsh mining conditions... Sidewall reinforcement protects the tire against cutting and abrasion on the toughest haul roads.”

The XH D1 is stated to be designed for rigid dumpers. [http://www.michelinearthmover.com/eng\\_us/tires-rigid-dumpers-100t/michelin-xh-d1/1247](http://www.michelinearthmover.com/eng_us/tires-rigid-dumpers-100t/michelin-xh-d1/1247). The X-QUARRY is similarly touted as “the extremely durable Michelin® E4 radial tire designed for use on haul trucks running at low speeds in the most damaging quarry conditions.” See [http://llantasyequipos.com.mx/catalogos/industrial/MICHELIN\\_OTR\\_tire\\_data\\_reference\\_manual.pdf](http://llantasyequipos.com.mx/catalogos/industrial/MICHELIN_OTR_tire_data_reference_manual.pdf). Finally, the XHAUL tread is described in Michelin’s brochure as “a radial tire for haul trucks operating at moderate speeds to provide excellent protection and long wear in harsh conditions...for use on rigid dumpers and bottom dump trucks... The square shoulders and reinforced sidewalls help provide exceptional protection in severe operating conditions resulting in optimal durability.”

The XMP (part no. 123406) tread tire is designed for both on and off-road use, and is therefore classified in subheading 4011.20, HTSUS. In contrast, the X-QUARRY (part no 123887), the XH D1 (part no. 123031) and the XHAUL (part no. 205207) tires are used primarily in off-road conditions in mines and quarries, they are not of a class or kind used on trucks and are not classified in subheading 4011.20, HTSUS. The X-QUARRY, XH D1 and XHAUL are radial tires, and they do not have a herring bone tread pattern. They are therefore classified in subheading 4011.80.20, HTSUS. This is consistent with prior CBP rulings HQ H263902, dated June 23, 2016, NY N272481, dated March 1, 2016, and NY N261453, dated February 20, 2015.

#### **HOLDING:**

The XMP tread tire (part no. part no. 123406) is classified in subheading 4011.20.10, HTSUS, which provides for “New pneumatic tires, of rubber: Of a kind used on buses or trucks: Radial.” The 2016 column one, general rate of duty is 4% *ad valorem*.

The X-QUARRY tread tire (part no. 123887), the XH D1 tread tire (part no. 123031) and the XHAUL tire (part no. 205207) are classified in subheading 4011.80.20, HTSUS, which provides for “New pneumatic tires, of rubber: Of a kind used on construction, mining or industrial handling vehicles and machines: Other: Radial.” The 2017 column one, general rate of duty is 4% *ad valorem*.

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

NY I86839, dated September 25, 2002, and NY I85323, dated September 13, 2002, are hereby modified with respect to part nos. 123887 (X- QUARRY), 123031 (XH D1), and 205207 (XHAUL).

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*

**PROPOSED REVOCATION OF ONE RULING LETTER AND  
REVOCATION OF TREATMENT RELATING TO THE  
TARIFF CLASSIFICATION OF A FISHING WADER WITH  
BOOTS**

**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 fishing wader with boots.

**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 fishing wader with boots 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 15, 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:** Grace A. Kim, Food, Textiles, and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325–7941.

**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 fishing wader with boots. Although in this notice, CBP is specifically referring to New York Ruling Letter (“NY”) N276141, dated June 29, 2016 (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 N276141, CBP classified a fishing wader with boots in heading 6405, HTSUS, specifically in subheading 6405.20.90, HTSUS, which provides for “[o]ther footwear: With uppers of textile materials: Other.” CBP has reviewed NY N276141 and has determined the ruling letter to be in error. It is now CBP’s position that the fishing

wader with boots is properly classified, by operation of GRIs 1 and 6, in heading 6404, HTSUS, specifically in subheading 6404.20.60, HTSUS, which provides for “[f]ootwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials: Footwear with outer soles of leather or composition leather: Other.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke NY N276141 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H285612, 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 25, 2017

IEVA K. O’ROURKE  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

Attachments

## [ATTACHMENT A]

N276141

June 29, 2016

CLA-2:OT:RR:NC:N3:447

CATEGORY: Classification

TARIFF NO.: 6405.20.9030

MS. JIN PARK  
PRO LINE MANUFACTURING COMPANY  
186 PARISH DRIVE  
WAYNE, NJ 07470

RE: The tariff classification of footwear from China

DEAR MS. PARK:

In your letters dated March 23, 2016, and May 27, 2016, you requested a tariff classification ruling. The submitted sample will be returned as requested.

The submitted sample, identified as style # 9301-BLK, is a man's, chest high fishing wader complete with boots attached. The upper of style 9301-BLK includes textile suspenders, a plastic buckle closure, neoprene material laminated with nylon jersey on the external surface, and rubber/plastic (boot component). The constituent material of the upper is considered to be textile. The outer soles are rubber/plastics with a thin layer of leather on the external surface. The wader is "protective" against water. You provided an F.O.B. value over \$12.40.

The applicable subheading for style # 9301-BLK will be 6405.20.9030, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other footwear: with uppers of textile materials: other: other: for men. The rate of duty will be 12.5 percent ad valorem

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

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 above, contact National Import Specialist Stacey Kalkines at [Stacey.kalkines@cbp.dhs.gov](mailto:Stacey.kalkines@cbp.dhs.gov).

*Sincerely,*

STEVEN A. MACK

*Director*

*National Commodity Specialist Division*

## [ATTACHMENT B]

HQ H285612  
CLA-2 OT:RR:CTF:TCM H285612 GaK  
CATEGORY: Classification  
TARIFF NO: 6404.20.60

MS. JIN PARK  
PRO LINE MANUFACTURING COMPANY  
186 PARISH DRIVE  
WAYNE, NJ 07470

RE: Revocation of NY N276141; Classification of footwear from China

DEAR MS. PARK:

This letter is to inform you that U.S. Customs and Border Protection (“CBP”) has reconsidered New York Ruling Letter (“NY”) N276141, which was issued to Pro Line Manufacturing Company on June 29, 2016. In NY N276141, CBP classified a fishing wader with boots (“merchandise”) under subheading 6405.20.90, Harmonized Tariff Schedule of the United States (“HTSUS”), which provides for “[o]ther footwear: With uppers of textile materials: Other.” We have reviewed NY N276141 and found it to be incorrect. For the reasons set forth below, we are revoking this ruling.

**FACTS:**

In NY N276141, the merchandise was described as follows:

The submitted sample, identified as style # 9301-BLK, is a man’s chest high fishing wader complete with boots attached. The upper of style 9301-BLK includes textile suspenders, a plastic buckle closure, neoprene material laminated with nylon jersey on the external surface, and rubber/plastic (boot component). The constituent material of the upper is considered to be textile. The outer soles are rubber/plastics with a thin layer of leather on the external surface. The wader is “protective” against water. You provided an F.O.B. value over \$12.40.

**ISSUE:**

Whether the merchandise is classified as “[o]ther footwear,” under heading 6405, HTSUS, or as “[f]ootwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials,” under heading 6404, HTSUS.

**LAW AND ANALYSIS:**

Merchandise imported into the United States is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (“GRIs”) and, in the absence of special language or context which requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law for all purposes.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the

basis of GRI 1, and if the heading and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

The HTSUS subheadings at issue are as follows:

6404	Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials:
6404.20	Footwear with outer soles of leather or composition leather: Not over 50 percent by weight of rubber or plastics and not over 50 percent by weight of textile materials and rubber or plastics with at least 10 percent by weight being rubber or plastics:
6404.20.40	Valued over \$2.50/pair.
6404.20.60	Other. * * *
6405	Other footwear:
6405.20	With uppers of textile materials:
6405.20.90	Other.

Note 4 to Chapter 64, HTSUS states:

4. Subject to note 3 to this chapter:

- (a) The material of the upper shall be taken to be the constituent material having the greatest external surface area, no account being taken of accessories or reinforcements such as ankle patches, edging, ornamentation, buckles, tabs, eyelet stays or similar attachments;
- (b) The constituent material of the outer sole shall be taken to be the material having the greatest surface area in contact with the ground, no account being taken of accessories or reinforcements such as spikes, bars, nails, protectors or similar attachments.

The original ruling request included a test report from an independent laboratory that tested the percentage of the outer sole covered by composition leather material in contact with the ground while walking: 72.3% by composition leather and 27.7% by rubber. In accordance with Note 4(b) to Chapter 64, HTSUS, the constituent material of the outer sole is composition leather, and therefore, it is more specifically described by the terms of heading 6404, HTSUS, pursuant to GRI 1.

In Headquarters Ruling Letter (“HQ”) 082614, dated October 17, 1988, CBP interpreted subheading 6404.20.40, HTSUS, to be “...limited to footwear with fabric uppers and leather or composition leather soles which are under 10 percent by weight of rubber and plastics or not over 50 percent by weight of textile materials, rubber and plastics.” In doing so, CBP noted that this interpretation was also consistent with the provisions contained in the Tariff Schedule of the United States, the predecessor to the HTSUS, which provided for footwear “which is over 50 percent by weight of rubber or plastics or over 50 percent by weight of fibers and rubber or plastics with at least 10 percent by weight being rubber or plastics.” The merchandise is mostly made of rubber/plastics and textile components, and therefore it cannot be classified under subheading 6404.20.40, HTSUS. Accordingly, the merchandise is properly classified under subheading 6404.20.90, HTSUS.

Therefore, we find that under GRIs 1 and 6, the fishing wader with boots are described by subheading 6404.20.90, HTSUS, which provides for “[f]ootwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials: Footwear with outer soles of leather or composition leather: Other.”

**HOLDING:**

Under the authority of GRIs 1 and 6, the fishing wader with boots are provided for in heading 6404, HTSUS, specifically in subheading 6404.20.90, HTSUS, which provides for, “[f]ootwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials: Footwear with outer soles of leather or composition leather: Other.” The 2017 column one general rate of duty is 37.5% *ad valorem*.

**EFFECT ON OTHER RULINGS:**

NY N276141, dated June 29, 2016, is hereby REVOKED.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

**PROPOSED MODIFICATION OF ONE RULING LETTER  
AND REVOCATION OF TREATMENT RELATING TO THE  
TARIFF CLASSIFICATION OF GUAYABERA STYLE  
SHIRT-BLOUSES**

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

**ACTION:** Notice of proposed modification of one ruling letter and revocation of treatment relating to the tariff classification of guayabera style shirt-blouses.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to modify one ruling letter concerning tariff classification of guayabera style shirt-blouses 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 15, 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:** Grace A. Kim, Tariff Classification and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325–7941.

**SUPPLEMENTARY INFORMATION:**

**BACKGROUND**

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

**“informed compliance”** and **“shared responsibility.”** These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations.

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP is proposing to modify one ruling letter pertaining to the tariff classification of guayabera style shirt-blouses. Although in this notice, CBP is specifically referring to New York Ruling Letter (“NY”) N252750, dated May 23, 2014 (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 N252750, CBP classified the guayabera style shirt-blouse made of cotton in heading 6211, HTSUS, specifically in subheading 6211.42.10, HTSUS, which provides for “Track suits, ski-suits and swimwear; other garments: Other garments, women’s or girls’: Of cotton: Other.” In NY N252750, CBP classified the guayabera style

shirt-blouse made of linen in heading 6211, HTSUS, specifically in subheading 6211.49.50, HTSUS, which provides for “Track suits, ski-suits and swimwear; other garments: Other garments, women’s or girls: Of other textile materials: Other.” CBP has reviewed NY N252750 and has determined the ruling letter to be in error. It is now CBP’s position that the guayabera style shirt-blouse made of cotton is properly classified, by operation GRI 1, in heading 6206, HTSUS, specifically in subheading 6206.30.30, HTSUS, which provides for “Women’s or girls’ blouses, shirts and shirt-blouses: Of cotton: Other.” In addition, the guayabera style shirt-blouse made of linen is properly classified, by operation GRI 1, in heading 6206, HTSUS, specifically in subheading 6206.90.00, HTSUS, which provides for “Women’s or girls’ blouses, shirts and shirt-blouses: Of other textile materials.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to modify NY N252750 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H257144, 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 25, 2017

IEVA K. O’ROURKE  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

Attachments

## [ATTACHMENT A]

N252750

May 23, 2014

CLA-2-62:OT:RR:NC:N3:360

CATEGORY: Classification

TARIFF NO.: 6211.42.0056; 6211.49.9050;

6204.42.3030; 6204.49.5060

MS. JENNIFER R. DIAZ  
BECKER & POLIAKOFF  
121 ALHAMBRA PLAZA  
10TH FLOOR  
CORAL GABLES, FL 33134

RE: The tariff classification and status under the United States-Panama Trade Promotion Agreement (PANTPA), of women's garments from Panama

DEAR MS. DIAZ:

In your letter dated April 17, 2014, you requested a ruling on behalf of your client, Confecciones Comodoro, S.A, on the status of women's garments under the PANTPA and the applicability of subheading 9822.09.63, Harmonized Tariff Schedule of the United States (HTSUS). You submitted six samples, all of which are being retained by this office. However, future requests should be limited to no more than five samples of related merchandise.

Style 01-0002-02-R-C Rosado, identified as a "Guayabera shirt-blouse," is a woman's blouse constructed from 100% cotton woven fabric. The blouse features a pointed collar, a right over left full front opening secured by six button closures, short hemmed sleeves, a rear yoke, front shoulder yokes, two pockets at the chest and two pockets below the waist with a decorative button at the center top of each pocket, two vertical columns of pin tucks extending vertically down the length of both front panels from the shoulder yokes to the garment bottom, two vertical columns of pin tucks extending vertically down the length of the center back panels from the yokes to the garment bottom, a decorative button at the top and bottom of each pin tucked column, side vents, and a slightly curved self-fabric bottom band. You state that this garment will also be constructed from 100% linen woven fabric.

Style 01-0008-09-R-L Aqua, identified as a "Guayabera shirt-blouse," is a woman's blouse constructed from 100% linen woven fabric. The blouse features a pointed collar, a right over left full front opening secured by six button closures, long sleeves with single button closures at the cuffs, a rear yoke, front shoulder yokes, two pockets at the chest and two pockets below the waist with a decorative button at the center top of each pocket, two pieces of pin tucked fabric sewn onto the garment and extending vertically down the length of both front panels from the shoulder yokes to the garment bottom, two pieces of pin tucked fabric sewn onto the garment and extending vertically down the length of the center back panel from the yoke to the garment bottom, a decorative button at the top and bottom of each pin tucked column, side vents, and a slightly curved self-fabric bottom band. You state that this garment will also be constructed from 100% cotton woven fabric.

Style 01-0008-16-R-C JeanOscu, identified as a "Guayabera dress," is a woman's dress constructed from 100% cotton woven fabric. The dress features a pointed collar, a right over left full front opening secured by nine button

closures, short hemmed sleeves, a rear yoke, front shoulder yokes, two chest pockets and two hip pockets with a decorative button at the center top of each pocket, two pieces of pin tucked fabric sewn onto the garment and extending vertically down the length of both front panels from the shoulder yokes to the garment bottom, a single piece of pin tucked fabric sewn onto the garment and extending vertically down the length of the center back panel from the yoke to the garment bottom, a decorative button at the top and bottom of each pin tucked column, side slits with button closures, and a straight self-fabric bottom band. You state that this garment will also be constructed from 100% linen woven fabric.

Style 01-0008-09-R-L Turquesa, identified as a “Guayabera dress,” is a woman’s dress constructed from 100% linen woven fabric. The dress features a pointed collar, a right over left full front opening secured by ten button closures, long sleeves with single button closures at the cuffs, a rear yoke, front shoulder yokes, two chest pockets and two hip pockets with a decorative button at the center top of each pocket, two pieces of pin tucked fabric sewn onto the garment and extending vertically down the length of both front panels from the shoulder yokes to the garment bottom, a single piece of pin tucked fabric sewn onto the garment and extending vertically down the length of the center back panel from the yoke to the garment bottom, a decorative button at the top and bottom of each pin tucked column, side slits with button closures, and a straight self-fabric bottom band.

Style 01-0008-09-R-S Azul, identified as a “Guayabera dress,” is a woman’s sleeveless dress constructed from 100% linen woven fabric. The dress features a pointed collar, a right over left full front opening secured by seven button closures, a rear yoke, front shoulder yokes, two chest pockets and two hip pockets with a decorative button at the center top of each pocket, two pieces of pin tucked fabric sewn onto the garment and extending vertically down the length of both front panels from the shoulder yokes to the garment bottom, a single piece of pin tucked fabric sewn onto the garment and extending vertically down the length of the center back panel from the yoke to the garment bottom, a decorative button at the top and bottom of each pin tucked column, a self-fabric tie at the waist, side slits with button closures, and a straight self-fabric bottom band.

Style 01-0008-09-R-H Blanco, identified as a “Guayabera dress,” is a woman’s halter-style dress constructed from 100% linen woven fabric. The sleeveless and shoulderless dress features a pointed collar that extends around the neck, a right over left full front opening secured by nine button closures, two chest pockets and two hip pockets with a decorative button at the center top of each pocket, two pieces of pin tucked fabric sewn onto the garment and extending vertically down the length of both front panels, decorative buttons at the bottom of the front pin tucked columns, two pieces of pin tucked fabric sewn onto the garment and extending vertically down the length of the back panels, decorative buttons at the top and bottom of both back pin tucked columns, side slits with button closures, and a straight self-fabric bottom band. The garment leaves the upper back and the shoulders bare.

Although you requested classification of styles 01-0002-02-R-C Rosado and 01-0008-09-R-L Aqua as blouses under heading 6206, HTSUS, the garments feature pockets below the waist, which preclude classification under heading 6206. Consequently, the applicable subheading for styles 01-0002-02-R-C Rosado and 01-0008-09-R-L Aqua, identified as “Guayab-

era shirt-blouses” and constructed from 100% cotton woven fabric, will be 6211.42.0056, HTSUS, which provides for Track suits, ski-suits and swimwear; other garments: Other garments, women’s or girls’: Of cotton: Blouses, shirts and shirt-blouses, sleeveless tank styles and similar upper body garments, excluded from heading 6206: Other. The rate of duty will be 8.1 percent ad valorem.

The applicable subheading for styles 01–0002–02-R-C Rosado and 01–0008–09-R-L Aqua, identified as “Guayabera shirt-blouses” and constructed from 100% linen woven fabric, will be 6211.49.9050, HTSUS, which provides for Track suits, ski-suits and swimwear; other garments: Other garments, women’s or girls’: Of other textile materials: Other: Blouses, shirts and shirt-blouses, sleeveless tank styles and similar upper body garments excluded from heading 6206. The rate of duty will be 7.3 percent ad valorem.

The applicable subheading for style 01–0008–16-R-C JeanOscu, identified as a “Guayabera dress” and constructed from 100% cotton woven fabric, will be 6204.42.3030, HTSUS, which provides for Women’s or girls’ suits, ensembles, suit-type jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear): Dresses: Of cotton: Other: Other: Other: With two or more colors in the warp and/or the filling: Women’s. The rate of duty will be 8.4 percent ad valorem.

The applicable subheading for styles 01–0008–16-R-C JeanOscu, 01–0008–09-R-L Turquesa, 01–0008–09-R-S Azul, and 01–0008–09-R-H Blanco, identified as “Guayabera dresses” and constructed from 100% linen woven fabric, will be 6204.49.5060, HTSUS, which provides for Women’s or girls’ suits, ensembles, suit-type jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear): Dresses: Of other textile materials: Other: Other: Other. The rate of duty will be 6.9 percent ad valorem.

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

The manufacturing operations are as follows:

The fabrics are produced in China.

The sewing thread is produced in China.

The buttons are produced in China.

The pleating is being performed in Panama.

The garments are both cut and sewn or otherwise assembled in Panama.

The garments are exported directly to the United States from Panama.

General Note 35, HTSUS, sets forth the criteria for determining whether a good is originating under the PANTPA. General Note 35(b), HTSUS, states, in pertinent part, that

- (b) For the purposes of this note, subject to the provisions of subdivisions (c), (d), (n) and (o) thereof, a good imported into the customs territory of the United States is eligible for treatment as an originating good of Panama or of the United States under the terms of this note if—
  - (i) the good is wholly obtained or produced entirely in the territory of Panama or of the United States, or both;
  - (ii) the good is produced entirely in the territory of Panama or of the United States, or both, and—

- (A) each of the nonoriginating materials used in the production of the good undergoes an applicable change in tariff classification specified in subdivision (o) of this note; or
- (B) the good otherwise satisfies any applicable regional value-content or other requirements set forth in such subdivision (o); and

satisfies all other applicable requirements of this note and of applicable regulations; or

- (iii) the good is produced entirely in the territory of Panama or of the United States, or both, exclusively from material described in subdivisions (i) or (ii), above.

The shirt-blouses and dresses have been determined to contain non-originating materials and will have to undergo an applicable change in tariff classification in order to meet the requirements of GN 35(b)(ii)(A).

General Note 35(o), Chapter 62, Chapter rule 2 states:

For purposes of determining whether a good of this chapter is originating, the rule applicable to that good shall only apply to the component that determines the tariff classification of the good and such component must satisfy the tariff change requirements set out in that rule for that good.

The component that determines the classification of the cotton shirt-blouses and dresses is the non-originating cotton fabric.

The component that determines the classification of the linen shirt-blouses and dresses is the non-originating linen fabric.

For goods classified in subheadings 6204.42 and 6204.49, General Note 35 (0), 62.26 requires:

A change to subheadings 6204.42 through 6204.49 from any other chapter, except from headings 5111 through 5113, 5204 through 5212 or 5310 through 5311, chapter 54 or headings 5508 through 5516, 5801 through 5802 or 6001 through 6006, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of Panama or of the United States, or both.

For goods classified in subheadings 6211.42 and 6211.49, General Note 35 (0), 62.38 requires:

A change to subheadings 6211.31 through 6211.49 from any other chapter, except from headings 5111 through 5113, 5204 through 5212 or 5310 through 5311, chapter 54 or headings 5508 through 5516, 5801 through 5802 or 6001 through 6006, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of Panama or of the United States, or both.

The cotton woven fabric does not meet the terms of the tariff shift. Accordingly, the shirt-blouses and dresses constructed from 100% cotton woven fabric do not qualify for PANTPA preferential treatment because they do not meet the requirements of HTSUS General Note 35(b)(ii)(A). The merchandise will not be entitled to a free rate of duty under the PANTPA.

The linen woven fabric is classified in heading 5309 and meets the terms of the tariff shift.

General Note 35(o), Chapter 62, Chapter rule 4 states:

Notwithstanding chapter rule 2 to this chapter, a good of this chapter containing sewing thread of headings 5204, 5401 and 5508 shall be

considered originating only if such sewing thread is both formed from yarns and finished in the territory of one or more of the parties to the Agreement.

The sewing thread used to assemble the linen garments will not be formed and finished in one or more of the parties to the Agreement.

Based upon the facts provided, the shirt-blouses and dresses constructed from 100% linen woven fabric do not qualify for PANTPA preferential treatment because they do not meet the requirements of HTSUS General Note 35(b)(ii)(A). The merchandise will not be entitled to a free rate of duty under the PANTPA.

The shirt-blouses and dresses are both cut and sewn or otherwise assembled in Panama and may be entitled to a free rate of duty based upon the provisions of subheading 9822.09.63, subchapter XXII of the HTSUS. U.S. Note 41 to that chapter states:

Heading 9822.09.63 shall apply to dresses of heading 6204 and shirts and blouses of heading 6205 or 6206 (whether or not such goods are originating goods under the terms of general note 35 to the tariff schedule) containing the following:

- (a) short or long sleeves;
- (b) a center front placket with button closure that runs the full length of the good;
- (c) a collar and yoke;
- (d) either pleats or embroidery that run the full length of the good on both sides of the center front placket from the yoke to the hem with a decorative button where the pleats or embroidery meet the yoke;
- (e) corresponding pleats or embroidery that run the full length of the good on both sides of the back from the yoke to the hem with a decorative button where the pleats or embroidery meet the yoke;
- (f) four pockets with buttons on the front of the good;
- (g) a straight hem; and
- (h) side vents or slits with a button closure,

provided that the good is both cut and sewn or otherwise assembled in the territory of the United States or Panama.

Subheading 9822.09.63 applies to blouses of heading 6206, HTSUS. The applicable heading for styles 01-0002-02-R-C Rosado and 01-0008-09-R-L Aqua will be 6211, HTSUS.

Styles 01-0008-09-R-S Azul and 01-0008-09-R-H Blanco do not feature short or long sleeves, a requirement for subheading 9822.09.63.

Finally, styles 01-0008-16-R-C JeanOscu and 01-0008-09-R-L Turquesa do not feature the required pleats or embroidery on both sides of the back from the yoke to the hem.

Based upon the above, the garments will not be eligible for U.S. Note 41. The merchandise will be not entitled to a free rate of duty under the PANTPA.

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 Kimberly Rackett at *kimberly.rackett@cbp.dhs.gov*.

*Sincerely,*

GWENN KLEIN KIRSCHNER

*Acting Director*

*National Commodity Specialist Division*

## [ATTACHMENT B]

HQ H257144

CLA-2 OT:RR:CTF:TCM H257144 GaK

CATEGORY: Classification

TARIFF NO: 6206.30.3041; 6206.90.0040

JENNIFER DIAZ  
DIAZ TRADE LAW, P.A.  
12700 BISCAYNE BLVD., SUITE #301  
NORTH MIAMI, FL 33181

RE: Revocation of NY N252750; Classification of women's guayabera style shirt-blouses; United States-Panama Trade Promotion Agreement ("PANTPA") preferential tariff treatment eligibility

DEAR MS. DIAZ:

This letter is in response to your request, dated July 10, 2014, for reconsideration of New York Ruling Letter ("NY") N252750, which was issued to your client, Confecciones Comodoro, S.A. on May 23, 2014. In NY N252750, U.S. Customs and Border Protection ("CBP") classified, among other items, women's guayabera style shirt-blouses under heading 6211, Harmonized Tariff Schedule of the United States ("HTSUS") and denied preference treatment under the United States-Panama Trade Promotion Agreement ("PANTPA"). Only the shirt-blouses are at issue herein. CBP has reviewed that ruling and determined that it is incorrect with regard to the classification of the shirt blouses. For the reasons set forth below, we are modifying this ruling.

**FACTS:**

In NY N252750, the shirt-blouses were described as follows:

Style 01-0002-02-R-C Rosado, identified as a "Guayabera shirt-blouse," is a woman's blouse constructed from 100% cotton woven fabric. The blouse features a pointed collar, a right over left full front opening secured by six button closures, short hemmed sleeves, a rear yoke, front shoulder yokes, two pockets at the chest and two pockets below the waist with a decorative button at the center top of each pocket, two vertical columns of pin tucks extending vertically down the length of both front panels from the shoulder yokes to the garment bottom, two vertical columns of pin tucks extending vertically down the length of the center back panels from the yokes to the garment bottom, a decorative button at the top and bottom of each pin tucked column, side vents, and a slightly curved self-fabric bottom band. You state that this garment will also be constructed from 100% linen woven fabric.

Style 01-0008-09-R-L Aqua, identified as a "Guayabera shirt-blouse," is a woman's blouse constructed from 100% linen woven fabric. The blouse features a pointed collar, a right over left full front opening secured by six button closures, long sleeves with single button closures at the cuffs, a rear yoke, front shoulder yokes, two pockets at the chest and two pockets below the waist with a decorative button at the center top of each pocket, two pieces of pin tucked fabric sewn onto the garment and extending vertically down the length of both front panels from the shoulder yokes to the garment bottom, two pieces of pin tucked fabric sewn onto the gar-

ment and extending vertically down the length of the center back panel from the yoke to the garment bottom, a decorative button at the top and bottom of each pin tucked column, side vents, and a slightly curved self-fabric bottom band. You state that this garment will also be constructed from 100% cotton woven fabric.

### ISSUE:

I. Whether the shirt-blouses are classified as “[w]omen’s or girls’ blouses, shirts and shirt-blouses,” under heading 6206, HTSUS, or as “[t]rack suits, ski-suits and swimwear; other garments,” under heading 6211, HTSUS.

II. Whether the shirt-blouses qualify for classification under subheading 9822.09.63, HTSUS, preferential tariff treatment under the PANTPA.

### LAW AND ANALYSIS:

#### *I. Classification*

Merchandise imported into the United States is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (“GRIs”) and, in the absence of special language or context which requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law for all purposes. GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the heading and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

The HTSUS headings at issue are as follows:

6206 Women’s or girls’ blouses, shirts and shirt-blouses:

\* \* \*

6211 Track suits, ski-suits and swimwear; other garments:

The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the Harmonized System at the international level. While not legally binding, the ENs provide a commentary on the scope of each heading of the HTSUS and are thus useful in ascertaining the proper classification of the merchandise. *See* T.D. 89–90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

EN 62.06 provides as follows:

This heading **does not cover** garments with pockets below the waist or with a ribbed waistband or other means of tightening at the bottom of the garment. [emphasis in original]

In NY N252750, CBP classified the Guayabera shirt-blouses under heading 6211, HTSUS, which provides for “[t]rack suits, ski-suits and swimwear; other garments.” CBP determined that the shirt-blouses at issue feature pockets below the waist, which preclude classification under heading 6206, HTSUS, pursuant to the EN 62.06. The importer claims that the lower pockets featured on the garments start at or on the waist, not below the

waist, and therefore should be classified under heading 6206. The importer submitted photos of models wearing various Guayabera shirt-blouses to support its claim. In light of the reconsideration request, CBP has reviewed the two styles of garments at issue by placing them on mannequins of respective sizes. In both instances, the lower pockets started just below the waist.

CBP has previously addressed Guayabera style shirts for men in NY N236766, dated January 18, 2013, and N252747, dated May 23, 2014. In both cases, CBP classified the men's Guayabera shirts under heading 6205, HTSUS, which provides for "[m]en's or boys' shirts."

EN 62.05 provides as follows:

This heading does not cover garments having the character of wind-cheaters, wind-jackets, etc....which generally have a tightening at the bottom...**which generally have pockets** below the waist. Sleeveless garments are also excluded. [emphasis added]

In NY N236766 and N252747, the men's Guayabera shirts are described as having two pockets "at the waist." We note that heading 6205 and 6206, HTSUS are counterpart headings for a shirt, depending on the gender it was designed for. *See* HQ H278603, dated September 21, 2016 (tariff classification of chef's coats that were claimed to be unisex, but classified as men's shirts in heading 6205, HTSUS, instead of heading 6206, HTSUS, due to the cut of the garment). In NY N252750, the women's Guayabera shirts were classified in heading 6211, HTSUS, instead of heading 6206, HTSUS, because of the strict pocket placement restriction in EN 62.06. In comparison, EN 62.05 provides a more relaxed exclusion to the heading, by describing excluded garments as "**generally** [having] pockets below the waist" (emphasis added).

We find that the ENs 62.05 and 62.06 must be read together as they correlate to counterpart headings for the same type of garment. Even though the bottom pockets of the subject women's Guayabera shirts start just below the waist of the mannequins, we note that artificial mannequins do not accurately represent all different types of women's bodies. Taking EN 62.05 into consideration, the women's Guayabera shirts are not precluded from classification under heading 6206, HTSUS. Therefore, we find that under GRI 1, the women's Guayabera shirts are classified in heading 6206, HTSUS, which provides for "[w]omen's or girls' blouses, shirts and shirt-blouses."

## II. 9822.09.63, HTSUS

On October 21, 2011, the President signed into law the United States-Panama Trade Promotion Agreement Implementation Act, Public Law 112-43, 125 Stat. 497 (19 U.S.C. § 3805 note), which approved and made statutory changes to implement the PANTPA. The PANTPA is implemented in the tariff schedule in General Note 35 ("GN"), HTSUS. Subchapter XIX to Chapter 99 and certain provisions within Subchapter XXII of Chapter 98 provide for temporary tariff-rate quotas, preferential tariff treatment for certain goods, and applicable safeguards implemented by the PANTPA. Benefits under the PANTPA were effective on or after October 31, 2012.

You do not seek preferential tariff treatment for the Guayabera shirts under GN 35, HTSUS, which implements the PANTPA, as you indicate the garments would not qualify. Subheading 9822.09.63, HTSUS, provides for:

Apparel goods described in U.S. note 41 to this subchapter and entered pursuant to its provisions.

Note 41, Subchapter XXII, Chapter 98, states:

Heading 9822.09.63 shall apply to dresses of heading 6204 and shirts and blouses of heading 6205 or 6206 (whether or not such goods are originating goods under the terms of general note 35 to the tariff schedule) containing the following:

- (a) short or long sleeves;
- (b) a center front placket with button closure that runs the full length of the good;
- (c) a collar and yoke;
- (d) either pleats or embroidery that run the full length of the good on both sides of the center front placket from the yoke to the hem with a decorative button where the pleats or embroidery meet the yoke;
- (e) corresponding pleats or embroidery that run the full length of the good on both sides of the back from the yoke to the hem with a decorative button where the pleats or embroidery meet the yoke;
- (f) four pockets with buttons on the front of the good;
- (g) a straight hem; and
- (h) side vents or slits with a button closure,

provided that the good is both cut and sewn or otherwise assembled in the territory of the United States or Panama.

We have examined the shirt-blouses at issue. We note that 01-0002-02-R-C Rosado and 01-0008-09-R-L Aqua have different designs of pleats. The Rosado shirt has columns of pin tucks creating pleats directly on the shirt, whereas the Aqua shirt has two separate pieces of pin tucked fabric with pleats on the fabric. The HTSUS does not define pleats. The “Essential Terms of Fashion” defines a pleat as:

“[f]old of fabric usually pressed but sometimes left unpressed. A pleat is sometimes stitched at the top of a garment to make it hang better. In some fabric blends pleats may be put in permanently with a heat-setting process.”<sup>1</sup>

Accordingly, pleats may be stitched directly onto the garment or indirectly on a pin tucked fabric.

The shirt-blouses meet all of the features required by U.S. Note 41, except for (g) and (h). Instead of a straight hem, the shirts feature a slightly curved self-fabric bottom band. In addition, the shirts have slits on the sides but without a button closure. The importer states that the shirts are “designed with a curved side slit so that they are more flattering to a woman’s figure. Based on the curved side slit design on the women’s Guayabera shirts, it is not possible to have a buttoned closure.” While we recognize that the curved side slit makes the shirts more feminine, it is irrelevant in meeting the requirements of U.S. Note 41. The curved self-fabric bottom band extends and creates the side slits. Due to the continued curve in the side slits from the bottom band, it is impossible to have a buttoned closure. However, if the shirt is designed with a straight self-fabric bottom band, the shirt would meet the

<sup>1</sup> CHARLOTTE MANKEY CALASIBETTA, *ESSENTIAL TERMS OF FASHION* 145 (Fairchild Publications) (1986).

requirements of U.S. Note (g) and (h).<sup>2</sup> Therefore, the women's Guayabera shirts do not meet the requirements of U.S. Note 41, Subchapter XXII, Chapter 98.

**HOLDING:**

By application of GRI 1, styles 01-0002-02-R-C Rosado and 01-0008-09-R-L Aqua of 100% linen woven fabric are provided for in subheading 6206.90.0040, HTSUS, which provides for, "[w]omen's or girls' blouses, shirts and shirt-blouses: Of other textile materials: Other." The 2017 column one, general rate of duty is 6.7 percent *ad valorem*.

By application of GRI 1, styles 01-0002-02-R-C Rosado and 01-0008-09-R-L Aqua of 100% cotton woven fabric are provided for in subheading 6206.30.3041, HTSUS, which provides for, "[w]omen's or girls' blouses, shirts and shirt-blouses: Of cotton: Other: Other: Other: Women's." The 2017 column one, general rate of duty is 15.4 percent *ad valorem*.

The women's Guayabera shirt-blouses do not meet the requirements of U.S. Note 41, Subchapter XXII, Chapter 98. As such, the garments are not eligible for preferential tariff treatment under the PANTPA.

**EFFECT ON OTHER RULINGS:**

NY N252750, dated May 23, 2014, is hereby modified with regard to the classification of the two styles of women's guayabera shirt-blouses.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

---

<sup>2</sup> <http://www.debratorres.com/short-sleeve-womens-guayabera-shirt.aspx> (last visited November 29, 2016).

## 19 CFR PART 177

### REVOCAION OF ONE RULING LETTER AND MODIFICATION OF TWO RULING LETTERS AND REVOCAION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF VARIOUS FOOT SLEEVES

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

**ACTION:** Notice of revocation of one ruling letter and modification of two ruling letters and of revocation of treatment relating to the tariff classification of various foot sleeves.

**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 one ruling letter and modifying two ruling letters concerning tariff classification of various foot sleeves 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. 23, on June 7, 2017. No comments were 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 16, 2017.

**FOR FURTHER INFORMATION CONTACT:** Grace A. Kim, Food, Textiles and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325–7941.

#### 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. 51, No. 23, on June 7, 2017, proposing to revoke one ruling letter and modify two ruling letters pertaining to the tariff classification of various foot sleeves. As stated in the proposed notice, this action will cover New York Ruling Letter ("NY") N222103, dated July 18, 2012, NY K86082, dated May 20, 2004, and NY L85061, dated June 15, 2005, 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 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 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 N222103, NY K86082, and NY L85061, CBP classified various foot sleeves in heading 6115, HTSUS, specifically in subheading 6115.96.90, HTSUS, which provides for "[p]lanty hose, tights, stockings, socks and other hosiery, including graduated compression hosiery (for example, stockings for varicose veins) and footwear without applied soles, knitted or crocheted: Other: Of synthetic fibers: Other." CBP has reviewed NY N222103, NY K86082, and NY L85061 and has determined the ruling letters to be in error. It is now CBP's position

that various foot sleeves are properly classified, by operation of GRIs 1 and 6, in heading 6307, HTSUS, specifically in subheading 6307.90.98, HTSUS, which provides for “[o]ther made up articles, including dress patterns: Other: Other: Other: Other: Other.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY N222103, and modifying NY K86082 and NY L85061, and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter (“HQ”) H242873, 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: July 19, 29017

IEVA K. O’ROURKE  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

Attachment

HQ H242873

July 19, 2017

CLA-2 OT:RR:CTF:FTM H242873 GaK

CATEGORY: Classification

TARIFF NO.: 6307.90.98

RUSSELL KIRKLAND

BENCHMARK BRANDS

5250 TRIANGLE PARKWAY SUITE 200

NORCROSS, GA 30092

RE: Revocation of NY N222103, and Modification of NY K86082 and NY L85061; classification of various foot sleeves

DEAR MR. KIRKLAND:

On July 18, 2012, U.S. Customs and Border Protection (“CBP”) issued to you New York Ruling Letter (“NY”) N222103. CBP also issued NY K86082, dated May 20, 2004<sup>1</sup>, and NY L85061, dated June 15, 2005<sup>2</sup>, pertaining to similar products. The rulings pertain to the tariff classification under the Harmonized Tariff Schedule of the United States (“HTSUS”) of various foot sleeves. In NY N222103, NY K86082, and NY L85061, the National Commodity Specialist Division (“NCSD”) classified various foot sleeves under subheading 6115.96.90, HTSUS. For the reasons described in this ruling, we hereby revoke NY N222103, and modify NY K86082, and NY L85061.

On June 7, 2012, pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, notice of the proposed action was published in the Customs Bulletin Vol. 51, No. 23. No comments were received in response to this notice.

**FACTS:**

In NY N222103, CBP described the merchandise as follows:

Item 40332, High Arch Sleeve; Item 40333/40335, Forefoot Camisole and Bunionette;

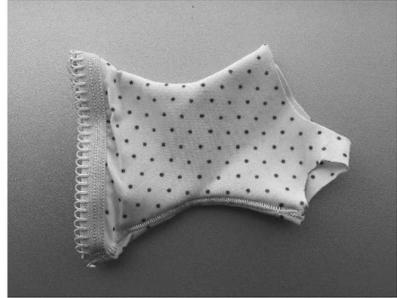
Item 40334, Stay and separate; and Item 40352, Arch Sleeve . . . constructed of 84% nylon and 16% spandex knit fabric. These items are used to add comfort to the foot while walking.

The foot sleeves are designed to provide cushioning and may not be worn without socks or shoes to cover them. They cover various area of the feet or toes for the purposes of cushion only. There is no fabric covering on the toes, heels, or ankles. After importation into the United States, gel is adhered to the sleeve on the foot pad, ball of the foot, little toe, or the bunion area, before it is sold to the ultimate consumer. The importer argues that the merchandise is not socks or hosiery, or intended to be a substitute for them. Pictures of each style are provided below:

<sup>1</sup> NY K86082 classified two products and only the classification of Style 0A394 ped-style sock item composed of knit mesh nylon fabric is being modified.

<sup>2</sup> NY L85061 classified foot tubes (style 9205), toe covers (styles 9414, 3876, and 9284), and foot covers (style 9263). Only the classification of the foot tubes and the toe covers is being modified.

Item 40332



Item 40333



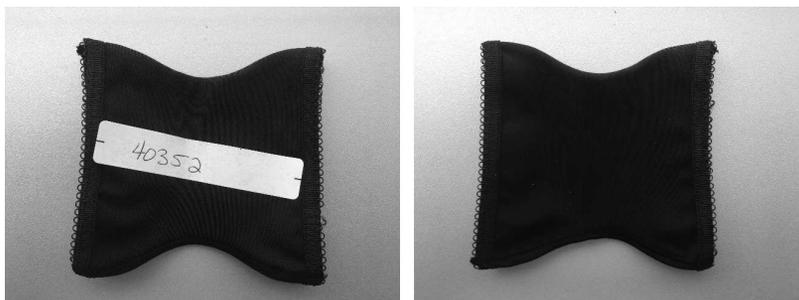
Item 40335



Item 40334



## Item 40352

**ISSUE:**

Whether the subject merchandise is classifiable under heading 6307, HTSUS, or under heading 6115, HTSUS.

**LAW AND ANALYSIS:**

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

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

6307 Other made up articles, including dress patterns.

\* \* \*

6115 Panty hose, tights, stockings, socks and other hosiery, including graduated compression hosiery (for example, stockings for varicose veins) and footwear without applied soles, knitted or crocheted.

Note 7 to Section XI, HTSUS provides as follows:

For the purposes of this Section, the expression “made up” means:

- (a) Cut otherwise than into squares or rectangles;
- (b) Produced in the finished state, ready for use (or merely needing separation by cutting dividing threads) without sewing or other working (for example, certain dusters, towels, table cloths, scarf squares, blankets);
- (c) Cut to size and with at least one heat-sealed edge with a visibly tapered or compressed border and the other edges treated as described in any other subparagraph of this Note, but excluding fabrics the cut edges of which have been prevented from unravelling by hot cutting or by other simple means;
- (d) Hemmed or with rolled edges, or with a knotted fringe at any of the edges, but excluding fabrics the cut edges of which have been prevented from unravelling by whipping or by other simple means;

- (e) Cut to size and having undergone a process of drawn thread work;
- (f) Assembled by sewing, gumming or otherwise (other than piece goods consisting of two or more lengths of identical material joined end to end and piece goods composed of two or more textiles assembled in layers, whether or not padded);
- (g) Knitted or crocheted to shape, whether presented as separate items or in the form of a number of items in the length.

Heading 6115, HTSUS, is an *eo nomine* provision. In *Camelback Products, LLC v. United States*, 649 F.3d 1361, 1364 – 1365 (Fed Cir. 2011), the U.S. Court of Appeals for the Federal Circuit described *eo nomine* provisions as follows: “[w]ith regard to assessing an imported article pursuant to GRI 1, we consider a HTSUS heading or subheading an *eo nomine* provision when it describes an article by a specific name.” *Carl Zeiss, Inc. v. United States*, 195 F.3d 1375, 1379 (Fed. Cir. 1999).

The HTSUS does not define “socks” or “hosiery.” The Essential Terms of Fashion, by Charlotte Mankey Calasibetta, 1986, at 197, defines “sock” as a “[k]nitted covering for the foot and part of the leg” and defines “hose” as “[k]nitted item of wearing apparel covering the foot and leg” at 87. We agree with the importer that the merchandise is not socks or hosiery, or intended to be a substitute. The merchandise does not sufficiently cover the area of foot or toes. Therefore, the merchandise is properly classified in heading 6307, HTSUS, specifically under subheading 6307.90.98, HTSUS, which provides for “[o]ther made up articles, including dress patterns: Other: Other: Other: Other: Other.”

This decision is consistent with other CBP rulings on substantially similar merchandise. See *e.g.*, NY H88106, dated February 19, 2002 (heel protector classified in heading 6307, HTSUS); NY G84345, dated November 28, 2000 (toe pad classified in heading 6307, HTSUS), and NY K86082, dated May 20, 2004 (foot pads classified in heading 6307, HTSUS).

#### **HOLDING:**

Pursuant to GRIs 1 and 6, the various foot sleeves are classified under heading 6307, HTSUS, specifically under subheading 6307.90.98, HTSUS, which provides for “[o]ther made up articles, including dress patterns: Other: Other: Other: Other: Other.” The 2017 general, column one, rate of duty is 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 World Wide Web at [www.usitc.gov/tata/hts/](http://www.usitc.gov/tata/hts/).

#### **EFFECTS ON OTHER RULINGS:**

NY N222103, dated July 18, 2012 is hereby revoked. NY K86082, dated May 20, 2004 (Style 0A394) and NY L85061, dated June 15, 2005 (Styles 9205, 9414, 3876, and 9284) are hereby modified.

*Sincerely,*

IEVA K. O’ROURKE

*for*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

## 19 CFR PART 177

### MODIFICATION OF ONE RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF NUT SETTERS

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

**ACTION:** Notice of modification of one ruling letter, and of revocation of treatment relating to the tariff classification of nut setters.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is modifying one ruling letter concerning tariff classification of nut setters 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. 23, on June 7, 2017. No comments supporting the proposed modification were 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 16, 2017.

**FOR FURTHER INFORMATION CONTACT:** Reema Radwan, Chemicals, Petroleum, Metals and Miscellaneous Branch, Regulations and Rulings, Office of Trade, at (202) 325–7703.

#### 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. 51, No. 23, on June 7, 2017, proposing to modify one ruling letter pertaining to the tariff classification of nut setters. As stated in the proposed notice, this action will cover New York Ruling Letter ("NY") E84374, dated July 8, 1999, as well as any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

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

In NY E84374, CBP classified nut setters and insert bits in heading 8207, HTSUS, specifically in subheading 8207.90.6000, Harmonized Tariff Schedule of the United States Annotated ("HTSUSA"), which provides for: "Interchangeable tools for handtools, whether or not power operated, or for machine-tools (for example, for pressing, stamping, punching, tapping, threading, drilling, boring, broaching, milling, turning or screwdriving), including dies for drawing or extruding metal, and rock drilling or earth boring tools; base metal parts thereof: Other interchangeable tools, and parts thereof: Other:

Other: Not suitable for cutting metal, and parts thereof: For hand-tools, and parts thereof.” CBP has reviewed NY E84374 and has determined the ruling letter to be in error. It is now CBP’s position that nut setters are properly classified, by operation of GRIs 1 and 3(a), in heading 8204, HTSUS, specifically in subheading 8204.20.00, HTSUS, which provides for: “Hand-operated spanners and wrenches (including torque meter wrenches but not including tap wrenches); socket wrenches, with or without handles, drives or extensions; base metal parts thereof: Socket wrenches, with or without handles, drives and extensions, and parts thereof.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is modifying NY E84374 with respect to classification of the nut setters described therein, and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter (“HQ”) H280763, set forth as an attachment to this notice. The classification determination in NY E84374 remains in effect with respect to insert bits. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: July 24, 2017

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

Attachment

HQ H280763

July 24, 2017

CLA-2 OT:RR:CTF:CPM H280763 RGR

CATEGORY: Classification

TARIFF NO.: 8204.20.0000

T. RANDOLPH FERGUSON  
SANDLER, TRAVIS & ROSENBERG  
505 SANSOME STREET  
SUITE 1475  
SAN FRANCISCO, CA 94111

RE: Modification of NY E84374; Tariff classification of nut setters from Taiwan

DEAR MR. FERGUSON:

This is to inform you that U.S. Customs and Border Protection (“CBP”) has reconsidered New York (“NY”) Ruling Letter E84374, dated July 8, 1999, regarding the classification under the Harmonized Tariff Schedule of the United States (“HTSUS”) of nut setters from Taiwan. The nut setters were classified under subheading 8207.90.6000, Harmonized Tariff Schedule of the United States Annotated (“HTSUSA”), as “Interchangeable tools for handtools, whether or not power-operated, or for machine-tools (for example, for pressing, stamping, punching, tapping, threading, drilling, boring, broaching, milling, turning or screwdriving), including dies for drawing or extruding metal, and rock drilling or earth boring tools; base metal parts thereof: Other interchangeable tools, and parts thereof: Other: Other: Not suitable for cutting metal, and parts thereof: For handtools, and parts thereof.” After reviewing this ruling in its entirety, we believe that it is partially in error. For the reasons set forth below, we hereby modify NY E84374 with respect to the classification of nut setters. The classification determination in NY E84374 remains in effect with respect to insert bits.<sup>1</sup>

Pursuant to 19 U.S.C. § 1625 (c)(1), a notice was published in the *Customs Bulletin*, Volume 51, No. 23, on June 7, 2017, proposing to modify NY E84374, and any treatment accorded to substantially identical transactions. No comments were received in response to this notice.

**FACTS:**

In NY E84374, we described the products as follows:

The Insert Bits for Phillips Screws and Nut Setters are made of steel and are designed to be fitted for and used with hand tools or power-driven hand tools. The Bits and Nut Setters are interchangeable tools that include those tools for pressing, stamping, punching, tapping, threading, drilling, boring, broaching, milling, tuning or screwdriving. The insert bits are approximately one-inch in length, and are designed to be used with hex shank or square recess Phillips screws. The Nut Setters come in three different lengths 1–1/8”, 1–3/4”, 2–9/16”. The Nut Setters are magnetized and can be snapped into a hand held or power-driven screw gun or can be used with drill chucks.

<sup>1</sup> We note that NY E84374, dated July 8, 1999, was addressed to Ms. Adonica-Jo Wada.

**ISSUE:**

Whether nut setters are classified under heading 8207, HTSUS, as “interchangeable tools for handtools” or under heading 8204, HTSUS, as “socket wrenches, with or without handles.”

**LAW AND ANALYSIS:**

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

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

The HTSUS headings under consideration are as follows:

8204: Hand-operated spanners and wrenches (including torque meter wrenches but not including tap wrenches); socket wrenches, with or without handles, drives or extensions; base metal parts thereof

8207: Interchangeable tools for handtools, whether or not power operated, or for machine-tools (for example, for pressing, stamping, punching, tapping, threading, drilling, boring, broaching, milling, turning or screw-driving), including dies for drawing or extruding metal, and rock drilling or earth boring tools; base metal parts thereof

GRI 3(a)<sup>2</sup> provides, in relevant part, that when goods are *prima facie* classifiable under two or more headings, the heading which provides the most specific description shall be preferred to headings providing a more general description. EN (IV) to GRI 3(a) explains that: “in general it may be said that: (a) A description by name is more specific than a description by class” and “(b) If the goods answer to a description which more clearly identifies them, that description is more specific than one where identification is less complete.” Our courts have interpreted this so-called “rule of relative specificity” to mean that “we look to the provision with requirements that are more difficult to satisfy and that describe the article with the greatest degree of accuracy and certainty.” *Orlando Food Corp. v. United States*, 140 F.3d 1437, 1441 (Fed. Cir. 1998).

<sup>2</sup> GRI 3(a) states as follows:

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

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

Generally, nut setters are interchangeable tools consisting of a design that fits over the head of hexagonal head fasteners. Dimensions of a nut setter also include the socket nose diameter. Socket wrenches are defined in the Dictionary of American Hand Tools: A Pictorial Synopsis (2002) as a “type of wrench that fits over the entire nut, thus providing an even torque and the largest gripping surface.” This publication further states that a socket wrench can also be called a “nut runner” or “nut wrench.” In addition, the Merriam-Webster Online Dictionary defines a socket wrench as “a tool that has a part which fits over the end of a bolt or nut and is used to turn it.” See <http://www.m-w.com> (last viewed on March 20, 2017). The nut setters in NY E84374 are designed to be fitted for and used with hand tools or power-driven hand tools but are also designed to be fitted over the head of a bolt, screw, or nut. As the nut setters can be described both as sockets without handles of heading 8204, HTSUS, and as hand tools of heading 8207, HTSUS, the issue is whether heading 8204 or heading 8207 provides a more narrow and specific description for the merchandise.

In HQ 964841, dated December 14, 2001, we determined that under GRI 3(a), heading 8204, HTSUS, provided a more narrow and specific description for the interchangeable sockets than did heading 8207, HTSUS. Thus, where nut setters are interchangeable hand tools, specifically sockets without handles, described in both headings, we find that the nut setters are correctly classified under the more narrow and specific description in heading 8204, HTSUS, pursuant to GRI 3(a).

In light of the foregoing, we find that the nut setters at issue are classified in heading 8204, HTSUS, and specifically provided for under subheading 8204.20.00, HTSUS, as “[h]and-operated spanners and wrenches (including torque meter wrenches but not including tap wrenches); socket wrenches, with or without handles, drives or extension; base metal parts thereof: Socket wrenches, with or without handles, drives and extensions, and parts thereof.” The 2017 column one general rate of duty is 9% *ad valorem*.

#### **HOLDING:**

Pursuant to GRIs 1 and 3(a), the nut setters are classified in heading 8204, HTSUS, and specifically provided for under subheading 8204.20.00, HTSUS, as “Hand-operated spanners and wrenches (including torque meter wrenches but not including tap wrenches); socket wrenches, with or without handles, drives or extension; base metal parts thereof: Socket wrenches, with or without handles, drives and extensions, and parts thereof.” The 2017 column one general rate of duty is 9% *ad valorem*.

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

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

NY E84374, dated July 8, 1999, is hereby MODIFIED as set forth above with respect to classification of the nut setters described therein, but the classification of the insert bits remains in effect.

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*

**19 CFR PART 177****MODIFICATION OF ONE RULING LETTER AND  
REVOCACTION OF TREATMENT RELATING TO THE  
TARIFF CLASSIFICATION OF EARTHMOVER TIRES**

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

**ACTION:** Notice of modification of one ruling letter and of revocation of treatment relating to the tariff classification of earthmover 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) is modifying New York Ruling Letter (NY) I80181, dated April 15, 2002, concerning the tariff classification of earthmover tires 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. 23, on June 7, 2017. No comments were 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 16, 2017.

**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, a notice was published in the *Customs Bulletin*, Vol. 51, No. 23, on June 7, 2017, proposing to modify one ruling letter pertaining to the tariff classification of earthmover tires. As stated in the proposed notice, this action will cover New York Ruling Letter (NY) I80181, dated April 15, 2002, as well as any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

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

In NY I80181, CBP classified five models of tires—the XL (part no. CAI 123434), the XGC (part no. 123691), the XHC (part no. 123444), the XVC (part no. 280557), and the XZ SC (part no. 123753), in subheading 4011.20.10, HTSUS, which provides for "New pneumatic tires of rubber: Of a kind used on buses or trucks: Radial."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is modifying NY I80181 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter ("HQ") H272342, 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: July 24, 2017

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

Attachment

HQ H272342

July 24, 2017

CLA-2 OT:RR:CTF:TCM H272342 CkG

CATEGORY: Classification

TARIFF NO.: 4011.20.10, 4011.80.20, 4011.90.20

MARGARET WILSON-McDOWELL  
 CUSTOMS/DRAWBACK ADMINISTRATOR  
 MICHELIN NORTH AMERICA, INC.  
 ONE PARKWAY SOUTH P.O. BOX 19001  
 GREENVILLE, SOUTH CAROLINA 29602-9001

Re: Modification of NY I80181; classification of certain off-the-road earthmover tires

DEAR Ms. WILSON-McDOWELL:

This is in response to your request of October 30, 2015, for reconsideration of New York Ruling Letter (NY) I80181, dated April 15, 2002, with respect to five models of tires: the XL (part no. CAI 123434), the XGC (part no. 123691), the XHC (part no. 123444), the XVC (part no. 280557), and the XZ SC (part no. 123753), in subheading 4011.20.10, HTSUS, which provides for “New pneumatic tires of rubber: Of a kind used on buses or trucks: Radial.” We have reconsidered NY I80691, and for the reasons set forth below, we find that the classification of the XL and XZ SC tires in subheading 4011.20.10, HTSUS, was incorrect.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to modify NY I80181 was published on June 7, 2017, in Volume 51, Number 23 of the Customs Bulletin. No comments were received in response to this notice.

**FACTS:**

The subject merchandise consists of five models of earthmover tires: the XL tread pattern (part no. CAI 123434), the XGC tread pattern (part no. 123691), the XHC tread pattern (part no. 123444), the XVC tread pattern (part no. 280557), and the XZ SC tread pattern (part no. 123753).

The XL tread tire is marked on the sidewall with the TRA code E2 and the size designation 17.5R25 (indicating that the section width<sup>1</sup> of the tire is 17.5 inches, the tire is of radial construction, and it has a rim diameter of 25 inches). The “E2” TRA code refers to tires for “Earthmover” vehicles, with a “Traction” tread.<sup>2</sup>

The XGC tread tire is marked on the sidewall with the TRA code E2 and the size designation 20.5R25 (indicating that tire’s section width is 20.5 inches, the tire is of radial construction, and it has a rim diameter of 25 inches).

<sup>1</sup> A tire’s section width (also called “cross section width”) is the measurement of the tire’s width from its inner sidewall to its outer sidewall (excluding any protective ribs, decorations or raised letters) at the widest point.

<sup>2</sup> The Tire & Rim Association (TRA) coding system assigns letter and number codes to tires according to their designated use. Thus, the TRA designates “L” as the code for “loaders and dozers”, “E” is defined as “earthmoving application”, and “G” is defined as the code for “graders”. Within each letter code, there are additional designations. For earthmover “E” tires, these include: 1 for “Ribbed”, 2 for “Traction”, 3 for “Rock”, 4 for “Rock (deep tread)”, and 5 for “Rock (very deep tread)”.

The XHC tread tire is marked on the sidewall with the TRA code E2 and the size designation 17.5R25 (indicating that tire’s section width is 17.5 inches, the tire is of radial construction, and it has a rim diameter of 25 inches).

The XVC tread tire is marked on the sidewall with the TRA code E2 and the size designation 27.00R49 (indicating that tire’s section width is 27 inches, the tire is of radial construction, and it has a rim diameter of 49 inches).

The XZ SC tread tire is marked on the sidewall with the TRA code E3 and the size designation 18.00R25 (indicating that tire’s section width is 18 inches, the tire is of radial construction, and it has a rim diameter of 25 inches). The “E3” TRA code refers to tires for “Earthmover” vehicles, with a “Rock” tread.

**ISSUE:**

Whether the instant tires are classified in subheading 4011.20, HTSUS, as tires “of a kind used on buses or trucks”, or in subheading 4011.80, HTSUS, as tires “of a kind used on construction, mining or industrial handling vehicles and machines.”

**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 at issue provide, in pertinent part, as follows:

4011	New pneumatic tires, of rubber:
4011.20	Of a kind used on buses or trucks
4011.20.10	Radial...
...	
4011.80	Of a kind used on construction, mining or industrial handling vehicles and machines:
4011.80.10:	Having a “herring-bone” or similar tread...
	Other:
4011.80.20:	Radial...
...	
4011.90:	Other:
4011.90.10:	Having a “herring-bone” or similar tread...
	Other:
4011.90.20:	Radial...
	* * * *

The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System represent the official interpretation of the tariff at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are

generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

EN 87.04 provides, in pertinent part, as follows:

This heading also covers :

(1) **Dumpers**, sturdily built vehicles with a tipping or bottom opening body, designed for the transport of excavated or other materials. These vehicles, which may have a rigid or articulated chassis, are generally fitted with off-the-road wheels and can work over soft ground. Both heavy and light dumpers are included in this group; the latter are sometimes characterised by a two-way seat, two seats facing in opposite directions or by two steering wheels, to enable the vehicles to be steered with the driver facing the body for unloading.

...

The heading also **excludes** :

(a) Straddle carriers used in factories, warehouses, dock areas or airports, etc., for the handling of long loads or containers (**heading 84.26**).

(b) Loader-transporters used in mines (**heading 84.29**).

#### **Subheading Explanatory Notes.**

##### **Subheading 8704.10**

These dumpers can generally be distinguished from other vehicles for the transport of goods (in particular, tipping lorries (trucks)) by the following characteristics...”

- the dumper body is made of very strong steel sheets; its front part is extended over the driver’s cab to protect the cab; the whole or part of the floor slopes upwards towards the rear;
- in some cases the driver’s cab is half-width only;
- lack of axle suspension;
- high braking capacity;
- limited speed and area of operation;
- special earth-moving tyres;
- because of their sturdy construction the tare weight/payload ratio does not exceed 1 : 1.6;
- the body may be heated by exhaust gases to prevent materials from sticking or freezing.

It should be noted, however, that certain dumpers are specially designed for working in mines or tunnels, for example, those with a bottom-opening body. These have some of the characteristics mentioned above, but do not have a cab or an extended protective front part of the body.

\* \* \* \*

Heading 40.11 provides for “New pneumatic tires, of rubber.” There is no dispute that the instant tires are classified therein. The issue arises at the six-digit subheading level.

Subheading 4011.20 provides for “New pneumatic tires, of rubber: Of a kind used on buses or trucks.” Subheading 4011.80 provides for “New pneumatic tires, of rubber: Of a kind used on construction, mining or industrial handling vehicles and machines.” Subheading 4011.90 provides for “New pneumatic tires, of rubber: Other.”

Subheading 4011.20 is a “principal use” provision, governed by Additional U.S. Rule of Interpretation 1(a), HTSUS (AUSRI 1(a)), which provides that “In the absence of special language or context which otherwise requires--a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use.”

Trucks are motor vehicles for the transport of goods that are classifiable in Chapter 87. However, we note that the EN to heading 40.11 as well as the international legal text of the Harmonized System uses the word “lorries” in subheading 4011.20 instead of “trucks”. In this regard, we note that Article 3 of the International Convention on the Harmonized Commodity Description and Coding System, states in pertinent part, as follows:

Subject to the exceptions enumerated in Article 4:

Each Contracting Party undertakes... that, in respect of its Customs tariff and statistical nomenclatures:

it shall use all the headings and subheadings of the Harmonized System without addition or modification, together with their related numerical codes;

it shall apply the General Rules for the interpretation of the Harmonized System and all the Section, Chapter and Subheading Notes, and shall not modify the scope of the Sections, Chapters, headings or subheadings of the Harmonized System...

In complying with the undertakings at paragraph 1(a) of this Article, each Contracting Party may make such textual adaptations as may be necessary to give effect to the Harmonized System in its domestic law. That the text of subheading 4011.20 in the HTSUS refers to “trucks” as opposed to “lorries” is indicative of a textual adaptation to give effect to a term (“lorries”) that is not commonly used in American English. Accordingly, the scope of subheading 4011.20, HTSUS, is informed by the legal text of the Harmonized Commodity Description and Coding System as well as EN 40.11.

The Explanatory Note to subheading 8704.10 draws a distinction between “dumpers” and “lorries” (trucks), stating that “These dumpers can generally be distinguished from other vehicles for the transport of goods (in particular, tipping lorries (trucks)) by the following characteristics”, such as, i.e., “special earth-moving tires.”

The Tire and Rim Association (TRA) Yearbook provides the following explanation of its “Earthmover” designation:

Earthmover: transportation usually occurs over unimproved surfaces at speeds up to 40 mph and short distances, up to 2.5 miles, one way. Equipment in this category is mainly haulage trucks and scrapers.

The CBP Informed Compliance Publication (ICP) on Classification of Tires further notes that “There are numerous machines identified as classifiable in chapter 84 that move on tires but are not trucks. These would include excavating machines of heading 8429, construction machines and snow plows

of heading 8430, agricultural machines of heading 8432 and harvesting machines of heading 8433. Although they all may be designed in some instances to roll on tires, they are not trucks, but machines, and their tires would be classifiable further on in heading 4011.”

Thus, the reference to buses and lorries in the legal text of the HS and the Explanatory Notes indicates that the contemplated class or kind of tires classified in subheading 4011.20 consists of those tires meant to be used on-road or on-the highways passenger or commercial vehicles, classified in heading 8704, HTSUS.<sup>3</sup>

The instant tires are used on a variety of vehicles, some of which are classified in heading 8704, HTSUS, as motor vehicles for the transport of goods, and some in other headings. Specifically, mobile cranes and straddle carriers are classified in heading 8426, HTSUS. Tires of a kind used solely or principally with mobile cranes, straddle carriers, and similar specialty vehicles are therefore not tires of a kind used on trucks or lorries, and are not classified in subheading 4011.20, HTSUS. Tires which are equally suitable for use with these types of specialty machines and with lorries or trucks within the meaning of subheading 4011.20, HTSUS, remain classified therein.

The XGC tire is described in Michelin’s “Earthmover and Industrial Tire Reference” guide as “The non-directional Michelin® radial tire designed to deliver exceptional operator comfort and durability in high-speed and demanding on- and offroad crane applications.” The brochure for the XGC tire further indicates that the XGC is designed for use on a range of vehicles, including mobile cranes, tractor-trailers, flatbed trucks, and fire and rescue trucks. While mobile cranes are not trucks within the meaning of 4011.20, HTSUS, tractor trailers, flatbed trucks, and fire and rescue trucks are trucks within the meaning of subheading 4011.20, HTSUS. The XGC tire is further designed for both mixed on and off-road use, including high speed, on-the highway use. The XGC is are therefore of a kind used on trucks, and classified in subheading 4011.20.10, HTSUS.

The XHC tire is described in the Earthmover and Industrial Tire Reference guide as “[t]he multi-purpose Michelin® radial tire designed for a wide spectrum of applications such as normal highway and off-road crane operations.” Your revocation request indicates that they are used for transport applications and with specialty machines such as self-propelled, on and off-road cranes. No brochure or additional information is available. Given that your submission and the Earthmover Tire guide indicate that the XHC is used for on-highway transport, we do not have reason to believe that the conclusion of NY I80181 that the XHC tire is classified in subheading 4011.20, HTSUS, was in error.

The XVC tire is designed for use on rigid dump trucks and mobile cranes. Mobile cranes are classified in heading 8426, HTSUS, and are not “trucks” for the purposes of subheading 4011.20, HTSUS. Tires for dump trucks, however, may remain classified in subheading 4011.20 if designed for on road or mixed use. The Michelin earthmover tire guide states that the XVC tires are “designed especially for high-speed applications on well-maintained site roads

<sup>3</sup> However, while a “truck” for the purposes of subheading 4011.20, HTSUS, must be classified within heading 8704, HTSUS, not all vehicles classifiable in heading 8704, HTSUS, are “trucks” within the meaning of subheading 4011.20. Thus, tires for dump trucks and dumpers may be precluded from classification in subheading 4011.20, HTSUS, if primarily used in off road applications such as mining, forestry, quarries, etc.

and highways.” The XVC tires are therefore of a kind used on buses or trucks and classified in subheading 4011.20.10, HTSUS.

The XL tire is designed for crash and fire rescue vehicles and military transport vehicles, “to provide exceptional traction on soft, muddy ground conditions and deliver solid performance in high-speed applications”. The XL tire is advertised as an “all-terrain tactical vehicle radial”, with a “cut-resistant tread compound” and “reinforced with durable steel-belted radial construction to provide excellent puncture and damage resistance.” The top internet search results for “Michelin XL” and Michelin XL tread” tire are for military tires. The XL is designed for speeds from 50 to 62 mph, depending on the size (generally the larger the size, the lower the maximum speed). The XL, as an earthmover tire designed for off highway and off road conditions in rough terrain, is not of a kind used on buses or trucks. The XL tire is not used directly in construction, mining or industrial handling applications; furthermore, it is designed for higher speeds than those applications typically demand. We therefore conclude that the XL is classified in subheading 4011.90.20, HTSUS, as an “other” new, pneumatic tire.

The XZ SC tires are used primarily in off-highway or off-road conditions, on industrial machines and vehicles such as dock cranes and straddle carriers. The XZ SC tires are thus not of a class or kind used on trucks and are not classified in subheading 4011.20, HTSUS. The XZ SC is a radial tire, and does not have a herring bone tread pattern. The XZ SC is therefore classified in subheading 4011.80.20, HTSUS.

This conclusion is consistent with prior CBP rulings HQ H263902, dated June 23, 2016, NY N272481, dated March 1, 2016, and NY N261453, dated February 20, 2015.

**HOLDING:**

The XGC (part no. 123691), XHC (part no. 123444) and XVC (part no. 280557) tread tires are classified in subheading 4011.20.10, HTSUS, which provides for “New pneumatic tires, of rubber: Of a kind used on buses or trucks: Radial.” The 2016 column one, general rate of duty is 4% *ad valorem*.

The XZ SC (part no.123753) tread tires are classified in subheading 4011.80.20, HTSUS, which provides for “New pneumatic tires, of rubber: Of a kind used on construction, mining or industrial handling vehicles and machines: Other: Radial.” The 2017 column one, general rate of duty is 4% *ad valorem*.

The XL tread tires (part no.123434) are classified in subheading 4011.90.20, HTSUS, which provides for “New pneumatic tires, of rubber: Other: Radial.” The 2017 column one, general rate of duty is 4% *ad valorem*.

**EFFECT ON OTHER RULINGS:**

NY I80181, dated April 15, 2002 is hereby modified with respect to part nos. 123434 (XL tread tire) and 123753 (XZ SC tread tire).

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*

**19 CFR PART 177****REVOCAION OF ONE RULING LETTER AND  
REVOCAION OF TREATMENT RELATING TO THE  
TARIFF CLASSIFICATION OF AN AQUA GLOBE WATERING  
SYSTEM (GLASS PLANT WATERING BULB)**

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

**ACTION:** Notice of revocation of one ruling letter and of revocation of treatment relating to the tariff classification of an Aqua Globe watering system (glass plant watering bulb).

**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 one ruling letter concerning tariff classification of an Aqua Globe watering system (glass plant watering bulb) 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. 23, on June 7, 2017. No comments were 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 16, 2017.

**FOR FURTHER INFORMATION CONTACT:** Albena Peters, Chemicals, Petroleum, Metals and Miscellaneous Classification Branch, Regulations and Rulings, Office of Trade, at (202) 325–0321.

**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. 51, No. 23, on June 7, 2017, proposing to revoke one ruling letter pertaining to the tariff classification of an Aqua Globe watering system (glass plant watering bulb). As stated in the proposed notice, this action will cover New York Ruling Letter ("NY") N020311, dated December 13, 2007, 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 ruling identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should 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 N020311, CBP classified an Aqua Globe watering system (glass plant watering bulb) in heading 7020, HTSUS, specifically in subheading 7020.00.60, HTSUS, which provides for "Other articles of glass: Other" and in heading 9817, HTSUS, specifically in subheading 9817.00.50, HTSUS, which provides for "Machinery, equipment and implements to be used for agricultural or horticultural purposes." CBP has reviewed NY N020311 and has determined the ruling letter

to be in error. It is now CBP's position that the Aqua Globe watering system (glass plant watering bulb) is properly classified, by operation of GRIs 1 and 6, in heading 7013, HTSUS, specifically in subheading 7013.99, HTSUS, which provides for "Glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018): Other glassware: Other."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY N020311 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter ("HQ") H258963, 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: July 24, 2017

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

*Attachment*

HQ H258963

July 24, 2017

CLA-2 OT:RR:CTF:CPM H258963 APP

CATEGORY: Classification

TARIFF NO.: 7013.99

MS. JENNIE CROSSLEY  
EXECUTIVE VICE PRESIDENT  
ALLSTAR MARKETING GROUP LLC  
4 SKYLINE DR.  
HAWTHORNE, NY 10532

RE: Revocation of NY N020311; Tariff classification of an Aqua Globe watering system (glass plant watering bulb) from China

DEAR MS. CROSSLEY:

This is to inform you that U.S. Customs and Border Protection (“CBP”) has reconsidered New York Ruling Letter (“NY”) N020311, dated December 13, 2007, regarding the classification, under the Harmonized Tariff Schedule of the United States (“HTSUS”), of an Aqua Globe watering system, which is a glass bulb used to water houseplants. In NY N020311, CBP classified an Aqua Globe in subheading 7020.00.60, HTSUS, which provides for “Other articles of glass: Other” and in subheading 9817.00.50, HTSUS, which provides for “Machinery, equipment and implements to be used for agricultural or horticultural purposes.” We have determined that NY N020311 is in error both with respect to the primary and secondary classifications. Therefore, for the reasons set forth below we hereby revoke NY N020311.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), a notice was published in the *Customs Bulletin*, Volume 51, No. 23, on June 7, 2017, proposing to revoke NY N020311 and to revoke any treatment accorded to substantially identical transactions. No comments were received in response to this notice.

**FACTS:**

NY N020311 describes the subject merchandise as follows:

The merchandise at issue is referred to as an Aqua Globe. The item is a hand blown glass bulb at the end of a glass tube that comes in a variety of colors. The entire piece measures approximately 14 inches in length and the bulb measures approximately 3 ½ inches in diameter. According to the information you submitted and your website, the user fills the bulb of the Aqua Globe with water and inserts the open tube end in the soil of a houseplant. The balance of air and water pressure in the soil as it dries allows water to enter the soil from the Aqua Globe as needed in order to keep the soil moist.

**ISSUE:**

Whether the glass plant watering bulb is classifiable under heading 7013, HTSUS, as glassware of a kind used for indoor decoration or similar purposes or under heading 7020, HTSUS, as other articles of glass.

Whether a secondary classification under subheading 9817.00.50, HTSUS as equipment or implements to be used for agricultural or horticultural purposes is appropriate.

### 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.

GRI 6 states, in pertinent part that:

[T]he 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 purpose of this rule, the relative section, chapter and subchapter notes also apply, unless the context otherwise requires.

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

<b>7013</b>	Glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018):
	Other glassware:
<b>7013.99</b>	Other:
<b>7020.00</b>	Other articles of glass:
<b>9817.00.50</b>	Machinery, equipment and implements to be used for agricultural or horticultural purposes.

Additional U.S. Rule of Interpretation (“AUSRI”) 1(a) provides that:

In the absence of special language or context which otherwise requires—  
(a) 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.

U.S. Note 2 to Subchapter XVII, HTSUS of Chapter 98, HTSUS, states that:

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

(f) articles provided for in section XIII (except heading 6808 and subheadings 6809.11, 7018.10, 7018.90, 7019.40, 7019.51, 7019.52 and 7019.59);

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

EN 70.13 states, in relevant part that:

This heading covers the following types of articles, most of which are obtained by pressing or blowing in moulds: . . .

(4) **Glassware for indoor decoration** and other glassware (including that for churches and the like), such as vases, ornamental fruit bowls, statuettes, fancy articles (animals, flowers, foliage, fruit, etc.), table-centres (**other than** those of heading 70.09), aquaria, incense burners, etc., and souvenirs bearing views.

The relevant ENs for heading 70.20, provide, in pertinent part:

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

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

As an initial matter, we note that U.S. Note 2 to Subchapter XVII, HTSUS of Chapter 98, HTSUS, excludes articles of Section XIII, HTSUS, which includes both heading 7013 and 7020, HTSUS, from duty-free treatment provided for in subheading 9817.00.50, HTSUS. Hence, regardless of which primary classification we find appropriate, the glass bulb is not eligible for duty-free treatment under Chapter 98, HTSUS, and NY N020311 must be revoked.

There is no question that the glass plant watering bulb is classifiable in Chapter 70, HTSUS, which provides for articles of glass. The headings under consideration are headings 7013 and 7020, HTSUS. Heading 7020, HTSUS is a residual or “basket” provision encompassing all “other articles of glass,” which is appropriate only when an item is not properly classifiable under another heading that covers the merchandise more specifically. *See Pomeroy Collection, Inc. v. United States*, 26 CIT 624, 631, 246 F. Supp. 2d 1286, 1293 (2002); *Apex Universal, Inc. v. United States*, 22 CIT 465, 1998 Ct. Intl. Trade LEXIS 64, at \*16-\*17 (1998). Therefore, we will first address heading 7013, HTSUS. Only if classification in heading 7013, HTSUS is precluded will we address classification in heading 7020, HTSUS.

Heading 7013, HTSUS, in relevant part, includes “glassware of a kind used for . . . indoor decoration or similar purposes.” Heading 7013, HTSUS is a “principal use” provision and is governed by AUSRI 1(a), HTSUS. Thus, the article’s principal use in the United States at the time of importation determines whether it is classifiable within a particular class or kind. In determining whether the principal use of a product is for indoor decoration or similar purposes, and thereby classified in heading 7013, HTSUS, CBP considers a variety of factors, including: (1) general physical characteristics of the merchandise; (2) expectation of the ultimate purchaser; (3) channels, class or kind of trade in which the merchandise moves; (4) environment of the sale (*i.e.*, accompanying accessories and the manner in which the merchandise is advertised and displayed); (5) usage, if any, in the same manner as merchandise which defines the class; and (6) economic practicality of so using the import and recognition in the trade of this use. *See United States v. Carborundum Co.*, 63 C.C.P.A. 98, 102, 536 F.2d 373, 377 (1976), *cert. denied*, 429 U.S. 979 (1976). Not all of these factors will necessarily be relevant in every situation.

The glass plant watering bulb at issue is intended to be decorative given its shape and appearance. The Aqua Globe is made of hand blown glass and comes in a variety of colors. It is marketed and sold as hand blown glass design that adds beauty to indoor and outdoor potted plants in addition to watering plants up to two weeks. The ultimate purchaser expects the glass

bulb to automatically water a houseplant for up to two weeks and to look beautiful. Purchasers commented at [www.amazon.com](http://www.amazon.com) that the Aqua Globe is “pretty,” is “perfect when not at home for an extended period of time,” and “work[s] amazing and look[s] gorgeous.”

The function of the Aqua Globe is similar to that of decorative glass vases or pitchers. EN 70.13(4) includes vases among its exemplars for “Glassware for indoor decoration and other glassware.” Decorative glass vases and pitchers have been classified in heading 7013, HTSUS. *See* Headquarters Ruling Letter (“HQ”) H207515, dated October 2, 2014 (orange-tinted glass vase classified in heading 7013, HTSUS); NY E87764, dated October 15, 1999 (ribbon glass vase classified in heading 7013, HTSUS); NY E84232, dated August 11, 1999 (glass pitcher with green swirl design classified in heading 7013, HTSUS). Just like decorative glass vases and pitchers that hold or pour water to keep cut or potted plants alive, the Aqua Globe is a decorative hand blown glass bulb at the end of a glass tube that holds water and releases slowly the amount of water that the potted plant needs for up to two weeks. Thus, the Aqua Globe is classifiable under heading 7013, HTSUS, and not in the catch-all provision under heading 7020, HTSUS, based on its general physical characteristics, expectation of the ultimate purchaser, environment of the sale, and usage.

Lastly, as noted above, the Aqua Globe is provided for under heading 7013, HTSUS, and is therefore excluded from subheading 9817.00.50, HTSUS pursuant to U.S. Note 2 to Subchapter XVII of Chapter 98, HTSUS. Accordingly, the Aqua Globe is classifiable in heading 7013, HTSUS, with no secondary classification.

**HOLDING:**

By application of GRIs 1 and 6, and AUSRI 1(a), the Aqua Globe is provided for in heading 7013, HTSUS, specifically in subheading 7013.99, HTSUS, which provides for “Glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018): Other glassware: Other.” Pursuant to U.S. Note 2 to Subchapter XVII of Chapter 98, HTSUS, the Aqua Globe is excluded from subheading 9817.00.50, HTSUS.

Due to our current lack of information about the value of the Aqua Globe, we are unable to provide a rate of duty for the Aqua Globe at this time. Should you require a determination as to the classification of the Aqua Globe at the 8-digit level, please submit a request for a binding ruling, along with any information required for this determination, to CBP’s National Commodities Specialist Division (“NCS D”). Requests for a binding ruling may be made electronically via CBP’s website, <https://apps.cbp.gov/erulings/index.asp>, or by writing to NCS D at the following address:

Director, National Commodity Specialist Division  
 Regulations and Rulings  
 Office of Trade  
 U.S. Customs and Border Protection  
 201 Varick Street, Suite 501  
 New York, New York 10014  
 Attn.: Binding Ruling Request

**EFFECT ON OTHER RULINGS:**

NY N020311, dated December 13, 2007, 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*

## 19 CFR PART 177

### REVOCAION OF TWO RULING LETTERS AND MODIFICATION OF ONE RULING LETTER AND REVOCAION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF CHELAL FE (CAS 12389-75-2 AND CAS 85959-68-8)

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

**ACTION:** Notice of revocation of two ruling letters and modification of one ruling letter, and of revocation of treatment relating to the tariff classification of Chelal Fe (CAS 12389-75-2 and CAS 85959-68-8).

**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 two ruling letters and modifying one ruling letter concerning tariff classification of Chelal Fe (CAS 12389-75-2 and CAS 85959-68-8) 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. 23, on June 7, 2017. No comments were 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 16, 2017.

**FOR FURTHER INFORMATION CONTACT:** Albena Peters, Chemicals, Petroleum, Metals and Miscellaneous Classification Branch, Regulations and Rulings, Office of Trade, at (202) 325-0321.

#### 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. 51, No. 28, on June 7, 2017, proposing to revoke two ruling letters and to modify one ruling letter pertaining to the tariff classification of Chelal Fe (CAS 12389–75–2 and CAS 85959–68–8). As stated in the proposed notice, this action will cover New York Ruling Letter (“NY”) A88070, dated February 5, 1997, NY A87653, dated September 26, 1996, and NY H86531, dated February 4, 2002, 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 three rulings 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 A88070, NY A87653 and NY N86531, CBP classified Chelal Fe (CAS 12389–75–2 and CAS 85959–68–8) in heading 2942, HTSUS, specifically in subheading 2942.00.50, HTSUS, which provides for “Other organic compounds: Other.” CBP has reviewed NY A88070,

NY A87653 and NY N86531, and has determined the ruling letters to be in error. It is now CBP's position that Chelal Fe (CAS 12389-75-2 and CAS 85959-68-8) is properly classified, by operation of GRIs 1 and 6, in heading 2922, HTSUS, specifically in subheading 2922.49.80, HTSUS, which provides for "Oxygen-function amino-compounds: Amino-acids, other than those containing more than one kind of oxygen function, and their esters; salts thereof: Other: Other: Other."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY A88070 and NY A87653, and modifying NY H86531, and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter ("HQ") H265102, 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: July 24, 2017

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

*Attachment*

HQ H265102

July 24, 2017

CLA-2 OT:RR:CTF:CPM H265102 APP

CATEGORY: Classification

TARIFF NO.: 2922.49.80

MR. ALAN RUBIN

BMS MICRO-NUTRIENTS NV

5405 ALTON PARKWAY, SUITE 5-A-612

IRVINE, CA 92714

MS. KATHLEEN M. MURPHY

KATTEN MUCHIN ZAVIS

525 WEST MONROE ST., SUITE 1600

CHICAGO, IL 60661-3693

RE: Revocation of NY A88070 and NY A87653, and modification of NY H86531; Tariff classification of Chelal Fe (CAS 12389-75-2 and CAS 85959-68-8)

DEAR MR. RUBIN AND MS. MURPHY:

This is to inform you that U.S. Customs and Border Protection (“CBP”) has reconsidered New York Ruling Letters (“NY”) A88070, dated Feb. 5, 1997, and NY A87653, dated Sept. 26, 1996 (both issued to BMS Micro-Nutrients NV), and NY H86531, dated Feb. 4, 2002 (issued to Akzo Nobel Functional Chemicals LLC) regarding the classification, under the Harmonized Tariff Schedule of the United States (“HTSUS”), of Chelal Fe [Chemical Service Abstract Numbers (“CAS”) 12389-75-2 and 85959-68-8]. In these three rulings, CBP classified the product under heading 2942, HTSUS, specifically under subheading 2942.00.50, HTSUS, which provides for “Other organic compounds: Other.”

We have determined that these rulings are in error with respect to the classification of Chelal Fe (CAS 12389-75-2 and CAS 85959-68-8) and that the correct tariff classification should be under heading 2922, specifically under subheading 2922.49.80, HTSUS, which provides for “Oxygen-function amino-compounds: Amino-acids, other than those containing more than one kind of oxygen function, and their esters; salts thereof: Other: Other: Other: Other.” Therefore, for the reasons set forth below we hereby revoke NY A88070 and NY A87653, and modify NY H86531.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), a notice was published in the *Customs Bulletin*, Volume 51, No. 23, on June 7, 2017, proposing to revoke NY A88070 and NY A87653, and modify NY H86531, and to revoke any treatment accorded to substantially identical transactions. No comments were received in response to this notice.

**FACTS:**

The merchandise at issue in NY A88070 is described as follows:

The sample, Chelal Fe, is composed of an aqueous solution of either [N,N-Bis[2-[Bis(carboxymethyl) amino] ethyl] glycinate(5)-ferrate(2-) sodium hydrogen or [N,N-Bis[2-[Bis(carboxymethyl) amino] ethyl] glycinate

(5)-ferrate (2-) diammonium. This product is used as a fertilizer and will be imported and sold in 5.25 quarts, 50 gallon and 200 gallon containers.

The merchandise at issue in NY A87653 is described as follows:

You have indicated that this product is used as a fertilizer and is composed of an aqueous solution of either one (not a mixture) of the following, depending on the availability:

Chemical Name - N,N-Bis-2-Bis(Carboxymethyl) Amino Ethyl Glycinato(5-)-Ferrate(2-) Sodium Hydrogen CAS 12389-75-2

Chemical Name - N,N-Bis-2-Bis(Carboxymethyl) Amino Ethyl Glycinato(5-)-Ferrate(2-) Diammonium CAS 85959-68-8.

The merchandise at issue in NY H86531 is described as follows:

...D-Fe-6 (Chemical Name - [rel-[N(R)]-N-[2-[bis[(carboxy-kO)methyl] amino-kN]ethyl]-N-[2-[(S)-[(carboxy-kO)methyl](carboxymethyl)amino kN]ethyl]glycinato(5-)-kN,kO]-ferrate(2-), diammonium); D-FE-11 (Chemical Name- [rel-[N(R)]-N-[2-[bis[(carboxy-kO)methyl]amino-kN] ethyl]-N-[2-[(S)-[(carboxy-kO)methyl] (carboxymethyl)amino-kN]ethyl] glycinato(5-)-kN,kO]-, sodium hydrogen, ferrate (2-); .... all of which are used in agriculture and horticulture ....

The CBP Laboratories and Scientific and Services Directorate (“LSSD”) examined the Chehal Fe (CAS 12389-75-2 and CAS 85959-68-8). LSSD Report No. NY20170426, dated April 28, 2017, states the following:

Product name:	Chelal Fe
Chemical name:	Ferrate(2-),[rel-[N(R)]-N-[2-[bis[(carboxy-kO)methyl] amino-kN]ethyl]-N-[2-[(S)-[(carboxy-kO)methyl] (carboxymethyl)amino-kN]ethyl]glycinato(5-)-kN,kO]-, sodium hydrogen (1:1:1)
CAS Number:	12389-75-2; Not listed in the Chemical Appendix to the HTSUS (2017)
Use:	Fertilizer

The product exists as an aqueous solution of the above separate chemically defined organic coordination compound. As per Note 5(c)3 to Chapter 29, classification would proceed based on the fragment remaining after “cleaving” all metal bonds, other than metal-carbon bonds. This fragment is an inorganic salt of an oxygen-function amino compound containing amino and carboxylic acid functional groups.

Product name:	Chelal Fe
Chemical name:	Ferrate(2-),[rel-[N(R)]-N-[2-[bis[(carboxy-kO)methyl] amino-kN]ethyl]-N-[2-[(S)-[(carboxy-kO)methyl] (carboxymethyl)amino-kN]ethyl]glycinato(5-)-kN,kO]-, diammonium
CAS Number:	85959-68-8; Not listed in the Chemical Appendix to the HTSUS (2017)
Use:	Fertilizer

The product exists as an aqueous solution of the above separate chemically defined organic coordination compound. As per Note 5(c)3 to Chapter 29, classification would proceed based on the fragment remaining after “cleaving” all metal bonds, other than metal-carbon bonds. This fragment is an inorganic salt of an oxygen-function amino compound containing amino and carboxylic acid functional groups.

#### ISSUE:

Whether Chelal Fe (CAS 12389–75–2 and CAS 85959–68–8) is classified as oxygen-function amino-compound under heading **2922**, HTSUS, or as other organic compound under heading **2942**, HTSUS.

#### LAW AND ANALYSIS:

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

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

**2922** Oxygen-function amino-compounds: Amino-acids, other than those containing more than one kind of oxygen function, and their esters; salts thereof:

**2942** Other organic compounds:

Chapter Note 1(a) to Chapter 29, HTSUS, states, in pertinent part, “Except where the context otherwise requires, the headings of this chapter apply only to: (a) Separately defined organic compounds, whether or not containing impurities.”

Note 4 to Chapter 29, HTSUS states that for purposes of heading 2922, HTSUS, oxygen-function is restricted to the functions (the characteristic organic oxygen-containing groups) referred to in headings 2905 to 2920, HTSUS.

Note 5 to Chapter 29, HTSUS, states, in relevant part, that:

(C) Subject to note 1 to section VI and note 2 to chapter 28: ....

(3) Co-ordination compounds, other than products classifiable in sub-chapter XI or heading 2941, are to be classified in the heading which occurs last in numerical order in chapter 29, among those appropriate to the fragments formed by “cleaving” of all metal bonds, other than metal-carbon bonds.

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

The ENs to 29.22 define the term “oxygen-function amino-compounds” to mean:

The term “oxygen-function amino-compounds” means amino-compounds which contain, in addition to an amine function, one or more of the oxygen functions defined in Note 4 to Chapter 29 (alcohol, ether, phenol, acetal, aldehyde, ketone, etc., functions), as well as their organic and inorganic acid esters. This heading therefore covers amino-compounds which are substitution derivatives of amines containing oxygen functions of headings 29.05 to 29.20, and esters and salts thereof.

The ENs to 29.22(D) defines amino-acids and their esters; salts thereof as:

These compounds contain one or more carboxylic acid functions and one or more amine functions. Anhydrides, halides, peroxides and peroxyacids of carboxylic acids are regarded as acid functions.

These compounds contain as oxygen functions only acids, their esters or their anhydrides, halides, peroxides and peroxyacids or a combination of these functions. Any oxygen function found in a non-parent segment attached to a parent amino-acid is disregarded for classification purposes.

The Subheading ENs to 29.22 state that:

For subheading classification purposes, ether or organic or inorganic acid ester functions are regarded either as alcohol, phenol or acid functions, depending on the position of the oxygen function in relation to the amine group. In these cases, only those oxygen functions present in that part of the molecule situated between the amine function and the oxygen atom of either the ether or the ester function should be taken into consideration. A segment containing an amine function is referred to as a “parent” segment. For example, in the compound 3-(2-aminoethoxy)propionic acid, the parent segment is aminoethanol, and the carboxylic acid group is disregarded for classification purposes; as an ether of an amino-alcohol, this compound is classifiable in subheading 2922.19.

If the compound contains two or more ether or ester functions, the molecule is segmented for classification purposes at the oxygen atom of each ether or ester function, and the only oxygen functions considered are those found in the same segment as an amine function.

If the compound has two or more amine functions linked to the same ether or ester function, it is classifiable in the subheading that is last in numerical order; that subheading is determined by considering the ether or ester function as either an alcohol, phenol or acid function, in relation to each amine function.

The ENs to 29.42 state as follows:

This heading covers separate chemically defined organic compounds **not classified elsewhere**.

(1) **Ketenes\***. Like ketones, these are characterised by a carbonyl group (>C=O) but it is linked to the neighbouring carbon atom by a double bond (e.g., ketene, diphenylketene).

This heading however **excludes** diketene which is a lactone of **heading 29.32**.

(2) **Boron trifluoride complexes with acetic acid, diethyl ether or phenol\*.**(3) **Dithymol di-iodide.**

There is no dispute that Chelal Fe (CAS 12389-75-2 and CAS 85959-68-8) is properly classified in Chapter 29, HTSUS as a separate chemically defined organic compound within the meaning of Note 1(a) to Chapter 29, HTSUS. At issue is the appropriate heading. Chelal Fe (CAS 12389-75-2 and CAS 85959-68-8) can only be classified as “other organic compounds” in heading 2942, HTSUS if it cannot be classified elsewhere. *See* ENs to 24.42. Therefore, if Chelal Fe can be classified in heading 2922, HTSUS, it cannot be classified in heading 2942.

Heading 2922, HTSUS covers compounds that contain one or more carboxylic acid functions and one or more amine functions. *See* ENs to 29.22(D). The instant Chelal Fe contains DTPA, a chelating agent, which is aminopolycarboxylic acid. An aminopolycarboxylic acid is a chemical compound containing one or more nitrogen atoms connected through carbon atoms to two or more carboxyl groups.<sup>1</sup> The parent of this family of ligands is the amino acid glycine.<sup>2</sup> *See* Subheading ENs to 29.22. Pursuant to Note 5(C)(3) to Chapter 29, HTSUS, classification will be based on the fragment remaining after “cleaving” all metal bonds other than metal-carbon bonds. This fragment is an inorganic salt of an oxygen-function amino compound containing amino and carboxylic acid functional groups.

In NY N281433, dated Dec. 22, 2016, CBP classified DTPA-Fe (Diethylenetriamine Penta Acetic Acid, Ferric Sodium complex, CAS 12389-75-2) as an amino acid salt under heading 2922, HTSUS, specifically under subheading 2922.49.80, HTSUS. In NY N014827, dated Aug. 2, 2007, CBP classified pentetic acid (also known as DTPA) as amino acid under heading 2922, HTSUS. Similarly, in two other rulings, CBP classified zinc ethylenediaminetetraacetic acid (also known as Zinc EDTA) and edetic acid tetrasodium salt used as a plant food chelating ingredient under heading 2922, HTSUS. *See* NY N274697, dated Apr. 25, 2016 (Zinc EDTA); NY H85081, dated Aug. 27, 2001 (edetic acid tetrasodium salt).

The product in NY N281433 (CAS 12389-75-2) is the same as the Chelal Fe in NY A88070, NY A87653 and NY H86531, and has the same CAS number. CAS 12389-75-2 is essentially iron chelated by DTPA similar to the Zinc EDTA (zinc chelated by EDTA) in NY N274697. Both EDTA and DTPA are aminopolycarboxylic acids and synthetic chelating agents. Similarly, per Note 5(C)(3) to Chapter 29, HTSUS, the Chelal Fe (CAS 12389-75-2 and CAS 85959-68-8) needs to be classified in heading 2922, HTSUS, based on the fragment remaining after “cleaving,” which is an inorganic salt of an oxygen-function amino compound containing amino and carboxylic acid functional groups.

Because the subject Chelal Fe (CAS 12389-75-2 and CAS 85959-68-8) is described by heading 2922, HTSUS, it is not classifiable under heading 2942, HTSUS, as “other organic compound.”

<sup>1</sup> *See* Aminopolycarboxylic Acid (APCA) Market: Global Industry Analysis and Forecast 2015 - 2021, at <http://www.persistencemarketresearch.com/market-research/aminopolycarboxylic-acid-market.asp> (last viewed May 1, 2017); CHEBI:60892 - Polyamino Carboxylic Acid, at <http://www.ebi.ac.uk/chebi/searchId.do?chebiId=60892> (last viewed May 1, 2017).

<sup>2</sup> *See id.*

**HOLDING:**

By application of GRIs 1 and 6, Chelal Fe (CAS 12389-75-2 and CAS 85959-68-8) is classified under heading 2922, HTSUS, specifically under subheading 2922.49.80, HTSUS, which provides for “Oxygen-function amino-compounds: Amino-acids, other than those containing more than one kind of oxygen function, and their esters; salts thereof: Other: Other: Other: Other.” The column one, duty rate is 3.7 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 at <https://hts.usitc.gov/current>.

**EFFECT ON OTHER RULINGS:**

NY A88070, dated Feb. 5, 1997, and NY A87653, dated Sept. 26, 1996, are hereby REVOKED.

NY H86531, dated Feb. 4, 2002, is hereby MODIFIED.

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

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

**19 CFR PART 177****MODIFICATION OF NY 818805 RULING LETTER AND  
REVOCATION OF TREATMENT RELATING TO THE  
TARIFF CLASSIFICATION OF MUSK 50/DEP/BB/IPM  
(CHEMICAL NAME – 1,3,4,6,7,8-HEXAMETHYL-  
CYCLOPENTA(G)-2-BENZOPYRAN; CAS 1222-05-5)**

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

**ACTION:** Notice of modification of NY 818805 ruling letter and of revocation of treatment relating to the tariff classification of Musk 50/DEP/BB/IPM (Chemical Name – 1,3,4,6,7,8-Hexamethyl-Cyclopenta(G)-2-Benzopyran; CAS 1222-05-5).

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is modifying NY 818805 ruling letter concerning tariff classification of Musk 50/DEP/BB/IPM (Chemical Name – 1,3,4,6,7,8-Hexamethyl-Cyclopenta(G)-2-Benzopyran; CAS 1222-05-5) 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. 23, on June 7, 2017. No comments supporting the proposed modification were 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 16, 2017.

**FOR FURTHER INFORMATION CONTACT:** Michele A. Boyd, Chemicals, Petroleum, Machinery 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, a notice was published in the *Customs Bulletin*, Vol. 51, No. 23, on June 7, 2017, proposing to modify NY 818805 ruling letter pertaining to the tariff classification of Musk 50/DEP/BB/IPM (Chemical Name – 1,3,4,6,7,8-Hexamethyl-Cyclopenta(G)-2-Benzopyran; CAS 1222-05-5). As stated in the proposed notice, this action will cover New York Ruling Letter (“NY”) 818805, dated June 7, 2017, as well as any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

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

In NY 818805, CBP classified Musk 50/DEP/BB/IPM (Chemical Name – 1,3,4,6,7,8-Hexamethyl-Cyclopenta(G)-2-Benzopyran; CAS 1222-05-5) in heading 2932, HTSUS, specifically in subheading 2932.99.7000, HTSUS, which provides for “Heterocyclic compounds with oxygen hetero-atom(s) only: Other: Other: Aromatic: Other:

Other.” CBP has reviewed NY 818805 and has determined the ruling letter to be in error. It is now CBP’s position that Musk 50/DEP/BB/IPM (Chemical Name – 1,3,4,6,7,8-Hexamethyl-Cyclopenta(G)-2-Benzopyran; CAS 1222–05–5) is properly classified, by operation of GRI 1, in heading 3302, HTSUS, specifically in subheading 3302.90.1050, HTSUS, which provides for “Mixtures of odoriferous substances and mixtures (including alcoholic solutions) with a basis of one or more of these substances, of a kind used as raw materials in industry; other preparations based on odoriferous substances, of a kind used for the manufacture of beverages: Other: Containing no alcohol or not over 10 percent of alcohol by weight: Other.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is modifying NY 818805 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter (“HQ”) H280915, 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: July 24, 2017

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

Attachment

HQ H280915

July 24, 2017

CLA-2 OT:RR:CTF:CPM H280915 MAB

CATEGORY: Classification

TARIFF NO.: 3302.90.1050

MR. L. KLESADT  
 TRANS-WORLD SHIPPING CORP.  
 53 PARK PLACE  
 NEW YORK, NY 10007

RE: Modification of NY 818805 classification of Musk 50/DEP/BB/IPM  
 (Chemical Name – 1,3,4,6,7,8-Hexamethyl-Cyclopenta(G)-2-  
 Benzopyran; CAS 1222-05-5)

DEAR MR. KLESADT:

This is in reference to New York Ruling Letter (NY) 818805, issued to you by U.S. Customs and Border Protection (CBP) on March 7, 1996. We have reviewed NY 818805, which involved classification of Musk 50/DEP/BB/IPM (Chemical Name – 1,3,4,6,7,8-Hexamethyl-Cyclopenta(G)-2-Benzopyran; CAS 1222-05-5) under the Harmonized Tariff Schedule of the United States (HTSUS), and determined that it is incorrect. For the reasons set forth below, we are modifying that ruling.

Pursuant to Section 6125(c), Tariff Act of 1920 (19 U.S.C. §1625(c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that CBP is modifying the above noted ruling concerning the classification of Musk 50/DEP/BB/IPM (Chemical Name – 1,3,4,6,7,8-Hexamethyl-Cyclopenta(G)-2-Benzopyran; CAS 1222-05-5), under the HTSUS. Similarly, CBP is modifying any treatment previously accorded by it to substantially identical transactions. Notice of the proposed modification was published on June 7, 2017, in Volume 51, Number 23, of the *Customs Bulletin*. No comments were received in response to the proposed notice.

**FACTS:**

NY 818805 pertains to Musk 50/DEP/BB/IPM (Chemical Name – 1,3,4,6,7,8-Hexamethyl-Cyclopenta(G)-2-Benzopyran; CAS 1222-05-5) whose chemical formula is depicted in Figure 1 below, dissolved in various solvents.

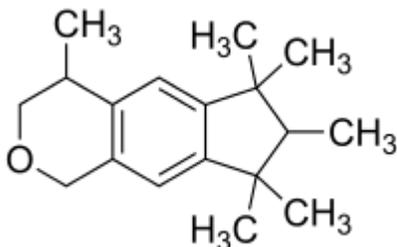


Figure 1

Specifically at issue in NY 818805 is Musk 50/DEP/BB/IPM (Chemical Name – 1,3,4,6,7,8-Hexamethyl-Cyclopenta(G)-2-Benzopyran; CAS 1222–05–5). These products are used as fragrance components. Musk 50 DEP consists of Musk dissolved in diethyl phthalate, a fluidizer (solvent). Musk 50 BB consists of Musk dissolved in benzyl benzoate, a fluidizer (solvent). Musk 50 IPM consists of Musk dissolved in isopropyl myristate, a fluidizer (solvent).

Musk 50/DEP/BB/IPM (Chemical Name – 1,3,4,6,7,8-Hexamethyl-Cyclopenta(G)-2-Benzopyran; CAS 1222–05–5) in NY 818805 were classified in heading 2932, HTSUS. They were specifically classified in subheading 2932.99.70, HTSUS, which provides for: “Heterocyclic compounds with oxygen hetero-atom(s) only: Other: Other: Aromatic: Other: Other.”

**ISSUE:**

Whether the subject Musk 50/DEP/BB/IPM (Chemical Name – 1,3,4,6,7,8-Hexamethyl-Cyclopenta(G)-2-Benzopyran; CAS 1222–05–5) are properly classified in heading 2932, HTSUS, as heterocyclic compounds with oxygen hetero-atom(s) only, or in heading 3302, HTSUS, as mixtures with a basis of one or more odoriferous substances, of a kind used in industry.

**LAW AND ANALYSIS:**

Merchandise imported into the United States is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context which requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law for all purposes.

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

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

The 2016 HTSUS provisions under consideration are as follows:

<b>2932</b>	Heterocyclic compounds with oxygen hetero-atom(s) only:
	Other:
2932.99	Other:
	Aromatic:
	Other
2932.99.70	Other

---

**3302** Mixtures of odoriferous substances and mixtures (including alcoholic solutions) with a basis of one or more of these substances, of a kind used as raw materials in industry; other preparations based on odoriferous substances, of a kind used for the manufacture of beverages:

3302.90 Other:

3302.90.10 Containing no alcohol or not over 10 percent of alcohol by weight:

Heading 2932, HTSUS, provides for heterocyclic compounds with oxygen hetero-atom(s) only. Note 1 to Chapter 29 provides, in pertinent part, as follows:

1. Except where the context requires, the headings of this chapter apply only to:

(a) Separate chemically defined organic compounds, whether or not containing impurities;

\*\*\*

(e) Products mentioned in (a), (b) or (c) above dissolved in other solvents provided that the solution constitutes a normal and necessary method of putting up these products adopted solely for reasons of safety or for transport and that the solvent does not render the product particularly suitable for specific use rather than for general use...

With respect to Note 1(a) to Chapter 29, the General EN to Chapter 29 states as follows:

A separate chemically defined compound is a substance which consists of one molecular species (e.g., covalent or ionic) whose composition is defined by a constant ratio of elements and can be represented by a definitive structural diagram. In a crystal lattice, the molecular species corresponds to the repeating unit cell.

The provisions in the General Explanatory Note to Chapter 28 concerning the addition of stabilisers, antidusting agents and colouring substances apply, *mutatis mutandis*, to the chemical compounds of this Chapter.

The General EN to Chapter 28 in turn states as follows:

Such elements and compounds are **excluded** from Chapter 28 when they are dissolved in **solvents other than water**, unless the solution constitutes a normal and necessary method of putting up these products adopted solely for reasons of safety or for transport (in which case the solvent must not render the product particularly suitable for some types of use rather than for general use).

The General EN to Chapter 29 defines “separate chemically defined compound” for purposes of Note 1 as a “substance...whose composition...can be represented by a definitive structural diagram.” Pursuant to Note 1(e) to Chapter 29, as explained in the General EN to Chapter 28, such compounds may be dissolved in non-aqueous solvents needed solely for safety or for transport. However, when the solvent enables or enhances the resulting solution’s end-use, or is otherwise added for reasons other than safety or

transport, the solution falls outside the scope of Note 1(e) to Chapter 29. *See, e.g.*, Headquarters Ruling Letter (HQ) 968018, dated January 9, 2006 (determining that Bitrex dissolved in propylene glycol did not meet the terms of Note 1(e) to Chapter 29 because Bitrex “is designed for human exposure and is not harmful” and the solution “is not necessary to put up or sell the product”); and HQ 965089, dated January 31, 2002 (excluding solution from heading 2922, HTSUS, where the solvent did not “enhance the safety of transportation” but instead “aid[ed] in the manufacture of the final product”).

The products at issue consist of Musk 50, a heterocyclic compound represented by a distinct structural diagram, dissolved in diethyl phthalate, benzyl benzoate or isopropyl myristate. Like other Musk 50 mixtures, the instant products are incorporated as active ingredients in perfumes and other fragrance products. Our research indicates that diethyl phthalate, benzyl benzoate or isopropyl myristate, known diluents, are added to Musk 50 for the express purpose of reducing the latter’s viscosity and rendering it in usable form for incorporation in perfumes. *See* Horst Surburg and Johannes Panten, *Common Fragrance and Flavor Materials: Preparation, Properties and Uses* (6th ed. 2016). Our research further indicates that diethyl phthalate also functions as a fixative, which is “a substance that prevents too rapid volatilization of the components of a perfume and tends to equalize...rates of volatilization” and which “thus increases the odor life of a perfume and keeps the odor unchanged.” Richard J. Lewis, Sr., *Hawley’s Condensed Chemical Dictionary* 566–67 (15th ed. 2007); *see also* U.S. Food and Drug Admin., Phthalates, [http://www.fda.gov/Cosmetics/ProductsIngredients/Ingredients.AmericanChemistryCouncil/DiethylPhthalate\(DEP\)inCosmeticsDeemedSafe,https://phthalates.americanchemistry.com/Phthalates-Basics/Personal-Care-Products/Diethyl-Phthalate-DEP-in-Cosmetics-Deemed-Safe.html](http://www.fda.gov/Cosmetics/ProductsIngredients/Ingredients.AmericanChemistryCouncil/DiethylPhthalate(DEP)inCosmeticsDeemedSafe,https://phthalates.americanchemistry.com/Phthalates-Basics/Personal-Care-Products/Diethyl-Phthalate-DEP-in-Cosmetics-Deemed-Safe.html) (last visited May 23, 2016). As such, none of the additives enable or enhance the safe use or transportation of Musk 50, which can in fact be safely maintained or transported in its undiluted form. *See* NY C87142, dated May 11, 1998 (classifying Galaxolide® “neat”). Instead, these additives enable fabrication of the finished perfumes and, in the case of the Musk 50 DEP, extend these perfumes’ shelf lives. Consequently, the products at issue are not covered by Note 1(e) to Chapter 29. Because the subject products do not otherwise satisfy Note 1 to Chapter 29, they are excluded from heading 2932, HTSUS.<sup>1</sup>

We next consider heading 3302, HTSUS, which applies, *inter alia*, to mixtures with a basis in one or more odoriferous substances, of a kind used as raw materials in the industry. Chapter Note 2 to Chapter 33 states as follows:

The expression “odoriferous substances” in heading 3302 refers only to the substances of heading 3301, to odoriferous constituents isolated from those substances or to synthetic aromatics.

With respect to “aromatics,” Additional U.S. Note 2(a) to Section Note VI states as follows:

<sup>1</sup> We also considered whether the instant products are covered by Note 1(f) to Chapter 29, which provides for: “The products mentioned in (a), (b), (c), (d) or (e) above with an added stabilizer (including an anticaking agent) necessary for their preservation or transport.” However, while diethyl phthalate prevents volatilization of the final perfume, neither it nor isopropyl myristate stabilizes Musk 50 when added to it.

2. For the purposes of the tariff schedule:

- (a) The term “*aromatic*” as applied to any chemical compound refers to such compound containing one or more fused or unfused benzene rings...

EN 33.02 states, in pertinent part, as follows:

This heading covers the following mixtures **provided** they are of a kind used as raw materials in the perfumery, food or drink industries (e.g., in confectionery, food or drink flavourings) or in other industries (e.g., soap-making):

\*\*\*

- (6) Mixtures of one or more odoriferous substances (essential oils, resins, extracted oleoresins or synthetic aromatics) combined with added diluents or carriers such as vegetable oil, dextrose or starch...

Pursuant to Chapter Note 2 to Chapter 33, heading 3302, HTSUS, applies, *inter alia*, to synthetic aromatics, which are synthetic compounds containing at least one benzene ring, mixed with one or more substances. EN 33.02 states that the substances with which these synthetic aromatics may be mixed include diluents and carriers.

Musk 50 is a synthetic substance that, according to its structural diagram, contains the requisite benzene ring of an aromatic compound within the meaning of Additional U.S. Note 2(a) to Section Note VI. *See* U.S. Patent No. 4,162,256 (issued July 24, 1979). It can therefore be described as a “synthetic aromatic” and, in effect, as an “odoriferous substance” within the meaning of Note 2 to Chapter 33. Because the instant products are mixtures consisting of an odoriferous substance and diluents, and because they are used as raw materials for perfumery products, they are described by EN 33.02 as examples of products classifiable in heading 3302. Consequently, we find that the instant products are properly classified in heading 3302, HTSUS, as mixtures with bases in an odoriferous substance, of a kind used as raw materials in the industry.

#### **HOLDING:**

By application of GRI 1, the subject Musk 50/DEP/BB/IPM (Chemical Name – 1,3,4,6,7,8-Hexamethyl-Cyclopenta(G)-2-Benzopyran; CAS 1222–05–5) are properly classified in heading 3302, HTSUS. They are specifically classified in subheading 3302.90.1050, HTSUSA (Annotated), which provides for: “Mixtures of odoriferous substances and mixtures (including alcoholic solutions) with a basis of one or more of these substances, of a kind used as raw materials in industry; other preparations based on odoriferous substances, of a kind used for the manufacture of beverages: Other: Containing no alcohol or not over 10 percent of alcohol by weight: Other.” 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/](http://www.usitc.gov/tata/hts/).

**EFFECT ON OTHER RULINGS:**

New York Ruling Letter N818805, dated March 7, 1996, is hereby MODIFIED in accordance with the above analysis.

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*

**19 CFR PART 177****MODIFICATION AND REVOCATION OF TWO RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF ELECTRICAL CABLES**

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

**ACTION:** Notice of modification and revocation of two ruling letters and revocation of treatment relating to the tariff classification of electrical cables.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is modifying Headquarters Ruling Letter (HQ) W967779, dated March 30, 2006, and revoking HQ 961830, dated October 2, 1998, relating to the tariff classification of electrical cable assemblies 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. 23, on June 07, 2017. No comments were 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 16, 2017.

**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, a notice was published in the *Customs Bulletin*, Vol. 51, No. 23, on June 7, 2017, proposing to modify HQ W967779 and to revoke HQ 961830, relating to the tariff classification of electrical cable assemblies under the HTSUS. As stated in the proposed notice, this action will cover HQ W967779, dated March 30, 2006, and HQ 961830, dated October 2, 1998, 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 two 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 HQ W967779 and HQ 961830, CBP determined that certain electrical cable assemblies were classified in subheading 8544.20.00, 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: Coaxial cable and other coaxial electric conductors.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is modifying HQ W967779 and revoking HQ 961830. CBP is also revoking or modifying any other ruling not specifically identified to reflect the analysis contained in HQ H127136, 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: July 24, 2017

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

Attachment

HQ H127136

July 24, 2017

CLA-2 OT:RR:CTF:TCM H127136 CKG

CATEGORY: Classification

TARIFF NO.: 8544.42.20

JAMES L. SAWYER

GARDNER, CARTON &amp; DOUGLAS

191 N. WACKER DRIVE, SUITE 3700

CHICAGO, IL 60606-1698

RE: Modification of HQ W967779 and Revocation of HQ 961830;  
classification of electrical cables

DEAR MR. SAWYER:

This is in reference to your request of January 08, 2010, for the reconsideration of Headquarters Ruling Letter (HQ) W967779, issued on March 30, 2006, on behalf of Precision Interconnect, regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of two styles of cable assemblies. We have reconsidered this decision, and for the reasons set forth below, have determined that the classification of styles 2 and 4 in subheading 8544.20.00, HTSUS, is incorrect. We have further determined that HQ 961830, dated October 2, 1998, incorrectly classified a similar electric cable in subheading 8544.20.00, HTSUS.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to modify HQ W967779 and revoke HQ 961830 was published on June 7, 2017, in Volume 51, Number 23 of the Customs Bulletin. No comments were received in response to this notice.

**FACTS:**

In HQ W967779, five styles of cable assemblies were classified in various subheadings under heading 8544, HTSUS, as insulated cable. You request reclassification of two styles, identified as items 2 and 4, which were classified in subheading 8544.20.00, HTSUS, as coaxial cables. HQ W967779 described the five cable assemblies as follows:

The subject merchandise consists of various cables used in PI's patient monitoring cable assemblies. These cables are designed to monitor minute changes in the human body, detecting voltages in the millivolt or even microvolt range. The cables vary in shape and size, but they all perform the same basic function. The cables consist of various numbers of individual conductors, bundled together in different combinations, each wrapped in appropriate insulating sheaths.

...

Item 1 – Part #500241708 is described as a composite cable consisting of multiple single conductors, arranged in pairs and triples, some of which are shielded as pairs or triples, bundled together for the cable break-out harnessing arrangement. The bundles are cabled together and bound by a fluoropolymer tape, all of which is surrounded by a wire braided shield, which is surrounded by an extruded PVC jacket. The finished cable operates at a voltage of less than one volt.

Item 2 – Part # 650270002 consists of four unshielded single conductors (tinned copper wires, each insulated with PVC), cabled together and bound with Mylar or equivalent tape, all of which is surrounded by a braided shield, which is then surrounded by an extruded PVC jacket. The finished cable operates at a voltage of less than one volt.

Item 3 – Part # SL3A1303 consists of a central conductor made of stranded tinned copper wire surrounded by an extruded insulating layer of PVC. The cable consists of a single conductor. The finished cable operates at a voltage of less than one volt.

Item 4 – Part # 500254403 consists of a shielded triple conductor (*i.e.*, three unshielded single conductors, cabled together, wrapped by a spiral wound wire and surrounded by an extruded PVC jacket) laid and bonded side-by-side with two more identical shielded triple conductors to make a 3-wide ribbon of jacketed shielded strips. The finished cable operates at a voltage of less than one volt.

Item 5 – Part# 500254206 is a composite cable consisting of multiple single conductors, arranged in pairs and triples, some of which are shielded as pairs or triples, bundled together as appropriate for a cable break-out harnessing arrangement. The bundles are cabled together and bound by a fluoropolymer tape, all of which is surrounded by a wire braided shield, which is surrounded by an extruded PVC jacket. The finished cable operates at a voltage of less than one volt.

In HQ 961830, the cable at issue was described as follows:

The article in issue, referred to as a wiring harness, was described as consisting of an insulated electrical cable with several connectors attached at one end and a single connector attached at the other end...

A submitted sample, designated 171-0614-00/13155, is a 7-foot cable consisting of multiple Teflon-coated copper wires surrounded by a braided outside metallic conductor called a “serve.” The entire cable is further encased in rubber. The copper wires at each end, with tips bared, are evenly spaced in plastic ferrules which you refer to as programmable integrated circuits.

The submission accompanying your request for reconsideration further indicates that while the outer braided metal shield in the Precision Interconnect cables provides shielding to protect the cables from electromagnetic interference, it does not conduct electrical signals and is not part of the circuit.

#### **ISSUE:**

Whether the subject cable assemblies are classifiable in subheading 8544.20, HTSUS, as coaxial cables, or subheading 8544.42, HTSUS, as other electrical conductors.

#### **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.

GRI 6, HTSUS, requires that the GRI's be applied at the subheading level on the understanding that only subheadings at the same level are comparable. The GRI's apply in the same manner when comparing subheadings within a heading.

The HTSUS provisions at issue 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:
8544.20.00:	Coaxial cable and other coaxial electric conductors Other electric conductors, for a voltage not exceeding 1,000 V:
8544.42:	Fitted with connectors: Other:
8544.42.20:	Of a kind used for telecommunications...
8544.42.90:	Other...

\* \* \* \* \*

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs), constitute the official interpretation of the Harmonized System at the international level. While 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 Explanatory Notes to heading 85.44 provide:

The goods of this heading are made up of the following elements :

- (A) A conductor - this may be single strand or multiple, and may be wholly of one metal or of different metals.
- (B) One or more coverings of insulating material - the aim of these coverings is to prevent leakage of electric current from the conductor, and to protect it against damage. The insulating materials mostly used are rubber, paper, plastics, asbestos, mica, micanite, glass fibre yarns, textile yarns (whether or not waxed or impregnated), varnish, enamel, pitch, oil, etc. In certain cases the insulation is obtained by anodising or by a similar process (e.g., the production of a surface coating of metallic oxides or salts).
- (C) In certain cases a metal sheath (e.g., lead, brass, aluminium or steel); this serves as a protective covering for the insulation, as a channel for an insulation of gas or oil, or as a supplementary conductor in certain co-axial cables.

- (D) Sometimes a metal armouring (e.g., spiral wound steel or iron wire or strip), used mainly for protecting underground or submarine cable.

...

The heading covers, *inter alia* :

...

- (3) **Telecommunications wires and cables** (including submarine cables and data transmission wires and cables) are generally made up of a pair, a quad or a cable core, the whole usually covered with a sheath. A pair or a quad consists of two or four insulated wires, respectively (each wire is made up of a single copper conductor insulated with a coloured material of plastics having a thickness not exceeding 0.5 mm), twisted together. A cable core consists of a single pair or a quad or multiple stranded pairs or quads.

\* \* \* \* \*

It is not in dispute that the instant cables are classified in heading 8544, HTSUS, as insulated cables. The issue arises at the six-digit subheading level. Styles 2 and 4 of HQ W967779, and the “wiring harness” of HQ 961830, were classified in subheading 8544.20, HTSUS, which provides for “coaxial cable and other coaxial electrical conductors.” You claim classification of styles 2 and 4 as “other electrical conductors, for a voltage not exceeding 1,000V,” in subheading 8544.42.90, HTSUS.

In HQ 964018 we considered the following definitions of the term “coaxial cable”:

The *McGraw-Hill Encyclopedia of Science and Technology* (1992) defines coaxial cable as:

An electrical transmission line comprising an inner, central conductor surrounded by a tubular outer conductor. The two conductors are separated by an electrically insulating medium which supports the inner conductor and keeps it concentric with the outer conductor.

The *IBM Dictionary of Computing* (10th ed., 1993) defines coaxial cable as:

A cable consisting of one conductor, usually a small copper tube or wire, within and insulated from another conductor of larger diameter, usually copper tubing or copper braid.

The *Microsoft Press Computer Dictionary* (3rd ed., 1997) defines coaxial cable as:

A two-conductor cable consisting of a center wire inside a grounded cylindrical shield, typically made of braided wire, that is insulated from the center wire. HQ 964018 at 3.

In HQ 088496, we considered the following definition of “coaxial”:

*Webster’s New World Dictionary*, Third College Edition, (1988), defines coaxial as: 3 “designating a high-frequency transmission line or cable in which a solid or stranded central conductor is surrounded by an insulating medium which, in turn, is surrounded by a solid or braided outside conductor in the form of a cylindrical shell: it is used for sending telephone, telegraph, television, etc. impulses.”

The *Oxford English Dictionary Online* further defines “coaxial line” as follows:

1. [A] transmission line made up of two concentric circular conductors separated by an insulating medium, used esp. for medium and high frequency signals in television and multiplex telephony.

\* \* \* \* \*

Similarly, *Encyclopedia Britannica* describes coaxial cables as follows: “A coaxial cable consists of two conductors laid concentrically along the same axis. One conducting wire is surrounded by a *dielectric* insulator, which is in turn surrounded by the other, outer conductor, producing an electrically shielded transmission circuit. The whole cable is wrapped in a protective plastic sheathing. The signal propagates within the dielectric insulator, while the associated current flow is restricted to adjacent surfaces of the inner and outer conductors. As a result, coaxial cable has very low radiation losses and low susceptibility to external interference.” See <http://www.britannica.com/EBchecked/topic/123218/coaxial-cable>.

Pursuant to the above definitions, a coaxial cable of subheading 8544.20, HTSUS, must have a single inner conductor surrounded by a layer of dielectric insulation, which is in turn surrounded by a metal sheath that acts as a secondary conductor. The outer conductor must run on a concentric, common axis with the primary conductor. The outer metal sheath intercepts and grounds electromagnetic energy it encounters at both ends of the cable. The dielectric layer keeps the spacing between the inner and outer conductor constant. The outer sheath acts as a secondary conductor; electrical current is transmitted forward by the central conductor, then sent back to the source on the secondary conductor. An electromagnetic field is formed between the inner and outer conductor. That electromagnetic field carries the RF signal, which travels within the dielectric, bouncing back and forth between the inner and outer conductors.

The cable assemblies under reconsideration contain multiple inner conductors wrapped in insulating sheaths and surrounded by a braided metal outer shield. This configuration cannot be considered coaxial because the conductors are not concentric (i.e., sharing a common center). Furthermore, the submission accompanying your request for reconsideration indicates that while the outer braided metal shield in the Precision Interconnect cables provides shielding to protect the cables from electromagnetic interference, it does not conduct electrical signals and is not part of the circuit. In coaxial cables, the outer sheath acts as a secondary conductor.

Subheading 8544.20, HTSUS, also provides for “other coaxial electric conductors.” In HQ W967779, we stated that “other coaxial electric conductors” in subheading 8544.20, HTSUS, refers to goods that contain coaxial “connectors”, although not necessarily in the conventional configuration set forth above. The use of “connectors” in this context appears to be a typographical error; rather, the statement should read: “other coaxial electric conductors’ in subheading 8544.20, HTSUS, refers to goods that contain coaxial **conductors**.” These may include cables with multiple coaxial lines, even cables with coaxial and other conductors. However, the instant cables, lacking any coaxial conductors, are still not classifiable as “other coaxial electric conductors” of subheading 8544.20, HTSUS.

Because items 2 and 4 of HQ W967779, and the cable at issue in HQ 961830 are not coaxial cables or other coaxial conductors of subheading 8544.20, HTSUS, they are classified in subheading 8544.42, HTSUS.

Within subheading 8544.42, HTSUS, two provisions are implicated: subheading 8544.42.20 (“Of a kind used for telecommunications”), and subheading 8544.42.90, HTSUS (“Other”). The instant cables are used in medical equipment, for patient monitoring and ultrasonic scanning. Pursuant to EN 85.44, telecommunications cables are generally made up of a pair, a quad or a cable core, the whole usually covered with a sheath. In addition, CBP has, in examining the common and commercial meaning of the term “telecommunications”, determined that a telecommunications cable of subheading 8544.42.20, HTSUS is used for the transfer of data, images, or voice between electronic devices. *See* HQ H029719, dated Nov. 7, 2008 and HQ H100097, dated September 3, 2010. In accordance with the explanation of telecommunications cables in the Explanatory Notes and prior CBP rulings, the instant cables are classified in subheading 8544.42.20, HTSUS.

**HOLDING:**

By application of GRIs 1 and 6, the instant electrical cables are classified in subheading 8544.42.90, 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; Other electric conductors, for a voltage not exceeding 1,000 V: Fitted with connectors: Other: Of a kind used for telecommunications.” 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 online at <http://www.usitc.gov/tata/hts/>.

**EFFECT ON OTHER RULINGS:**

HQ W967779, dated March 30, 2006, is hereby modified with respect to the classification of items 2 and 4 (part nos. 650270002 and 500254403).

HQ 961830, dated October 2, 1998, 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*

**AGENCY INFORMATION COLLECTION ACTIVITIES:**

**Cargo Manifest/Declaration, Stow Plan, Container Status  
Messages and Importer Security Filing**

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

**ACTION:** 60-Day notice and request for comments; revision 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 October 2, 2017) to be assured of consideration.

**ADDRESSES:** Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651-0001 in the subject line and the agency name. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) Email. Submit comments to: *CBP\_PRA@cbp.dhs.gov*.

(2) Mail. Submit written comments to 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.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional PRA information should be directed to 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.*). 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:** Cargo Manifest/Declaration, Stow Plan, Container Status Messages and Importer Security Filing.

**OMB Number:** 1651-0001.

**Form Number:** CBP Forms 1302, 1302A, 7509, 7533.

**Abstract:** This OMB approval includes the following existing information collections: CBP Form 1302 (or electronic equivalent); CBP Form 1302A (or electronic equivalent); CBP Form 7509 (or electronic equivalent); CBP Form 7533 (or electronic equivalent); Manifest Confidentiality; Vessel Stow Plan (Import); Container Status Messages; and Importer Security Filing, Electronic Ocean Export Manifest; Electronic Air Export Manifest; Electronic Rail Export Manifest; and Vessel Stow Plan (Export). CBP is proposing to add a new information collection for the Air Cargo Advance Screening (ACAS) Pilot Program.

*CBP Form 1302:* The master or commander of a vessel arriving in the United States from abroad with cargo on board must file CBP Form 1302, *Inward Cargo Declaration*, or submit the information on this form using a CBP-approved electronic equivalent. CBP Form 1302 is part of the manifest requirements for vessels entering the United States and was agreed upon by treaty at the United Nations Inter-government Maritime Consultative Organization (IMCO). This form and/or electronic equivalent, is provided for by 19 CFR 4.5, 4.7, 4.7a, 4.8, 4.33, 4.34, 4.38, 4.84, 4.85, 4.86, 4.91, 4.93 and 4.99 and is accessible at: [http://www.cbp.gov/sites/default/files/documents/CBP%20Form%201302\\_0.pdf](http://www.cbp.gov/sites/default/files/documents/CBP%20Form%201302_0.pdf).

*CBP Form 1302A:* The master or commander of a vessel departing from the United States must file CBP Form 1302A, *Cargo Declaration Outward With Commercial Forms*, or CBP-approved electronic equivalent, with copies of bills of lading or equivalent commercial documents relating to all cargo encompassed by the manifest. This form and/or electronic equivalent, is provided for by 19 CFR 4.62, 4.63, 4.75, 4.82, and 4.87-4.89 and is accessible at: [http://www.cbp.gov/sites/default/files/documents/CBP%20Form%201302\\_0.pdf](http://www.cbp.gov/sites/default/files/documents/CBP%20Form%201302_0.pdf).

*Electronic Ocean Export Manifest:* CBP began a pilot in 2015 to electronically collect ocean export manifest information. This information is transmitted to CBP in advance via the Automated Export System (AES) within the Automated Commercial Environment (ACE).

*CBP Form 7509:* The aircraft commander or agent must file Form 7509, *Air Cargo Manifest*, with CBP at the departure airport, or respondents may submit the information on this form using a CBP-approved electronic equivalent. CBP Form 7509 contains information about the cargo onboard the aircraft. This form, and/or electronic equivalent, is provided for by 19 CFR 122.35, 122.48, 122.48a, 122.52, 122.54, 122.73, 122.113, and 122.118, and is accessible at: [http://www.cbp.gov/sites/default/files/documents/CBP%20Form%207509\\_0.pdf](http://www.cbp.gov/sites/default/files/documents/CBP%20Form%207509_0.pdf).

*Air Cargo Advanced Screening:* CBP began a pilot in 2012 announced via a notice published in **Federal Register** on October 24, 2012 (77 FR 65006). The ACAS pilot is a voluntary test in which participants agree to submit a subset of the required 19 CFR 122.48a data elements at the earliest point practicable prior to loading of the cargo onto the aircraft destined to or transiting through the United States. The ACAS pilot data is transmitted to CBP via a CBP-approved electronic data interchange system. Currently, the ACAS data consists of:

- (1) Air waybill number
- (2) Total quantity based on the smallest external packing unit
- (3) Total weight
- (4) Cargo description
- (5) Shipper name and address
- (6) Consignee name and address

*Electronic Air Export Manifest:* CBP began a pilot in 2015 to electronically collect air export manifest information. This information is transmitted to CBP in advance via ACE's AES.

*CBP Form 7533:* The master or person in charge of a conveyance files CBP Form 7533, *Inward Cargo Manifest for Vessel Under Five Tons, Ferry, Train, Car, Vehicle, etc*, which is required for a vehicle or a vessel of less than 5 net tons arriving in the United States from Canada or Mexico, otherwise than by sea, with baggage or merchandise. Respondents may also submit the information on this form using a CBP-approved electronic equivalent. CBP Form 7533, and/or electronic equivalent, is provided for by 19 CFR 123.4, 123.7, 123.61,

123.91, and 123.92, and is accessible at: [http://www.cbp.gov/sites/default/files/documents/CBP%20Form%207533\\_0.pdf](http://www.cbp.gov/sites/default/files/documents/CBP%20Form%207533_0.pdf).

*Electronic Rail Export Manifest:* CBP began a pilot in 2015 to electronically collect the rail export manifest information. This information is transmitted to CBP in advance via ACE's AES.

*Manifest Confidentiality:* An importer or consignee (inward) or a shipper (outward) may request confidential treatment of its name and address contained in manifests by following the procedure set forth in 19 CFR 103.31.

*Vessel Stow Plan (Import):* For all vessels transporting goods to the United States, except for any vessel exclusively carrying bulk cargo, the incoming carrier is required to electronically submit a vessel stow plan no later than 48 hours after the vessel departs from the last foreign port that includes information about the vessel and cargo. For voyages less than 48 hours in duration, CBP must receive the vessel stow plan prior to arrival at the first port in the U.S. The vessel stow plan is provided for by 19 CFR 4.7c.

*Vessel Stow Plan (Export):* CBP began a pilot in 2015 to electronically collect a vessel stow plan for vessels transporting goods from the United States, except for any vessels exclusively carrying bulk cargo. The exporting carrier is required to electronically submit a vessel stow plan in advance.

*Container Status Messages (CSMs):* For all containers destined to arrive within the limits of a U.S. port from a foreign port by vessel, the incoming carrier must submit messages regarding the status of events if the carrier creates or collects a container status message (CSM) in its equipment tracking system reporting an event. CSMs must be transmitted to CBP via a CBP-approved electronic data interchange system. These messages transmit information regarding events such as the status of a container (full or empty); booking a container destined to arrive in the United States; loading or unloading a container from a vessel; and a container arriving or departing the United States. CSMs are provided for by 19 CFR 4.7d.

*Importer Security Filing (ISF):* For most cargo arriving in the United States by vessel, the importer, or its authorized agent, must submit the data elements listed in 19 CFR 149.3 via a CBP-approved electronic interchange system within prescribed time frames. Transmission of these data elements provide CBP with advance information about the shipment.

**Current Actions:** CBP is proposing that this information collection be extended with no change to the burden hours resulting from the proposed revision to the information collection associated with the Air Cargo Advance Screening pilot, as there is no change to the

data being collected, only to the timing of the collection. There are no changes to the existing information collections under this OMB approval. The burden hours are listed in the chart below.

**Type of Review:** Revision and Extension

**Affected Public:** Businesses.

Collection	Total burden hours	Number of respondents	Number of responses per respondent	Total responses	Time per response
Air Cargo Manifest (CBP Form 7509)	366,600	215	6820.46	1,466,400	15 minutes.
Air Cargo Advance Screening Pilot (ACAS)					
Inward Cargo Manifest for Truck, Rail, Vehicles, Vessels, etc. (CBP Form 7533).	962,940	33,000	291.8	9,629,400	6 minutes.
Inward Cargo Declaration (CBP Form 1302)	1,500,000	10,000	300	3,000,000	30 minutes.
Cargo Declaration Outward With Commercial Forms (CBP Form 1302A).	10,000	500	400	200,000	3 minutes.
Importer Security Filing ...	17,739,000	240,000	33.75	8,100,000	2.19 hours.
Vessel Stow Plan (Import) .	31,803	163	109	17,767	1.79 hours.
Vessel Stow Plan (Export) .	31,803	163	109	17,767	1.79 hours.
Container Status Messages	23,996	60	4,285,000	257,100,000	0.0056 minutes.
Request for Manifest Confidentiality	1,260	5,040	1	5,040	15 minutes.
Electronic Air Export Manifest	121,711	260	5,640	1,466,400	5 minutes.
Electronic Ocean Export Manifest	5,000	500	400	200,000	1.5 minutes.
Electronic Rail Export Manifest	2,490	50	300	15,000	10 minutes.
Total .....	20,796,603	289,996	.....	281,217,774	

Dated: July 28, 2017.

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

[Published in the Federal Register, August 2, 2017 (82 FR 35982)]

**AGENCY INFORMATION COLLECTION ACTIVITIES:**

**Documentation Requirements for Articles Entered Under Various Special Tariff Treatment Provisions**

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

**ACTION:** 60-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 October 2, 2017) to be assured of consideration.

**ADDRESSES:** Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651-0067 in the subject line and the agency name. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) Email. Submit comments to: *CBP\_PRA@cbp.dhs.gov*.

(2) Mail. Submit written comments to 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.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional PRA information should be directed to 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.*). 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:** Documentation Requirements for Articles Entered Under Various Special Tariff Treatment Provisions.

**OMB Number:** 1651-0067.

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

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

**Abstract:** CBP is responsible for determining whether imported articles that are classified under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 9801.00.10, 9802.00.20, 9802.00.40, 9802.00.50, 9802.00.60 and 9817.00.40 are entitled to duty-free or reduced duty treatment. In order to file under these HTSUS provisions, importers, or their agents, must have the declarations that are provided for in 19 CFR 10.1(a), 10.8(a), 10.9(a) and 10.121 in their possession at the time of entry and submit them to CBP upon request. These declarations enable CBP to ascertain whether the requirements of these HTSUS provisions have been satisfied.

**Affected Public:** Businesses.

**Estimated Number of Respondents:** 19,445.

**Estimated Number of Responses per Respondent:** 3.

**Estimated Number of Total Annual Responses:** 58,335.

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

**Estimated Total Annual Burden Hours:** 933

Dated: July 28, 2017.

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