

U.S. Customs and Border Protection



NOTICE OF ISSUANCE OF FINAL DETERMINATION CONCERNING A CERTAIN VISITOR MANAGEMENT SYSTEM

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

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection (“CBP”) has issued a final determination concerning the country of origin of a certain visitor management system known as the Raptor Basic System. Based upon the facts presented for purposes of U.S. Government procurement, CBP has concluded that China is the country of origin of the identification scanner and printer components of the Raptor Basic System, that the United States is the country of origin of the label component of the Raptor Basic System, and that Taiwan is the country of origin of the barcode scanner that is compatible with the Raptor Basic System.

DATES: The final determination was issued on May 08, 2017. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination within June 19, 2017.

FOR FURTHER INFORMATION CONTACT: Robert Dinerstein, Valuation and Special Programs Branch, Regulations and Rulings, Office of Trade, at (202) 325–0132.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on May 08, 2017, pursuant to subpart B of Part 177, U.S. Customs and Border Protection Regulations (19 CFR part 177, subpart B), CBP issued a final determination concerning the country of origin of a certain visitor management system known as the Raptor Basic System, which may be offered to the U.S. Government under an undesignated government procurement contract. This final determination, HQ H277116, was issued under procedures set forth at 19 CFR part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18). In the final determination, CBP

concluded that the identification scanner and printer components of the Raptor Basic System were not substantially transformed in the United States, and thus remain products of China. Additionally, CBP concluded that the label component of the Raptor Basic System was a product of the United States and that the barcode scanner that is compatible with the Raptor Basic System was a product of Taiwan. Therefore, for purposes of U.S. Government procurement, China is the country of origin of the identification scanner and printer components of the Raptor Basic System, the United States is the country of origin of the label component of the Raptor Basic System, and Taiwan is the country of origin of the barcode scanner that is compatible with the Raptor Basic System.

Section 177.29, CBP Regulations (19 CFR 177.29), provides that a notice of final determination shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 CFR 177.30), provides that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register**.

Dated: May 08, 2017.

ALICE A. KIPEL,
Executive Director,
Regulations and Rulings, Office of Trade.

HQ H277116

May 08, 2017

OT:RR:CTF:VS H277116 AJR

MS. HEATHER MIMS
CENTRE LAW AND CONSULTING LLC
8330 BOONE BOULEVARD, SUITE 300
TYSONS, VA 22182

RE: U.S. Government Procurement; Country of Origin of a Visitor
Management System

DEAR MS. MIMS:

This is in response to your letter, dated June 15, 2016, requesting a final determination on behalf of Raptor Technologies, LLC (“Raptor”), pursuant to subpart B of Part 177 of the U.S. Customs and Border Protection (“CBP”) Regulations (19 C.F.R. Part 177). Under these regulations, which implement Title III of the Trade Agreements Act of 1979 (“TAA”), as amended (19 U.S.C. § 2511 *et seq.*), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain “Buy American” restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

This final determination concerns the country of origin of the Raptor Basic System (“RBS”). We note that Raptor is a party-at-interest within the meaning of 19 C.F.R. § 177.22(d)(1) and is entitled to request this final determination.

FACTS:

Raptor provides security and safety products to schools across the United States, and plans to sell its RBS product to the U.S. Government. The RBS is a visitor management system that is typically installed in elementary schools and used as a screening tool. The RBS is comprised of a scanner, a printer, the Raptor software, and labels. Installation of the RBS requires the use of a customer provided computer, where the software is installed. Once the RBS is installed and ready for use, users are able to scan the identification cards of individuals visiting the school in order to obtain personal/public information pertaining to the visitor. Based on the information received, the user prints out a color coded visitor tag which signifies the access or identity type of the visiting person.

Specifically, the RBS consists of the Raptor software, one roll of Blanco labels, one Acuant Duplex ID scanner (“ID scanner”), and one Dymo printer. Along with the cost for these items, the software updates, database set-up, and shipping fee are integrated into the RBS price. Additional ID scanners, printers, and labels can be purchased for use with the RBS, along with barcode scanners that are also compatible with the system. According to Raptor, the RBS and its compatible products are produced for sale in the United States as follows:

(1) **Raptor Software:** Raptor developed the software for the RBS in the United States. Additionally, Raptor’s engineers write the source code for the software in the United States, and Raptor will install the software to customer specifications onto the RBS in the United States. The software is a critical component because it controls the entire system enabling it to manage, report, send, alert, and track all visitors entering public or private

premises, along with notifying the Raptor technical support team about any potential issues. The software connects and communicates with the printers, scanners, and customer-provided computers within the system. The software accounts for 30 percent of the RBS price. Additionally, the software makes the RBS operational by automatically updating and permitting access to various databases, including the RBS database, which is also located in the United States. Raptor spends approximately two hours setting up the database, and training its customers how to use the system, which accounts for 21.86 percent of the RBS price. Together the cost of the software, database set-up, and training for the RBS system account for 51.86 percent of the RBS price.

(2) **Blanco Labels:** Blanco, Inc. develops and manufactures the labels in the United States, and the labels are printed with the Raptor logo in the United States. The RBS only uses these labels for the temporary badges and passes that it prints. The labels account for 6.25 percent of the RBS price.

(3) **Acuant Duplex ID Scanner:** The ID scanner consists of a hardware component made in China and a software component developed by Acuant (“Acuant software”) in the United States. The Acuant software is loaded onto the hardware component in the United States, and permits the ID scanner to communicate with the Raptor software. Raptor states that without the Raptor software, the ID scanner would not be an integral part of the RBS. The ID scanner accounts for 30.93 percent of the RBS price.

(4) **Dymo Printer:** Dymo designs and engineers the printer in the United States and manufactures the printer in China. The printer communicates with the Raptor software, and Raptor states that without this software, the printer would not print the specific visitor badges or passes. The printer accounts for 8.68 percent of the RBS price.

(5) **Barcode Scanner:** The barcode scanner is not required for the RBS, but is compatible with the system. Scan Technology Inc. manufactures the barcode scanner in Taiwan with parts that are also from Taiwan. The barcode scanners are also inspected and tested in Taiwan before they are shipped to the United States. While the barcode scanners are not part of the RBS, and will not be included within the RBS price, the purchase price for one barcode scanner comes to approximately 10 percent of the RBS price.

The final assembly of the RBS occurs in the United States. According to Raptor, this process is complex and uses skilled technicians to complete it. This assembly takes approximately one hour per system and sometimes there are several systems installed in one school. The final testing of the RBS printers, scanners, and software also occurs in the United States. According to Raptor, it takes approximately one hour to test a system with a skilled technician, but some locations require testing multiple systems. Additionally, Raptor technicians train the users on how to use the system in the United States, and this training takes approximately one hour.

ISSUE:

What is the country of origin of the RBS for purposes of U.S. Government procurement?

LAW AND ANALYSIS:

Pursuant to subpart B of Part 177, 19 C.F.R. § 177.21 *et seq.*, which implements Title III of the TAA, as amended (19 U.S.C. § 2511 *et seq.*), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or

instrumentality for the purposes of granting waivers of certain “Buy American” restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

Under the rule of origin set forth under 19 U.S.C. § 2518(4)(B):

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

See also 19 C.F.R. § 177.22(a).

In order to determine whether a substantial transformation occurs when the components of various origins are assembled to form completed articles, CBP considers the totality of the circumstances and makes decisions on a case-by-case basis. The country of origin of the article’s components, the extent of the processing that occurs within a given country, and whether such processing renders a product with a new name, character, and use are primary considerations in such cases. Here, the determination will be a “mixed question of technology and customs law, mostly the latter.” *Texas Instruments v. United States*, 681 F.2d 778, 782 (CCPA 1982).

In this case, Raptor acquires scanners and printers that were manufactured outside of the United States and installs onto them the Raptor software that was developed in the United States. The installation of the Raptor software takes place in the United States, and Raptor further customizes these devices with the software for each of its customers in the United States, as well as trains its customers on how to use the system. This package of hardware components, software components, and services are integrated together by Raptor as the RBS, which is the product being sold to the U.S. Government.

Raptor believes that the country of origin of the RBS is the United States reasoning that the printers, scanners, labels, and software are substantially transformed into the RBS in the United States by installing critical software in the United States. Raptor also believes that the software, ID scanner, printer, and label components of the RBS are individually products of the United States, and that the RBS-compatible Barcode scanner is a product of Taiwan.

With regard to the Raptor software, Raptor argues that software is substantially transformed into a new article of commerce where the software build takes place, citing to HRL H268858, dated February 12, 2016.¹ However, while HRL H268858 took into account the development of the software as a factor in substantial transformation, it did not state that the intangible software itself was a product of a particular origin. Rather, it decided that the intangible software, partially developed in the United States, and tangible U.S.-origin blank discs, when combined by loading the software onto the discs, resulted in one product of the United States.

Unlike HRL H268858, where CBP determined the country of origin of a tangible product, here we have no indication that the Raptor software by itself is a tangible product prior to its integration with the scanners and

¹ Raptor also cites to HRL H192146, dated June 8, 2012, which is a non-binding advisory ruling.

printers of the RBS. In rendering final determinations for purposes of U.S. Government procurement, CBP recognizes that the Federal Acquisition Regulation (“FAR”) restricts the U.S. Government’s purchase of products to U.S.-made or designated country end products for acquisitions subject to the TAA, which excludes automatic data processing (“ADP”) telecommunications and transmission services, and related services. *See* 19 C.F.R. § 177.21; and, subpart 25.4, FAR (48 C.F.R. Subpart 25.4). *See also* General Note 3(e), Harmonized Tariff Schedule of the United States (“HTSUS”) (stating that that telecommunication transmissions are not goods subject to the provisions of the tariff schedule, and as such would not require a country of origin marking). To the extent the Raptor software is an intangible product developed in the United States and transmitted via intangible signals, the Raptor software, by itself, is not subject to the country of origin determinations issued by CBP for purposes of U.S. Government procurement.

However, the ID scanner and printer, which are tangible products imported into the United States are subject to the country of origin determination issued by CBP. In this regard, CBP may look at the process of loading U.S.-developed software onto these products in the United States when considering the extent of processing that occurs within the United States under the substantial transformation test. While Raptor argues that this process will transform the ID scanner and printer into products of the United States, we disagree as explained below.

Here, both the development and loading of the software take place in the United States. However, the ID scanners and printers in this case serve as scanners and printers, even before software is loaded onto them in the United States. While the Acuant software gives the ID scanner the particular features of an Acuant branded scanner, and while the Raptor software gives the ID scanner and printer the ability to function within the RBS, this does not change the fact that these products have a predetermined use prior to having software installed onto them in the United States. *See* HRL H215657, dated April 29, 2013 (holding that the process of developing and installing software onto foreign flashlights in the United States did not change the basic operations of the flashlight). Likewise, the process of customizing the RBS to work with multiple devices and multiple databases, or the process of training the customer how to use the system, will not transform the scanner into something other than a scanner or the printer into something other than a printer. *See generally National Hand Tool Corp. v. United States*, 16 Ct. Int’l Trade 308, 311 (1992) (holding that processing in the United States did not substantially transform tools already shaped for a predetermined use prior to importation into the United States).

Raptor also cites to HRL H039856, dated August 12, 2009, to argue that the RBS is a product of the United States. In HRL H039856, various components of foreign origin, including a printer control unit and laser scanning unit, were imported into Japan and assembled into multifunction printers (“MFP(s)”). CBP has considered similar MFP cases on various occasions. In these cases, various components, including printer unit and scanner unit subassemblies, are physically integrated together to create an MFP capable of printing, scanning, and similar operations. Prior to this assembly, these subassemblies lack these capabilities. *See* HRL H263561, dated December 23, 2015; HRL H025106, dated June 11, 2008; and, HRL 562936, dated March 17, 2004. Unlike these MFP cases, the scanner and printer in this case do not require integration into the RBS to function as scanners and printers. More-

over, integrating the scanner and printer components into the RBS does not result in a printer and scanner that are physically assembled together. That is, after integration into the system, the scanner will look like the same scanner, and the printer like the same printer, both still without permanent physical attachments to other tangible products. See *Uniroyal, Inc. v. United States*, 3 CIT 220, 542 F. Supp. 1026 (1982), *aff'd* 702 F. 2d 1022 (Fed. Cir. 1983) (noting that if the manufacturing or combining process is a minor one which leaves the identity of the article intact, a substantial transformation has not occurred).

We also disagree with Raptor's argument that the various hardware component parts of the RBS cannot function as a visitor management system without the Raptor software, citing to HRL H090115, dated August 2, 2010, and HRL H21555, dated July 13, 2012. The software installation process in HRL H090115 was only part of the 16 day process that rendered a substantial transformation, and thus is distinguished from this case which only involves a one to three hour process per system, mainly focusing on the software installation. Similarly we distinguish HRL H21555 because that case involved microcomputer devices which could not function without the proprietary software, whereas this case involves printers and scanners that are functional without the Raptor software.

Additionally, we note that the ID scanner and printer are products that can be individually purchased and used outside of the system without the Raptor software. Thus, whether these products are substantially transformed into the RBS is really a question of whether the software development and loading are sufficient to transform these individual products into a different article of commerce, the RBS. As indicated above, regardless of the software installed onto the ID scanner and printer, the ID scanner and printer already have their respective functions as scanners and printers prior to their incorporation into the system. They function as scanners and printers when they are manufactured in China, their basic functions in this regard do not change once imported into the United States, and their physical appearance will remain the same even after integrated into the RBS. Accordingly, the ID scanner and printer remain products of China for purposes of U.S. Government procurement.

With regard to the Blanco labels, Raptor indicates that such will be designed and manufactured in the United States. Similarly, Raptor indicates that the barcode scanner will be manufactured entirely in Taiwan. Raptor provides affidavits signed by the label manufacturer and barcode scanner manufacturer stating that such are products of the United States and Taiwan, respectively. To the extent that the labels and barcode scanner are products from the United States and Taiwan, respectively, each may be individually compliant under the TAA.

While the labels are products that are integrated within the RBS, their country of origin does not change the country of origin of the ID scanner and printer within the RBS. In a number of rulings CBP stated, "merely packaging parts of a kit together does not constitute a substantial transformation." See HRL 732498, dated October 3, 1989; and HRL 732897, dated June 6, 1990. As noted from these rulings, packaging the ID scanner and printers with the labels does not substantially transform these products because such are already in their finished forms, not modified or affixed to each other, or combined in a permanent matter. Accordingly, the ID scanner and printers remain products of the country where they will be manufactured, China.

HOLDING:

Based on the facts provided, the integration of the ID scanner, printer, and labels via the Raptor software into the RBS does not substantially transform these individual products into a product of the United States. Rather, for purposes of U.S. Government procurement, the labels are products of the United States, and the ID scanner and printer remain products of China because they are not substantially transformed by the processes that take place in the United States. Moreover, to the extent the RBS-compatible barcode scanner is manufactured in Taiwan, it is a product of Taiwan for purposes of U.S. Government procurement.

Notice of this final determination will be given in the **Federal Register**, as required by 19 C.F.R. § 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 C.F.R. § 177.31, that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 C.F.R. § 177.30, any party-at-interest may, within 30 days of publication of the **Federal Register** Notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

ALICE A. KIPPEL,

Executive Director

Regulations and Rulings Office of Trade

[Published in the Federal Register, May 19, 2017 (82 FR 23015)]

ACCREDITATION AND APPROVAL OF INSPECTORATE AMERICA CORPORATION, AS A COMMERCIAL GAUGER AND LABORATORY

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

ACTION: Notice of accreditation and approval of Inspectorate America Corporation as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Inspectorate America Corporation has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of August 3, 2016.

EFFECTIVE DATES: The accreditation and approval of Inspectorate America Corporation as commercial gauger and laboratory became effective on August 3, 2016. The next triennial inspection date will be scheduled for August 2019.

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

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Inspectorate America Corporation, 1404 Joliet Road, Suite G, Romeoville, IL 60446 has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Inspectorate America Corporation is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API Chapters	Title
3	Tank Gauging.
7	Temperature Determination.
8	Sampling.
12	Calculations.
17	Marine Measurement.

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

CBPL No.	ASTM	Title
27-01.....	D 287	Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method).
27-03.....	D 4006	Standard Test Method for Water in Crude Oil by Distillation.
27-05.....	D 4928	Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration.
27-06.....	D 473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27-13.....	D 4294	Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy Dispersive X-ray Fluorescence Spectrometry.

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

Dated: May 11, 2017.

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

19 CFR PART 177**REVOCATION OF TWO RULING LETTERS AND
REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF NON-MOTORIZED KNEE
SCOOTERS DESIGNED TO PROVIDE STABLE MOBILITY
TO PATIENTS RECOVERING FROM LEG INJURIES**

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

ACTION: Notice of revocation of two ruling letters, and revocation of treatment relating to the tariff classification of non-motorized knee scooters designed to provide stable mobility to patients recovering from leg injuries.

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 non-motorized knee scooters designed to provide stable mobility to patients recovering from leg injuries 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. 10, on March 8, 2017. No comments supporting the proposed revocation were received in response to that notice.

DATE: Comments must be received on or before August 7, 2017.

ADDRESS: Written comments are to be addressed to the U.S. Customs and Border Protection, Office of Trade, Regulations & Rulings, Attention: Trade and Commercial Regulations Branch, 90 K St., NE, 10th Floor, Washington, DC 20229–1179. Submitted comments may be inspected at the address stated above during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Albenia Peters, Tariff Classification and Marking Branch, 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. 10, on March 8, 2017, proposing to revoke two ruling letters pertaining to the tariff classification of non-motorized knee scooters designed to provide stable mobility to patients recovering from leg injuries. As stated in the proposed notice, this action will cover New York Ruling Letter (“NY”) N246495, dated October 18, 2013, and NY N182928, dated September 26, 2011, as well as any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the five 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 im-

porter'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 N246495 and NY N182928, CBP classified non-motorized knee scooters designed to provide stable mobility to patients recovering from leg injuries in heading 8716, HTSUS, specifically in subheading 8716.80.50, HTSUS, which provides for "Trailers and semi-trailers; other vehicles, not mechanically propelled; and parts thereof: Other vehicles: Other." It is now CBP's position that non-motorized knee scooters designed to provide stable mobility to patients recovering from leg injuries are properly classified, by operation of GRI 1, in heading 9021, HTSUS, specifically in subheading 9021.10.00, HTSUS, which provides for "Orthopedic appliances, including crutches, surgical belts and trusses; splints and other fracture appliances; artificial parts of the body; hearing aids and other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability; parts and accessories thereof."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY N246495 and NY N182928, and revoking any other ruling not specifically identified to reflect the tariff classification of the subject merchandise according to the analysis contained in Headquarters Ruling Letter ("HQ") H280343, set forth as Attachment A 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: April 05, 2017

GREG CONNOR

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachment

HQ H280343

April 05, 2017

CLA-2 OT:RR:CTF:TCM H280343 APP

CATEGORY: Classification

TARIFF NO.: 9021.10.00

MR. TROY CHARNEY
WHEELCHAIR PLUS MOBILITY SOLUTIONS
770 INDUSTRIAL PARK ROAD
EVANS, GA 30909-3697

RE: Revocation of NY N246495 and NY N182928; Tariff classification of non-motorized knee scooters designed to provide stable mobility to patients recovering from leg injuries.

DEAR MR. CHARNEY:

This is to inform you that U.S. Customs and Border Protection (CBP) has reconsidered New York Ruling Letters (NY) N246495, dated Oct.18, 2013, and NY N182928, dated Sept. 26, 2011, regarding the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of non-motorized knee scooters designed to provide stable mobility to patients recovering from leg injuries. In NY N246495, CBP classified the knee scooter under subheading 8716.80.50, HTSUS, which provides for: "Trailers and semi-trailers; other vehicles, not mechanically propelled; and parts thereof: Other vehicles: Other." CBP reached the same conclusion regarding the classification of substantially similar merchandise in NY N182928. We have determined that both rulings are in error with respect to the classification of the non-motorized knee scooters. Therefore, for the reasons set forth below we hereby revoke NY N246495 and NY N182928.

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. 10, on March 8, 2017, proposing to revoke NY N246495 and NY N182928, and revoke any treatment accorded to substantially identical transactions. No comments were received in response to this notice.

FACTS:

The merchandise at issue in NY N246495 is described as "a non-motorized knee scooter which serves to provide greater mobility to people with leg injuries. It includes a steel frame, polyurethane knee cushion, four wheels, handlebar, hand break and front basket."

The merchandise at issue in NY N182928 is described as a knee scooter that "will assist people who may have broken bones or strains below the knee. It will allow people greater mobility in their homes, in malls and in stores. The weight capacity of the Knee Scooter is approximately 300 pounds. It contains (4) Polyurethane (PU) wheel frames and PU tires. The frame and attached front basket are made of steel. The seat is filled with water-blown PU and covered in leather. The front handlebars have an operator-activated cable braking system."

ISSUE:

Whether the subject knee scooters are classifiable as an orthopedic appliance under heading 9021, HTSUS, or a vehicle of heading 8716, HTSUS.

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings 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:

8716	Trailers and semi-trailers; other vehicles, not mechanically propelled; and parts thereof:	
8716.80	Other vehicles:	
8716.80.50	Other:	
		*
		*
		*
9021	Orthopedic appliances, including crutches, surgical belts and trusses; splints and other fracture appliances; artificial parts of the body; hearing aids and other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability; parts and accessories thereof:	
9021.10.00	Orthopedic or fracture appliances, and parts and accessories thereof.	

Note 2(g) to Section XVII, HTSUS, excludes, “Articles of chapter 90.”

Note 6 to Chapter 90, HTSUS provides, in pertinent part, as follows:

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

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

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 heading 8716, HTSUS state, in pertinent part, the following:

This heading **does not cover**:

- (a) Walking aids known as “walker-rollators”, which generally consist of a tubular metal frame on three or four wheels (some or all of which may swivel), handles and hand-brakes (**heading 90.21**).
- (b) Small wheeled-containers (e.g., wheeled-baskets) of basketwork, metal, etc., not incorporating a chassis, of a kind used in shops (classification according to their constituent material).

The ENs to heading 9021, HTSUS state, in pertinent part, that:

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

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

They include:

- (1) Appliances for hip diseases (coxalgia, etc.).
- (2) Humerus splints (to enable use of an arm after resection), (extension splints)
- (8) Orthopaedic foot appliances (talipes appliances, leg braces, with or without spring support for the foot, surgical boots, etc.)

This group also includes crutches and crutch-sticks (it should, however, be noted that ordinary walking-sticks, even if specially made for disabled persons, are **excluded (heading 66.02)**.)

This group further includes walking aids known as “walker-rollators”, which provide support for the users as they push them. They generally consist of a tubular metal frame on three or four wheels (some or all of which may swivel), handles and hand-brakes. “Walker-rollators” can be adjustable in height and can be equipped with a seat between the handles and with a wire basket for carrying personal items. The seat allows the user to take short rest breaks whenever necessary.

In the instant case, if the non-motorized knee scooters are *prima facie* classifiable under heading 9021, HTSUS, taking into account the heading text and Note 6 to Chapter 90, HTSUS, which cover orthopedic appliances for supporting or holding parts of the body following an illness, operation, or injury, then they cannot be classified under heading 8716, HTSUS by virtue of Note 2(g) to Section XVII, HTSUS, which excludes, “Articles of chapter 90.” In NY N243278, dated July 18, 2013, a wheeled walker with a seat similar to a walker-rollator designed for “individuals who want to maintain an active lifestyle and require a little assistance to do so” was classified in heading 9021, HTSUS. In NY N235453, dated Dec. 12, 2012, two walkers and two rollators were classified as orthopedic appliances in heading 9021, HTSUS. In NY 816012, dated Nov. 2, 1995, a wheeled walker with a folding seat to allow the user to sit and rest was classified in heading 9021, HTSUS.

Like the merchandise subject to NY N243278, NY N235453 and NY 816012, the subject knee scooters are walking aids, which are designed or configured to support the weight of the user to enable greater mobility to people with leg injuries. The knee scooters are also similar to the “walker-rollators” described in the ENs. The knee scooter in NY N246495 consists of a steel frame, polyurethane knee cushion, four wheels, handlebar, hand break, and front basket. The knee scooter in NY N182928 contains four PU wheel frames and PU tires; an operator-activated cable braking system; a steel frame and a front basket; and a leather seat filled with water-blown PU. Given their design, the subject non-motorized knee scooters provide support to users as they push them, which meets the terms of Note 6 to Chapter 90, HTSUS, as orthopedic appliances designed to support parts of the body following an injury. The non-motorized knee scooters are not designed for transportation, which is a characteristic of “other vehicles” of heading 8716, HTSUS, inasmuch as the subject merchandise is not designed to be ridden by

the user. Rather, the subject knee scooters serve as alternative to crutches or the aforementioned “walker-rollators.”

Based on the foregoing, we find that the subject non-motorized knee scooters meet the terms of heading 9021, HTSUS, as orthopedic appliances and are specifically provided for in subheading 9021.10.00, HTSUS, which provides for “Orthopedic appliances, including crutches, surgical belts and trusses; . . . parts and accessories thereof: Orthopedic or fracture appliances, and parts and accessories thereof.” Accordingly, they are excluded from classification under heading 8716, HTSUS, by virtue of Note 2(g) to Section XVII, HTSUS.

HOLDING:

By application of GRI 1 (Note 6 to Chapter 90), the subject non-motorized knee scooters are provided for in heading 9021, HTSUS, which provides for “Orthopedic appliances, including crutches, surgical belts and trusses; splints and other fracture appliances; artificial parts of the body; hearing aids and other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability; parts and accessories thereof.” The non-motorized knee scooters are specifically provided for in subheading 9021.10.00, HTSUS, which provides for “Orthopedic appliances, including crutches, surgical belts and trusses; splints and other fracture appliances; artificial parts of the body; hearing aids and other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability; parts and accessories thereof: Orthopedic or fracture appliances, and parts and accessories thereof.” The column one, general rate of duty is *free*.

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

EFFECT ON OTHER RULINGS:

NY N246495, dated Oct. 18, 2013, and NY N182928, dated Sept. 26, 2011, are hereby REVOKED.

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

Sincerely,

GREG CONNOR

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Cc: John C. Carroll
John M. Brining Co., Inc.
202 Congress Street
Mobile, AL 36603

**PROPOSED 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 proposed 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).

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 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 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 July 7, 2017.

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

FOR FURTHER INFORMATION CONTACT: Michele A. Boyd, Tariff Classification and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325-0136.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP is proposing to 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). Although in this notice, CBP is specifically referring to New York Ruling Letter (“NY”) 818805, dated March 7, 1996 (Attachment A), this notice covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one ruling identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

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

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

In NY 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) are 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 proposing to modify NY 818805 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H280915, 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: April 25, 2017

ALLYSON MATTANAH

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachments

ATTACHMENT A

NY 818805

March 7, 1996

CLA-2-29:RR:NC:FC:239 818805

CATEGORY: Classification

TARIFF NO.: 2932.99.7000, 2914.39.1000

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

RE: The tariff classification of Musk 50/DEP/BB/IPM (CAS 1222-05-5)
and Ganolid (CAS 21145-77-7) from Israel.

DEAR MR. KLESTADT:

In your letter dated January 17, 1996, you requested a tariff classification ruling for the above products which are used as fragrance components..

The applicable subheading for Musk 50/DEP/BB/IPM (Chemical Name - 1,3,4,6,7,8-Hexamethyl-Cyclopenta(G)-2-Benzopyran) will be 2932.99.7000, Harmonized Tariff Schedule of the United States (HTS), which provides for heterocyclic compounds with oxygen hetero-atom(s) only: other. The rate of duty will be 3 cents per kilogram plus 14.3 percent ad valorem.

The applicable subheading for Ganolid (Chemical Name - 1-((5,6,7,8-Tetrahydro-3,5,5, 6,8,8-Hexamethyl)-2-Naphthalenyl)Ethanone) will be 2914.39.1000, Harmonized Tariff Schedule of the United States (HTS), which provides for ketones and quinones, whether or not with other oxygen function, and their halogenated, sulfonated, nitrated, or nitrosated derivatives: other. This provision is duty free.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Thomas Brady at (212) 466-5747.

Sincerely,

ROGER J. SILVESTRI

Director

National Commodity Specialist Division

ATTACHMENT B

HQ H280915

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

CATEGORY: Classification

TARIFF NO.: 3302.90.1050

MR. L. KLESADT
 TRANS-WORLD SHIPPING CORP.
 3 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.

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.

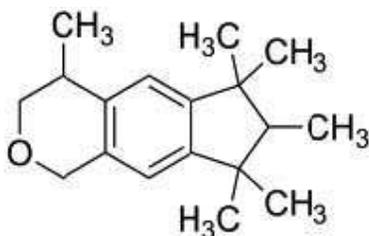


Figure 1

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:

2932	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.¹

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:

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,

¹ 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.

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/.

EFFECT ON OTHER RULINGS:

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

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**WITHDRAWAL OF PROPOSED REVOCATION OF TWO
RULING LETTERS AND PROPOSED REVOCATION OF
TREATMENT RELATING TO THE TARIFF
CLASSIFICATION OF DOUBLE-WALLED BEVERAGE
BOTTLES**

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

ACTION: Withdrawal of notice of proposed revocation of two ruling letters and treatment relating to tariff classification of stainless steel, double-walled beverage bottles.

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), Customs and Border Protection (CBP) proposed to revoke two ruling letters relating to the tariff classification of stainless steel, double-walled beverage bottles under the Harmonized Tariff Schedule of the United States (HTSUS). Notice of the proposed action was published in the *Customs Bulletin*, Vol. 49, No. 51, on December 23, 2015. Three comments were received in opposition to the proposed revocation. After further review, we have determined that no modification of the subject rulings is necessary.

EFFECTIVE DATE: This action is effective immediately.

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) (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility**.” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws.

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the *Customs Bulletin*, Vol. 49, No. 51, on December 23, 2015, proposing to revoke New York Ruling Letter (NY) N254461, dated September 10, 2014, and NY N264760, dated June 16, 2015, which classified stainless steel, double-walled beverage bottles in subheading 7323.93.00, HTSUS, which provides for “[t]able, kitchen or other household articles and parts thereof, of iron or steel; iron or steel wool; pot scourers and scouring or polishing pads, gloves and the like, or iron or steel: Other: Of stainless steel.” In the notice of December 23, 2015, we proposed to revoke the tariff classification of the stainless steel, double-walled beverage bottles. Three comments were received in opposition to the proposed revocation. All three comments noted that the proposed heading 9617, HTSUS, provides for “[v]acuum flasks and other vacuum vessels, complete with cases; parts thereof other than glass inners.” The instant steel vacuum flasks are not equipped with an outer case or casing. Therefore, we concur that the stainless steel, double-walled beverage bottles are properly classified in subheading 7323.93.00, HTSUS. As such, the classification of the stainless steel, double-walled beverage bottles set forth in N254461 and N264760 is correct.

Pursuant to 19 U.S.C. §1625(c), and 19 C.F.R. §177.7(a), which states, in pertinent part, that “[n]o ruling letter will be issued... in any instance in which it appears contrary to the sound administration of the Customs and related laws to do so”, CBP is withdrawing its proposed modification of NY N254461 and N264760.

Dated: April 25, 2017

ELIZABETH JENIOR
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

**PROPOSED MODIFICATION AND REVOCATION OF TWO
RULING LETTERS AND PROPOSED 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 proposed modification and revocation of two ruling letters and proposed 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 Customs and Border Protection (CBP) proposes to modify Headquarters Ruling Letter (HQ) W967779, dated March 30, 2006, relating to the tariff classification of electrical cable assemblies under the Harmonized Tariff Schedule of the United States (HTSUS), and to revoke HQ 961830, dated October 2, 1998. CBP also proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before July 7, 2017.

ADDRESS: Written comments are to be addressed to the U.S. Customs and Border Protection, Office of Trade, Regulations & Rulings, Attention: Trade and Commercial Regulations Branch, 90 K St., NE, 10th Floor, Washington, DC 20229–1179. Submitted comments may be inspected at the address stated above during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Claudia Garver, Tariff Classification and Marking Branch: (202) 325–0024

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

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

Pursuant to section 625 (c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625 (c)(1)), this notice advises interested parties that CBP is proposing to modify one ruling letter and to revoke one ruling letter pertaining to the tariff classification of two styles of electrical cables. Although in this notice, CBP is specifically referring to the modification of Headquarters Ruling Letter (HQ) W967779, dated March 30, 2006 (Attachment A), and the revocation of HQ 961830, dated October 2, 1998 (Attachment B), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

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

In HQ W967779, CBP determined that two styles of electrical cable assemblies, identified as items 2 and 4, were classified in subheading 8544.20.00, HTSUS, which provides for "Insulated (including enameled or anodized) wire, cable (including 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.” In HQ 961830, CBP also classified a similar electric cable in subheading 8544.20.00, HTSUS.

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to revoke HQ 961830, modify HQ W967779 with respect to items 2 and 4, and to revoke or modify any other ruling not specifically identified, in order to reflect the proper classification of the subject cables in subheading 8544.42.20, 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”, according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H127136, set forth as Attachment C to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: April 26, 2017

ALLYSON MATTANAH
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

ATTACHMENT A

HQ W967779

March 30, 2006

CLA-2 RR:CTF:TCM 967779 AML

CATEGORY: Classification

TARIFF Nos.: 8544.20.0000; 8544.41.8000;
8544.49.8000

AREA PORT DIRECTOR
U.S. CUSTOMS AND BORDER PROTECTION
8337 NE ALDERWOOD ROAD
PORTLAND, OR 97220

RE: Internal Advice 05/021; Cable Assemblies

DEAR PORT DIRECTOR:

The following is our decision regarding your memorandum to this office, dated June 16, 2005, forwarding Internal Advice 05/021, which was initiated by counsel on behalf of Precision Interconnect (“PI”) via letter dated May 23, 2005, and seeks classification of five types of cable assemblies (categorically represented by part numbers 500241708, 650270002, SL3A1303, 500254403 and 500254206) pursuant to the Harmonized Tariff Schedule of the United States Annotated (“HTSUSA”). Samples and technical specification sheets were provided for our consideration. Also considered was supplemental technical information provided by counsel on March 7, 2003 and March 20, 2006.

FACTS:

The internal advice requester contends, with regard to entry number xxx-xxxx663-8, dated July 1, 2004, and in regard to PI’s line of cable products generally, that U.S. Customs and Border Protection (“CBP”) has misconstrued the meaning of the term “coaxial cable,” a term that is not defined in the tariff but has been previously defined in several Headquarters Rulings Letters (“HQ”), set forth below. These contentions are made in response to tariff classifications made by a CBP Import Specialist as a result of a Focused Assessment Audit conducted by a CBP Regulatory Audit team in February 2005. The Import Specialist determined that the articles at issue are “coaxial cables” classifiable under subheading 8544.20, HTSUS, set forth below. The internal advice requester contends that the cable assemblies are classifiable under subheading 8544.41, HTSUS, set forth below.

We paraphrase and quote the internal advice requester’s description of the cable assemblies at issue 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.

The internal advice requester continues that it has identified five representative samples, which because of their component materials and configurations, are classifiable under subheading 8544.41, HTSUS, which provides

for, *inter alia*, other electric conductors, for a voltage not exceeding 80 V, fitted with connectors, rather than 8544.20, HTSUS, which provides for coaxial cables and other coaxial electric connectors.

The internal advice requester describes the five representative cable assemblies as follows:

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 is nothing more than 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.

The internal advice requester contends with regard to each of the five representative cable assemblies that none of the samples meets the “industry and commercial definition” of “coaxial.” The requester further contends that the “multiple conductors in this cable do not share a common axis” and that the “cable is simply a collection of individual conductors wrapped together inside a common sheath; they are not concentric.” The requester concludes that the articles are classifiable under subheading 8544.41, HTSUS.

Further, the internal advice requester contends that we should be swayed by its reliance upon a ruling concerning the classification of substantially identical merchandise issued to its “sister” company: HQ 952350, dated October 8, 1992.

Finally, via its supplemental submission dated supplemental submission dated March 20, 2006, the internal advice requester provided additional and clarifying information concerning the role or function of the braided sheaths in Items 1 and 5 above. The requester states that the “primary purpose of the braided material in PI cable Items 1 and 5 is to provide shielding to protect the cables from electromagnetic interference (“EMI”) and radio frequency interference (“RFI”) from electrical signals traveling on components con-

tained in the braided shield.” In addition to the shielding function, the braided sheaths also provide structural and protective support to the cables. The braided sheaths do not conduct electrical signals in these items.

ISSUE:

Whether the cable assemblies are “coaxial cables” classifiable under subheading 8544.20, HTSUS, which provides for, among other things, coaxial cable, or under subheading 8544.41, HTSUS, which provides for, among other things, other electric conductors, for a voltage not exceeding 80 V, fitted with connectors, other?

LAW AND ANALYSIS:

Prefatorily, we note that the internal advice requester’s reliance upon HQ 952350 is misplaced. Section 177.9(c), Customs Regulations (19 CFR 177.9(c)), specifically provides that persons other than the person to whom the ruling letter was addressed should not rely on that ruling, *viz.* “no other person should rely on the ruling letter or assume that the principles of that ruling will be applied in connection with any other transaction other than the one described in the ruling letter.”

Classification of imported merchandise is accomplished pursuant to the Harmonized Tariff Schedule of the United States (“HTSUS”). Classification under the HTSUS is guided by the General Rules of Interpretation of the Harmonized System (“GRIs”). GRI 1, HTSUS, states in part that “for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes,” and, provided the headings or notes do not otherwise require, according to the remaining GRIs taken in order. GRI 6 provides that for legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to the above rules, on the understanding that only subheadings at the same level are comparable.

The HTSUS provisions under consideration 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 80 V:
8544.41	Fitted with connectors:
8544.41.80	Other.
8544.49	Other:
8544.49.80	Other.

The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the Harmonized System. While not legally binding on the contracting parties, and therefore not dispositive, the ENs provide a commentary on the scope of each heading of

the Harmonized System and are thus useful in ascertaining the classification of merchandise under the System. CBP believes the ENs should always be consulted. See T.D. 89–80, published in the Federal Register on August 23, 1989 (54 FR 35127, 35128).

Note 1 to Section XVI (in which Chapter 85 is located in the tariff) provide in pertinent part that Section XVI does not cover “(m) Articles of Chapter 90.” Similarly, Note 2 to Chapter 90 provides, in pertinent part, as follows:

2. Subject to note 1 above, parts and accessories for machines, apparatus, instruments or articles of this chapter are to be classified according to the following rules:

(a) Parts and accessories which are goods included in any of the headings of this chapter or of chapter 84, 85 or 91 (other than heading 8485, 8548 or 9033) are in all cases to be classified in their respective headings;

(b) Other parts and accessories, if suitable for use solely or principally with a particular kind of machine, instrument or apparatus, or with a number of machines, instruments or apparatus of the same heading (including a machine, instrument or apparatus of heading 9010, 9013 or 9031) are to be classified with the machines, instruments or apparatus of that kind[.]

An article is to be classified according to its condition as imported. See *XTC Products, Inc. v. United States*, 771 F. Supp. 401, 405 (1991). See also *United States v. Citroen*, 223 U.S. 407 (1911). The articles at issue are imported separately from any other article. We conclude therefore, in accordance with Note 2(a) to Chapter 90, that the articles, cable assemblies equipped with various connectors for use with goods of Chapter 90, imported separately from the goods of Chapter 90, are *prima facie* classifiable under heading 8544, HTSUS.

The General Explanatory Notes to Chapter 85 provide, in pertinent part, that Chapter 85 covers “certain articles and materials which are used in electrical apparatus and equipment because of their conducting or insulating properties, such as insulated electric wire and assemblies thereof (heading 85.44)”.

The ENs to heading 8544, HTSUS, provide, in pertinent part, as follows:

Provided they are insulated, this heading covers electric wire, cable and other conductors (*e.g.*, braids, strip, bars) used as conductors in electrical machinery, apparatus or installations. **Subject** to this condition, the heading includes wiring for interior work or for exterior use (*e.g.*, underground, submarine or aerial wires or cables). These goods vary from very fine insulated wire to thick cables of more complex types [bold emphasis in original].

Non-metal conductors are also covered by this heading.

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 insulated wires, cables, etc., of this heading may be in the form of:

- (i) Single or multiple strand insulated wire.
- (ii) Two or more such insulated wires twisted together.
- (iii) Two or more such insulated wires assembled together in a common insulating sheath.

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 [heading 8544] also includes insulated strip generally used in large electrical machinery or control equipment.

Wire, cable, etc., remain classified in this heading if cut to length or fitted with connectors (e.g., plugs, sockets, lugs, jacks, sleeves or terminals) at one or both ends.

The term “coaxial” is not defined in either the HTSUS or the ENs. In the absence of a contrary legislative intent, tariff terms that are not defined in an HTSUS section or chapter note, or clearly described in an EN, are construed in accordance with their common and commercial meanings, which are presumed to be the same. *Nippon Kogasku (USA) Inc. v. United States*, 69 CCPA 89, 673 F.2d 380 (1982); *Nylos Trading Company v. United States*, 37 CCPA 71, 73, C.A.D. 423 (1949). Dictionaries, scientific authorities and other reliable lexicographic sources are often consulted; and, where the term under consideration is technical in nature, appropriate technical sources of information should be consulted. See *Brookside Veneers, Ltd. v. United States*, 6 Fed. Cir. (T) 121, 125, 847 F.2d 786 (1988); *C.J. Tower & Sons v. United States*, 69 CCPA 128, 673 F.2d 1268 (1982).

CBP has previously examined lexicographic and scientific definitions of the term “coaxial” in several rulings: HQ 964018, dated June 7, 2000; HQ 961830, dated October 2, 1998 and HQ 088496, dated April 12, 1991. 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 dated April 12, 1991, we held certain “instant sensor” cable to be coaxial cable “since it consists of a solid copper center (conductor), surrounded by polyethylene (insulating medium), which, in turn, is surrounded by copper braid (outside conductor), and is used for sending or receiving RF impulses.” HQ 964018 at 3.

In HQ 961830, in classifying a “wiring harness” for use in “ultrasonic scanning devices for medical use,” we used the following analysis in determining that the articles were classified as “coaxial cable”:

Goods of heading 8544 may be in the form of single or multiple strand insulated wire or two or more insulated wires assembled together in a common insulating sheath. Such goods are made up of a single or multiple-strand conductor, one or more coverings of insulating material, and in certain cases a metal sheath (*e.g.*, lead, brass, aluminum or steel) which serves, among other things, as a supplementary conductor in certain co-axial cables. The cable, designated 171-0614-00/13155, conforms to this description. Coaxial security system sensor cables of substantially similar construction were held to be classifiable as coaxial cable in sub-heading 8544.20.00, HTSUS. *See* HQ 088496, dated April 12, 1991, and lexicographic authorities cited. HQ 961830 at 4.

In HQ 088496, we considered the following definitions of the term “coaxial cable”:

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 *McGraw-Hill Encyclopedia of Science & Technology*, Vol. 4, (1987), states that: “Coaxial units are designed for different mechanical behavior depending upon the application.” HQ 088496 at 3.

From the above cited definitions, the basic definition of “coaxial cable or other coaxial conductors” for purposes of this internal advice decision is:

An electric transmission line comprised of inner conductors surrounded by outer conductors with the inner and outer conductors being separated by an insulating material or medium.

A reasonable interpretation of the term “other coaxial electric conductors” is guided by the canon of construction *ejusdem generis*. The Court of International Trade (“CIT”) has stated that the canon of construction *ejusdem generis*, which means literally, of the same class or kind, teaches that “where particular words of description are followed by general terms, the latter will be regarded as referring to things of a like class with those particularly described.” *Nissho-Iwai American Corp. v. United States (Nissho)*, 10 CIT 154, 156 (1986). The CIT further stated that “[a]s applicable to customs classification cases, *ejusdem generis* requires that the imported merchandise possess the essential characteristics or purposes that unite the articles enumerated *eo nomine* in order to be classified under the general terms.” *Nissho*, p. 157. Thus we conclude that “other coaxial electric conductors” in subheading 8544.20, HTSUS, refer to goods that contain coaxial connectors, although not necessarily in the conventional configuration set forth above.

The information provided establishes that the representative articles at issue are cable assemblies comprised of multiple conductors variously bundled and insulated. From the samples and technical information provided, as well as by application of the criteria and general definition set forth above, we make the following conclusions regarding classification of the five parts at issue as follows:

Item 1 – Part #500241708 (described above 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) is not, based upon the definition set forth above, coaxial. The braided sheath does not conduct electrical signals, but rather fulfills structural and shielding roles in the finished assembly. According to the technical information provided has a capacity of less than 1 volt. While the sample provided has no connectors, the technical information describes the article as having connectors upon importation. If imported with connectors, the article is classified under subheading 8544.41, HTSUS; if imported without connectors it is classified under subheading 8544.49, HTSUS.

Item 2 – Part # 650270002 is comprised of a tubular electric conductor with a shield inside it and other electric conductors wrapped in Mylar inside the shield. This configuration meets the definition of coaxial set forth above. This part is classified under subheading 8544.20, HTSUS.

Item 3 – Part #SL3A1303 is comprised of a central conductor made of stranded tinned copper wire surrounded by an extruded insulating layer of PVC and operates at a voltage of less than one volt. The cable consists of a single conductor and cannot be considered to be coaxial. If imported with connectors, the article is classified under subheading 8544.41, HTSUS; if imported without connectors it is classified under subheading 8544.49, HTSUS.

Item 4 – Part #500254403 is comprised 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” (see the IA requester’s submission) ribbon of jacketed, shielded

strips. The finished cable operates at a voltage of less than one volt. Despite the “ribbon” configuration of the sample, the specification sheet refers to the article as having “cable coax” as one of its components. This configuration meets the definition of coaxial and other coaxial electric conductors set forth above. This part is classified under subheading 8544.20, HTSUS.

Item 5 – Part# 500254206 is comprised 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 finished cable operates at a voltage of less than one volt. The part is not coaxial and according to the technical information provided has a 30-volt capacity. While the sample provided has no connectors, the technical information describes the article as having connectors upon importation. If imported with connectors, the article is classified under subheading 8544.41, HTSUS; if imported without connectors it is classified under subheading 8544.49, HTSUS.

HOLDING:

The cable assemblies are classified as follows:

Item 2 – Part # 650270002 and Item 4 – Part #500254403, both which contain coaxial cable, are classified under subheading 8544.20.0000, HTSUSA, which provides for: “Insulated (including enameled or anodized) wire, cable (including coaxial cable) and other insulated electric conductors, whether or not fitted with connectors; . . . : Coaxial cable and other coaxial electric conductors.”

The 2004 general, column 1 duty rate is 5.3% *ad valorem*.

Item 1 – Part #500241708, Item 3 – Part #SL3A1303 and Item 5 – Part# 500254206, if imported with connectors, the articles are classified under subheading 8544.41.8000, HTSUSA, which provides for “Insulated (including enameled or anodized) wire, cable (including coaxial cable) and other insulated electric conductors, whether or not fitted with connectors . . . Other electric conductors, for a voltage not exceeding 80 V: Fitted with connectors: Other”; and, if imported without connectors they are classified under subheading 8544.49.8000, HTSUSA. The 2004 general, column 1 duty rate for subheading 8544.41.8000, HTSUSA is 2.6% *ad valorem*. The 2004 general, column 1 duty rate for subheading 8544.49.8000, HTSUSA is 3.5% *ad valorem*.

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

You are directed to mail this decision to the internal advice applicant, no later than 60 days from the date of this letter. On that date the Office of Regulations and Rulings will make the decision available to Customs personnel and to the public on the Customs Home Page on the World Wide Web at www.cbp.gov, by means of the Freedom of Information Act, and other public methods of distribution.

Sincerely,

MYLES B. HARMON,

Director

Commercial & Trade Facilitation Division

ATTACHMENT B

HQ 961830

OCTOBER 2, 1998

CLA-2 RR:CR:GC 961830 JAS

CATEGORY: Classification

TARIFF NO.: 8544.20.00

MR. RUDY A. PINA
JOFFROY CUSTOMS BROKERS, INC.
P.O. BOX 698
NOGALES, ARIZONA 85628-0698

RE: NY A89005 Revoked; Wiring Harness for Use With Ultrasonic Scanning Apparatus; Teflon-Coated Stranded Copper Surrounded by Outside Conductor; Coaxial Electric Conductor; Other Electric Conductors Fitted With Connectors, Subheading 8544.51.90; Chapter 90, Note 2, HTSUS; GRI 6; HQ 088496

DEAR MR. PINA:

In a letter, dated April 28, 1998, on behalf of North American Manufacturing Corporation (NAMCO), you request reconsideration of NY A89005, which the Director, Customs Commodity Specialist Division, New York, issued to NAMCO on December 11, 1996. This ruling held that an insulated electrical cable with several connectors attached at one end and a single connector attached at the other end was classifiable in subheading 8544.51.80 (now 90), Harmonized Tariff Schedule of the United States (HTSUS), as other electric conductors for a voltage exceeding 80 V but not exceeding 1,000 V, fitted with connectors. 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, 2186 (1993), notice of the proposed revocation of NY A89005 was published on August 26, 1998, in the Customs Bulletin, Volume 32, Number 34. No comments were received in response to that notice.

FACTS:

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. The ruling requester stated it was solely for use with ultrasonic scanning apparatus of the type provided for in HTS heading 9018. 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.

You cite several lexicographic sources in support of the contention that this article is in fact a coaxial cable or coaxial electric conductor of heading 8544. Notwithstanding its special construction, which you state dedicates it solely for use with apparatus of heading 9018, in your opinion it is still classifiable as a coaxial cable, in subheading 8544.20.00, HTSUS.

The provisions under consideration are as follows:

8544	Insulated wire, cable (including coaxial cable) and other insulated electric conductors, whether or not fitted with connectors;...:
8544.20.00	Coaxial cable and other coaxial electric conductors Other electric conductors, for a voltage exceeding 80 V but not exceeding 1,000 V:
8544.51	Fitted with connectors:
8544.51.80 (now 90)	Other
* * * *	
9018	Instruments and appliances used in medical, surgical, dental or veterinary sciences..., other electro-medical apparatus and sight-testing instruments; parts and accessories thereof:
9018.12.00	Ultrasonic scanning apparatus Other instruments and appliances and parts and accessories thereof:
9018.90.80	Other

ISSUE:

Whether the electric cable in issue is a coaxial cable of heading 8544.

LAW AND ANALYSIS:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). GRI 1 states in part that for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6. GRI 3(a) states, in part, that goods which are, *prima facie*, provided for under two or more headings, shall be classified in the heading which provides the most specific description. GRI 6 states, in part, that in considering subheadings within the same heading, only subheadings at the same level are comparable.

In accordance with Chapter 90, Note 2, HTSUS, parts and accessories which are goods included in any of the headings of this chapter or of chapter 84, 85 or 91 are in all cases to be classified in their respective headings. *See* Note 2(a). Other parts and accessories are to be classified with the machines, instruments or apparatus with which they are solely or principally used. *See* Note 2(b).

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. Though not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and Customs believes the ENs should always be consulted. *See* T.D. 89-80. 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

Relevant ENs at p. 1521 state, in part, that provided they are insulated, heading 8544 covers electric wire, cable and other conductors used as conductors in electrical machinery, apparatus or installations. Goods of heading 8544 may be in the form of single or multiple strand insulated wire or two or more insulated wires assembled together in a common insulating sheath. Such goods are made up of a single or multiple-strand conductor, one or more

coverings of insulating material, and in certain cases a metal sheath (e.g., lead, brass, aluminum or steel) which serves, among other things, as a supplementary conductor in certain co-axial cables. The cable, designated 171-0614-00/13155, conforms to this description. Coaxial security system sensor cables of substantially similar construction were held to be classifiable as coaxial cable in subheading 8544.20.00, HTSUS. *See* HQ 088496, dated April 12, 1991, and lexicographic authorities cited.

HOLDING:

In accordance with Chapter 90, Note 2(a), HTSUS, the cable designated 171-0614-00/13155, is a good included in heading 8544. This precludes any parts claim in heading 9018 from consideration.

Under the authority of GRI 3(a), applied at the subheading level by GRI 6, the cable is classifiable in subheading 8544.20.00, HTSUS, as the provision for coaxial cable and other coaxial electric conductors provides a more specific description for this cable than does the provision for other electric conductors, for a voltage exceeding 80 V but not exceeding 1,000 V, fitted with connectors. NY A89005, dated December 11, 1996, is revoked. In accordance with 19 U.S.C. 1625(c)(1), this ruling will become effective 60 days after its 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)).

Sincerely,

JOHN DURANT,

Director

Commercial Rulings Division

ATTACHMENT C

HQ H127136
CLA-2 OT:RR:CTF:TCM H127136 CKG
CATEGORY: Classification
TARIFF NO.: 8544.42.20

JAMES L. SAWYER
GARDNER, CARTON & 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.

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 coaxial cables.

(D) Sometimes a metal armoring (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: [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 telecommu-

nications 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.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**PROPOSED REVOCATION OF ONE RULING LETTER AND
MODIFICATION OF ONE RULING LETTER, AND
PROPOSED REVOCATION 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 proposed 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) intends to revoke one ruling letter and modify one ruling letter concerning the tariff classification of name badge components 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 July 7, 2017.

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

FOR FURTHER INFORMATION CONTACT: 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, this notice advises interested parties that CBP is proposing to revoke one ruling letter and modify one ruling letter pertaining to the tariff classification of name badge components. Although in this notice, CBP is specifically referring to Headquarters Ruling Letter (HQ) H217623, dated July 25, 2012 (Attachment A) and HQ 562821, dated October 30, 2003 (Attachment B), this notice covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the 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 advise CBP during the notice period.

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

In HQ 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 these 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 should be 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 proposing to revoke HQ H217623 and to modify HQ 562821, and to modify or revoke any other ruling not specifically identified, to reflect the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H269117, set forth as Attachment C 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: April 26, 2017

ELIZABETH JUNIOR
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

ATTACHMENT A

HQ H217623

July 25, 2012

CLA-2 RR:CTF:TCM H217623 HvB

CATEGORY: Classification

TARIFF NO: 8505.11.11

MR. PETER KIRBY
FASKEN MARTINEAU DUMOULIN LLP
STOCK EXCHANGE TOWER
SUITE 3700, P.O. BOX 242
800 PLACE VICTORIA
MONTREAL, QUEBEC, CANADA H4Z 1E9

RE: Classification and NAFTA Eligibility of name badge kits; country of origin marking

DEAR MR. KIRBY:

This is in response to your request for an advance ruling, dated April 3, 2012, on behalf of Imprint Plus, which you submitted to U.S. Customs and Border Protection (“CBP”). In your letter, you ask whether certain imported name badge kits are eligible for preferential tariff treatment under the North American Free Trade Agreement (“NAFTA”), pursuant to General Note 12 of the Harmonized Tariff Schedule of the United States (“HTSUS”). In addition, you also ask for a determination as to the proper country of origin marking for the name badge kits. Your submission includes a sample of the YouWho Professional Name Badge System (“YouWho”) and the Mighty Badge kits.

FACTS:

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.

The cardboard box for the YouWho kit is marked as follows:

Packaged in Canada
Steel Plates, Lenscovers©, Insert Sheets© and CD Made in
Canada. Fasteners Made in China

This marking is visible, both in terms of font size and placement. The box for the Mighty Badge Kit contains a similar marking, but is in smaller font and is less conspicuous. It reads as follows:

Packaged in Canada
Aluminum Plates, Lenscovers, Insert Sheets and CD Made in Canada
Fasteners Made in China

In both instances, the marking is located above Imprint Plus’s Canadian address, which is more prominent, in that it is in a larger font.

You state that all items, except the magnets, are of Canada origin. You indicate that the rare earth magnets are manufactured in China.

Your submission includes a list of Imprint Plus’s product line, Bill of Materials, and print-outs from Imprint Plus’ website which describe the kits.

ISSUE:

1. What is the tariff classification of the name badge kits under the HTSUS?
2. Whether the name badge kits are eligible for preferential tariff treatment under the NAFTA?
3. Are the name badge kits products of Canada for country of origin marking purposes?

LAW AND ANALYSIS:

I. Classification

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

The 2012 HTSUS provisions under consideration are as follows:

3926	Other articles of plastic			
		*	*	*
7616	Other articles of aluminum			
		*	*	*
7326	Other articles of iron or steel			
		*	*	*

8505 Electromagnets; permanent magnets and articles intended to become magnets after magnetization; electromagnetic or permanent magnet chucks, clamps and similar holding devices; electromag-

netic couplings, clutches and brakes; electromagnetic lifting heads; parts thereof

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) though not dispositive or legally binding, may 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 rare earth magnets are products of China. The remaining components of the kits are manufactured in Canada, and the kits are assembled and packaged for retail sale in Canada before importation into the U.S. In order to determine if the instant kits are products of Canada, we must determine the tariff classification of the kits under the HTSUS. Then, we will use this tariff classification to determine if the packaged kits satisfy the tariff shift rules required to be a product of Canada and thus be eligible for NAFTA preferential treatment.

Since no heading of the HTSUS completely describes the name badge kits, and the goods are *prima facie* classifiable in two or more headings, classification must fall to GRI 3.

GRI 3 provides, in pertinent part, as follows:

3. 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:

* * *

- (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.
- (c) When goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

GRI 3(b) provides for the classification of goods put up in retail sets. EN(X) to GRI 3(b) states that for purposes of Rule 3(b) the term “goods put up in sets for retail sale” means goods which: (a) consist of at least two different articles which are, *prima facie*, classifiable in different headings; (b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and, (c) are put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or cases or on boards).

Applying the definition of the phrase “goods put up as sets for retail sale” provided in EN (X) to GRI 3(b), the subject merchandise meets the first requirement because the product consists of two or more goods, which are *prima facie* classifiable in two or more headings of the HTSUS. In addition, the subject merchandise meets the second requirement because the metal badges, magnets, inserts and other components of the set are put up together to carry out a specific activity. In this case, the goods are put up together to create name badges. Finally, the goods are put up in a manner suitable for sale without repackaging because the kits are packaged in sealed cardboard boxes that are suitable for retail sale. Therefore, the YouWho and Mighty Badge kits can qualify as a set for purposes of GRI 3(b).

GRI 3(b) requires that classification be based on the product that provides the set with its essential character. EN (VIII) to GRI 3(b) provides that when performing an essential character analysis the factors that should be considered are the bulk, quantity, weight or value, or the role of a constituent material in relation to the use of the goods. There have been several court decisions on “essential character” for purposes of classification under GRI 3(b). See *Conair Corp. v. United States*, 29 C.I.T. 888 (2005); *Structural Industries v. United States*, 360 F. Supp. 2d 1330, 1337–1338 (Ct. Int’l Trade 2005); and *Home Depot USA, Inc. v. United States*, 427 F. Supp. 2d 1278, 1295–1356 (Ct. Int’l Trade 2006), *aff’d* 491 F.3d 1334 (Fed. Cir. 2007). “[E]ssential character is that which is indispensable to the structure, core or condition of the article, i.e., what it is.” *Home Depot USA, Inc. v. United States*, 427 F. Supp. 2d at 1293 quoting *A.N. Deringer, Inc. v. United States*, 66 Cust. Ct. 378, 383 (1971). In particular in *Home Depot USA, Inc. v. United States*, the court stated “[a]n essential character inquiry requires a fact intensive analysis.” 427 F. Supp. 2d 1278, 1284 (Ct. Int’l Trade 2006). Therefore, a case-by-case determination on essential character is warranted in this situation.

You contend that the articles are classifiable in heading 7326, HTSUS, on the basis that the metal plates are the most visible aspect of the name badge and that they provide the name badge with its the functional utility. You further contend that the magnet is an “optional component that could be replaced by a clip (e.g. safety pins) or some other fastener without affecting the badge’s character.” However, given that the samples provided to us did not contain an alternate fastener and that the badge lacks any obvious design features to accommodate alternate fasteners, we do not find this argument persuasive.

Applying the essential character analysis to the present case, we find that the individual magnets are significantly heavier than other items. We note that the magnets are significantly more expensive than the other items.¹ The plastic lens cover and metal plates are the least expensive items, with the plastic lens cover being slightly more costly.

The final factor to consider is the role of the constituent materials in relation to the use of the kits. In this case, we note that plastic lens cover, the metal plates and magnets play equally important roles. In order for the wearer to display his nametag on his article of clothing, all three items must be utilized. The insert labels will not stay on the metal plates without the plastic covers; yet, the lens covers are useless without the other components. Although the magnets are more expensive than the metal plates and plastic lens covers, the difference in cost is not sufficiently large enough to overcome the fact that when used alone, the magnet does not facilitate display of one’s name tag. Similarly, the plastic cover merely protects and holds the label on the badge. Thus, neither the plastic lens cover, metal plate, nor the magnet imparts the essential character to the merchandise and we are unable to classify the merchandise pursuant to GRI 3(b).

Accordingly, the instant sets are classified pursuant to GRI 3(c), *supra*. In this instance, the metal plates, plastic lens covers and metal magnets equally merit consideration, since they provide complementary roles in allowing the

¹ The software is less expensive than the magnet, but costs more than the lens cover and badges. While costly, the software does not appear necessary to creating the name badges. We therefore discount the software as imparting the essential character, because one can still create and utilize the other materials to create name tags without it.

name-tag wearer to display his or her name. As stated above, the HTSUS headings at issue are: 3926 (plastic lens covers), 7616 or 7326, HTSUS (metal plates) and 8505, HTSUS (magnets). Thus, since heading 8505 occurs last in numerical order of the two headings, the YouWho and Mighty Badge kits are classifiable as magnets in heading 8505, HTSUS.

We note that this decision is consistent with previous CBP decisions concerning similar items. In Headquarters Ruling Letter (“HQ”) 966569, dated April 20, 2004, we classified plastic identification badges, consisting of a neck hanging plastic badge holder with cardstock inserts, in heading 3926, HTSUS, because the plastic badge holder was the material which enabled the wearer (e.g. a convention attendee) to display his or her name. The magnet provides this function in the instant kits. In New York Ruling Letter (“NY”) N016390, dated September 5, 2007, CBP applied GRI 3(c) to classify a kit for making photo ID badges, which contained badge sheets, metal clips for wearing the badges on clothing, paper card stock and peel off plastic sheet which is folded to form a protected cover over the paper badge in heading 7326, HTSUS.

II. NAFTA Eligibility

General Note 12, HTSUS, incorporates Article 401 of NAFTA into the HTSUS, and provides, in pertinent part, the following:

- (a) Goods originating in the territory of a party to the [NAFTA] are subject to duty as provided herein. For the purposes of this note –
 - (i) Goods that originate in the territory of a NAFTA party under the terms of subdivision (b) of this note and that qualify to be marked as goods of Canada under the terms of the marking rules set forth in regulations issued by the Secretary of the Treasury (without regard to whether the goods are marked), when such goods are imported into the customs territory of the United States and are entered under a subheading for which a rate of duty appears in the “Special” subcolumn followed by the symbol “CA” in parentheses, are eligible for such duty rate, in accordance with section 201 of the NAFTA Implementation Act.

Accordingly, the imported product will be eligible for the “Special” “CA” rate of duty provided it is a NAFTA “originating” good under General Note 12(b), HTSUS, and qualifies to be marked as a product of Canada under the NAFTA Marking Rules. General Note 12(b), HTSUS, provides, in pertinent part:

- (b) For the purposes of this note, goods imported into the customs territory of the United States are eligible for the tariff treatment and quantitative limitations set forth in the tariff schedule as goods originating in the territory of a NAFTA party only if—
 - * * *
 - (ii) they have been transformed in the territory of Canada, Mexico and/or the United States so that—
 - (A) except as provided in subdivision (f) of this note, each of the non-originating materials used in the production of such goods undergoes a change in tariff classification described in subdivisions (r), (s) and (t) of this note or the rules set forth therein[.]

* * *

As discussed above, the kits are classified in 8505, HTSUS, specifically in subheading 8505.11. The tariff shift rule for subheading 8505.11 is set forth in General Note 12(t) 85/9, and provides for “A change to subheadings 8505.11 through 8505.20 from any other heading”. In this case, the tariff-shift rule set forth above is not satisfied because the magnets, classifiable in heading 8505, are manufactured in China. Therefore, the kits are not eligible for preferential treatment under NAFTA.

III. Country of Origin Marking

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. §1304), requires that, unless excepted, every article of foreign origin (or its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article (or its container) will permit in such manner as to indicate to the ultimate purchaser the English name of the country of origin of the article. The regulations implementing the requirements and exceptions to 19 U.S.C. § 1304 are set forth in Part 134, CBP Regulations (19 C.F.R. Part 134).

Section 134.1(b), CBP Regulations (19 C.F.R. §134.1(b)), defines “country of origin” as:

The country of manufacture, production, or growth of any article of foreign origin entering the United States. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the “country of origin” within this part; however, for a good of a NAFTA country, the NAFTA Marking Rules will determine the country of origin.

Section 134.1(j) provides that the “NAFTA Marking Rules” are the rules promulgated for purposes of determining whether a good is a good of a NAFTA country. Section 134.1(g) defines a “good of a NAFTA country” as an article for which the country of origin is Canada, Mexico or the United States as determined under the NAFTA Marking Rules.

Part 102 of the CBP Regulations sets forth the NAFTA Marking Rules. Section 102.11 sets forth the required hierarchy for determining country of origin for marking purposes, which is provided in pertinent part:

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

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

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

* * *

(c) Where the country of origin cannot be determined under paragraph (a) or (b) of this section and the good is specifically described in the Harmonized System as a set or mixture, or classified as a set, mixture or composite good pursuant to General Rule of Interpretation 3, the country

of origin of the good is the country or countries of origin of all materials that merit equal consideration for determining the essential character of the good.

Since the magnets included with the subject kits are foreign components, the origin of the merchandise cannot be determined by application of 19 CFR § 102.11(a)(1) or (2). Therefore, under 19 CFR § 102.11(a)(3), the tariff shift rule set forth in 19 C.F.R. § 102.20 is considered. Both the kits are classified under subheading 8505.11, HTSUS. The tariff shift rule for subheading 8505.11, HTSUS, set forth at 19 CFR § 102.20(o) states:

A change to subheading 8505.11 through 8505.20 from any other subheading, including another subheading within that group.

In this case, since the magnets are classified in the same subheading as the kits, the tariff shift rule is not met. Furthermore, since the items are merely packaged together, they will not be considered to meet the applicable change in tariff classification pursuant to 19 C.F.R. § 102.17.

We therefore turn to 19 CFR § 102.11(c), since the kits are classified pursuant to GRI 3(c), as 19 C.F.R. § 102.11(b) is not applicable to “sets.” In this case, the materials that merit equal consideration for determining essential character are the magnets, the plastic cover, and the metal plates. As noted above, the magnets are goods of China; the plastic cover and metal plates are products of Canada. Therefore, the kits are products of China and Canada for marking purposes.

Finally, although you did not request guidance on the actual marking of the articles in question, we note that Imprint’s Plus Canadian address is in larger font than the adjacent country of origin marking on the Mighty Badge kit. Please bear in mind that 19 C.F.R. § 134.11 requires that the article be marked in a manner as to allow the ultimate purchaser to easily locate the country or origin marking and that under 19 C.F.R. § 134.46, where a locality other than product’s country origin appears appear on the article or its container, the marking must be in comparable size to any reference to a locality or foreign country other than the article’s country of origin.

HOLDING:

By application of GRI 3(c), the YouWho Kit and Mighty Badge kits are classified under subheading 8505.11.11, HTSUS, which provides for “Electromagnets; permanent magnets and articles intended to become 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 column one, general rate of duty is 2.1% *ad valorem*.

Based on your submission, the YouWho Kit and Mighty Badge kits are not originating goods under GN 12(t) 85/9, HTSUS, and therefore they do not qualify for preferential treatment under NAFTA.

Pursuant to 19 C.F.R. § 102.11, the countries of origin of the Mighty Badge Kit and the YouWho Badge Kit for marking purposes is China and Canada.

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.

Sincerely,
MONIKA R. BRENNER,
Chief
Valuation & Special Programs Branch

ATTACHMENT B

HQ 562821

October 30, 2003

CLA-2 RR:IA 562861 RFC

CATEGORY: Classification

TARIFF NOS.: 7326.90.8587; 7419.99.5050;

7616.99.5090; 3926.90.9880; 8505.19.0080;

7319.20.20

MR. LES SUZUKI

LIVINGSTON INTERNATIONAL CONSULTING GROUP

1140 WEST PENDER STREET, SUITE 720

VANCOUVER BC

CANADA V6E 4115

RE: NAFTA; HTSUS General Note 12; Parts for Nametags

DEAR MR. SUZUKI:

This is in reference to your June 13, 2003, request to the National Commodity Specialist Division for a binding ruling on the classification and eligibility for North American Free Trade Agreement (NAFTA) preferential tariff treatment under General Note 12 to the Harmonized Tariff Schedule of the United States (HTSUS) for parts for nametags. Your request has been forwarded to this office for a response.

FACTS:

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.

In the ruling request, it is contended that the numerous parts shipped in bulk form should be classified together as complete or finished articles pursuant to General Rule of Interpretation 2(a), HTSUS.

ISSUE:

1. What is the proper classification of the parts under the HTSUS?
2. Whether the parts shipped and presented in bulk form are classified together as complete or finished articles pursuant to General Rule of Interpretation 2(a).
3. Whether the goods satisfy the applicable rule of origin under General Note 12 to the HTSUS, and thus are eligible for NAFTA preferential tariff treatment.

LAW AND ANALYSIS:

Classification of the Merchandise

Merchandise imported into the United States is classified under the HTSUS. The tariff classification of merchandise under the HTSUS is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context which otherwise requires, 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. *See* Sections 1204(a) and 1204(c) of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. § 1204(a), 1204(c)).

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule (*i.e.*, (1) merchandise is to be classified under the 4-digit heading that most specifically describes the merchandise; (2) only 4-digit headings are comparable; and (3) merchandise must first satisfy the provisions of a 4-digit heading before consideration is given to classification under a subheading within this 4-digit heading) and any relative section or chapter notes and, provided such headings or notes do not otherwise require, then according to the other GRIs.

GRI 6 prescribes that, for legal purposes, GRIs 1 to 5 shall govern, *mutatis mutandis*, classification at subheading levels within the same heading. Therefore, merchandise is to be classified at equal subheading levels (*i.e.*, at the same digit level) within the same 4-digit heading under the subheading that most specifically describes or identifies the merchandise.

The Explanatory Notes to the Harmonized Commodity Description and Coding System (hereinafter “Harmonized System”) represent the official interpretation of the Customs Cooperation Council (also known by the informal working name “World Customs Organization”) on the scope of each heading. *See* H.R. Conf. Rep. No. 100–576, 100th Cong., 2d Sess. 549 (1988); 23 *Customs Bulletin* No. 36, 3 (T.D. 89–90, September 6, 1989), 59 F.R. 35127 (August 23, 1989). Although not binding on the contracting parties to the Harmonized System Convention or considered to be dispositive in the interpretation of the Harmonized System, the Explanatory Notes should be consulted on the proper scope of the Harmonized System. *Id.*

In the ruling request, it is contended that the numerous parts shipped in bulk should be classified as finished articles pursuant to GRI 2(a). With respect to this contention, GRI 2(a) provides, in pertinent part, as follows:

- (a) any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.

GRI 2 (a) to the HTSUS.

The Harmonized System Explanatory Notes to GRI 2(a) provide, in pertinent part, as follows:

RULE 2 (a)

(Articles presented unassembled or disassembled)

(V) The second part of Rule 2 (a) provides that complete or finished articles presented unassembled or disassembled are to be classified in the same heading as the assembled article. When goods are so presented, it is usually for reasons such as requirements or convenience of packing, handling or transport.

(VI) This Rule also applies to incomplete or unfinished articles presented unassembled or disassembled provided that they are to be treated as complete or finished articles by virtue of the first part of this Rule.

(VII) For the purposes of this Rule, “articles presented unassembled or disassembled” means articles the components of which are to be assembled either by means of fixing devices (screws, nuts, bolts, etc.) or by riveting or welding, for example, provided only assembly operations are involved.

No account is to be taken in that regard of the complexity of the assembly method. However, the components shall not be subjected to any further working operation for completion into the finished state.

Unassembled components of an article which are in excess of the number required for that article when complete are to be classified separately.

(VIII) Cases covered by this Rule are cited in the General Explanatory Notes to Sections or Chapters (e.g., Section XVI, and Chapters 44, 86, 87 and 89).

(IX) In view of the scope of the headings of Sections I to VI, this part of the Rule does not normally apply to goods of these Sections.

In the instant case, the numerous parts are not packaged in any manner to indicate that they constitute an identifiable article or have the nature of an article that will be shipped in an unassembled condition “for reasons such as requirements or convenience of packing, handling or transport” (e.g., a bicycle shipped unassembled with all the parts constituting a single bicycle contained in a single box because it is easier to transport in this condition than in an assembled condition). Rather, the parts when shipped and imported in bulk appear to be packaged and shipped to accommodate the needs of a nametag production operation rather than articles recognized and identifiable as unassembled goods. Therefore, the importation of the bulk parts, even if consisting of all the parts to assemble a set number of nametags, are not goods “unassembled” within the meaning of GRI 2(a). Accordingly, each of the parts will be separately classified when imported into the United States in bulk under the applicable HTSUS provisions.

This decision is consistent with the past classification and treatment of parts shipped and presented in bulk form. *See* HQ 081999 (December 10, 1990)(components for golf carts shipped in bulk do not constitute unassembled articles or golf carts for purposes of GRI 2(a), and therefore the components are classified separately); *see also*, HQ 951065 (February 21, 1992)(parts for stun guns shipped in bulk do not constitute unassembled articles or stun guns for purposes of GRI 2(a), and therefore the parts are classified separately).

Upon review, the parts are classified as follows: the steel plates in heading 7326 as other articles of iron or steel (and specifically in subheading 7326.90.8587); the brass plates are classified in heading 7419 as other articles of copper (and specifically in subheading 7419.99.5050); the aluminum plates are classified in heading 7616 as other articles of aluminum (and specifically in subheading 7616.99.5090); the plastic covers are classified in heading 3926 as other articles of plastics and articles of other materials of heading 3901 to 3914 (and specifically in subheading 3926.90.9880); the magnets are classified in heading 8505 as permanent magnets (and specifically in subheading 8505.19.0080); and the safety pins are classified in heading 7319 as safety pins (and specifically in subheading 7319.20.20).

Preferential Treatment Under General Note 12

In order to be eligible for NAFTA preferential tariff treatment under General Note 12 to the HTSUS, goods must satisfy certain requirements in that note. General Note 12(a)(i) provides in, pertinent part, as follows:

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

General Note 12(a)(i) to the HTSUS (2003).

Accordingly, the nametag parts will be eligible for the “Special” “CA” rate of duty provided they are NAFTA “originating” goods under General Note 12(b), HTSUS, and qualify to be marked as a product of Canada under the above-referenced marking rules (as found in 19 CFR § 102). General Note 12(b), HTSUS, provides as follows:

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

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

or

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

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

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

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

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

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

(B) the tariff headings for such goods provide for and specifically describe both the goods themselves and their parts and is not further divided into subheadings, or the subheadings for such goods provide for and specifically describe both the goods themselves and their parts, provided that such goods do not fall under chapters 61 through 63, inclusive, of the tariff schedule, and provided further that the regional value content of such goods, determined in accordance with subdivision (c) of this note, is not less than 60 percent where the transaction value method is used, or is not less than 50 percent where the net cost method is used, and such goods satisfy all other applicable provisions of this note. For purposes of this note, the term “material” means a good that is used in the production of another good, and includes a part or an ingredient.

General Note 12(b) to the HTSUS (2003).

In the instant case, the steel, brass and aluminum plates are stated to be manufactured in Canada by stamping and cutting coiled and plate steel, brass and aluminum; and the plastic covers are stated to be manufactured in Canada. No information was submitted as to whether the materials used to manufacture each part are NAFTA originating or non-originating. Assuming the materials are non-originating, however, we note that pursuant to General Note 12(b)(ii), HTSUS, the applicable tariff-shift rule set forth in General Note 12(e), HTSUS, for the steel nameplates classified in subheading 7326.90.8587, HTSUS, is as follows:

A change to headings 7325 through 7326 from any heading outside that group.

You state that the steel coil from which the steel nameplates are made is classified in heading 7212, HTSUS. Assuming the correctness of this classification, the steel nameplates would satisfy the tariff-shift rule and would qualify as NAFTA originating goods when imported into the U.S.

The applicable tariff-shift rule for the brass nameplates classified in subheading 7419.99.5050, HTSUS, is as follows:

A change to subheadings 7419.91 through 7419.99 from any other heading.

You state that the brass coil from which the brass nameplates are made is classified in heading 7409, HTSUS. Assuming the correctness of this classification, the brass plates would satisfy the tariff shift rule and would qualify as NAFTA originating goods when imported into the U.S.

The applicable tariff-shift rule for the aluminum nameplates classified in subheading 7616.99.5090, HTSUS, is as follows:

A change to headings 7615 through 7616 from any other heading, including another heading within that group.

You state that the aluminum coil from which the aluminum plates are made is classified in heading 7606, HTSUS. Assuming the correctness of this classification, the aluminum plates would satisfy the tariff-shift rule and would qualify as NAFTA originating goods when imported into the U.S.

Furthermore, pursuant to 19 CFR §§102.11(a)(3) and 102.20(n), Section XV: Chapters 72 through 83, the steel plates, brass plates and aluminum plates qualify to be marked as goods of Canada.

The applicable tariff-shift rule for the plastic covers classified in subheading 3926.90.9880, HTSUS, is as follows:

A change to headings 3924 through 3926 from any other heading, including another heading within that group, provided there is a regional value content of not less than:

- (A) 60 percent where the transaction value method is used, or
- (B) 50 percent where the net cost method is used.

We are unable to determine from the limited information you have provided whether the plastic covers satisfy the above tariff-shift rule. Therefore, we are unable to ascertain whether the plastic covers qualify as NAFTA originating goods under General Note 12 to the HTSUS, or to ascertain whether they qualify to be marked as goods of Canada under 19 CFR § 102.

The magnets and safety pins are stated to be manufactured in China. Accordingly, they would not be eligible for preferential tariff treatment because they do not satisfy the requirements under General Note 12. Therefore, they will be subject to the rates of duty found in the general subcolumn of column one to the HTSUS.

For purposes of country of origin marking, each carton in which the nametag parts are shipped to the United States must be marked "Product of Canada and China (and the country of origin of the plastic covers if a country other than Canada or China). The marking "Product of Canada—Components from Canada and China" will not be acceptable.

HOLDING:

Classification of the Merchandise

The parts are classified as follows: the steel plates in heading 7326 as other articles of iron or steel (and specifically in subheading 7326.90.8587); the brass plates are classified in heading 7419 as other articles of copper (and specifically in subheading 7419.99.5050); the aluminum plates are classified in heading 7616 as other articles of aluminum (and specifically in subheading 7616.99.5090); the plastic covers are classified in heading 3926 as other articles of plastics and articles of other materials of heading 3901 to 3914 (and specifically in subheading 3926.90.9880); the magnets are classified in heading 8505 as permanent magnets (and specifically in subheading 8505.19.0080); and the safety pins are classified in heading 7319 as safety pins (and specifically in subheading 7319.20.20).

NAFTA Preferential Treatment Under General Note 12

The above-mentioned steel plates, brass plates and aluminum plates are eligible for NAFTA preferential tariff treatment under General Note 12 (1) if the materials used to make the plates are originating or (2) if any of the

materials used to make the plates are non-originating and the materials are correctly classified as stated above, and therefore satisfy the applicable tariff-shift rule.

Insufficient information was provided to determine if the plastic covers are eligible for NAFTA preferential tariff treatment under General Note 12.

The magnets and safety pins are not eligible for preferential tariff treatment. Therefore, they will be subject to the rates of duty found in the general subcolumn of column one to the HTSUS.

For purposes of country of origin marking, each carton in which the nametag parts are shipped to the United States must be marked "Product of Canada and China (and the country of origin of the plastic covers if a country other than Canada or China).

A copy of this ruling letter should be attached to the entry documents filed at the time the goods are entered. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs and Border Protection officer handling the transaction.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

ATTACHMENT C

HQ H269117
CLA-2 OT:RR:CTF:TCM 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,¹ 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.

FACTS:

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

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

¹ 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.

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; electromagnetic 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)²; the brass plates 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)³; 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)⁴; the magnets in heading 8505 as permanent magnets (and specifically in subheading 8505.19.00, HTSUS)⁵; and the safety pins in heading 7319 as safety pins (and specifically in subheading 7319.20.20, HTSUS).

² Subheading 7326.90.85 of the HTSUS 2003 corresponds to subheading 7326.90.86 of the HTSUS 2017.

³ Subheading 7616.99.50 of the HTSUS 2003 corresponds to subheading 7616.99.51 of the HTSUS 2017.

⁴ Subheading 3926.90.98 of the HTSUS 2003 corresponds to subheading 3926.90.99 of the HTSUS 2017.

⁵ Subheading 8505.19.00 of the HTSUS 2003 corresponds to subheading 8505.19.30 of the HTSUS 2017.

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 preclude a finding that the magnets are the component that gives the finished product its essential character. 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:

- (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,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**PROPOSED MODIFICATION OF TWO RULING LETTERS
AND PROPOSED REVOCATION OF TREATMENT
RELATING TO THE TARIFF CLASSIFICATION OF
EARTHMOVER TIRES**

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

ACTION: Notice of proposed modification and revocation of two ruling letters and proposed 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 Customs and Border Protection (CBP) proposes to modify New York Ruling Letters (NY) I86839, dated September 25, 2002, and NY I85323, dated September 13, 2002, relating to the tariff classification of earthmover tires under the Harmonized Tariff Schedule of the United States (HTSUS). CBP also proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before July 7, 2017.

ADDRESS: Written comments are to be addressed to the U.S. Customs and Border Protection, Office of Trade, Regulations & Rulings, Attention: Trade and Commercial Regulations Branch, 90 K St., NE, 10th Floor, Washington, DC 20229–1179. Submitted comments may be inspected at the address stated above during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Claudia Garver, Tariff Classification and Marking Branch: (202) 325–0024

SUPPLEMENTARY INFORMATION:

Background

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

“informed compliance” and **“shared responsibility.”** These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625 (c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625 (c)(1)), this notice advises interested parties that CBP is proposing to modify two ruling letters pertaining to the tariff classification of earthmover tires. Although in this notice, CBP is specifically referring to the modification of New York Ruling Letters (NY) I86839, dated September 25, 2002 (Attachment A), and NY I85323, dated September 13, 2002 (Attachment B), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

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

In NY I86839 and NY I85323, CBP determined that 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)—were classified 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 proposes to modify NY 186839 and NY 185323 with respect to the X-QUARRY, XH D1 and XHAUL tires, and to revoke or modify any other ruling not specifically identified, in order to reflect the proper classification of the subject tires in subheading 4011.94.40, HTSUS, which provides for “New pneumatic tires, of rubber: Other: Of a kind used on construction or industrial handling vehicles and having a rim size exceeding 61 cm: Radial”, according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H272344, set forth as Attachment C to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: April 26, 2017

ALLYSON MATTANAH
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

ATTACHMENT A

NY I86839

September 25, 2002

CLA-2-40:RR:NC:MM:101 I86839

CATEGORY: Classification

TARIFF NO.: 4011.20.1025

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

RE: The tariff classification of *Earthmover Tires XMP Tread Pattern of Global Part Number CAI 123406; X-QUARRY Tread Pattern of Global Part Number 123887; XH D1 Tread Pattern Global Part Number 123031* from Netherlands and Canada

DEAR MS. WILSON:

In your letter dated August 6, 2002 you requested a tariff classification ruling.

You have requested that we review New York Ruling NY I80691. You state that you believe that we had incorrectly classified *Earthmover Tires XMP Tread Pattern of Global Part Number CAI 123406; X-QUARRY Tread Pattern of Global Part Number 123887; XH D1 Tread Pattern Global Part Number 123031* under 4011.20.1015, Harmonized Tariff Schedule of the United States (HTS), which provides for New pneumatic tires of rubber: Of a kind used on buses or trucks: Radial...On-the-highway: Other.

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*.

Two equally competing headings merit consideration: HTS 4011.20.1015 which provides for New pneumatic tires of rubber: Of a kind used on buses or trucks: Radial...On-the-highway: Other; and HTS 4011.20.1025 which provides for New pneumatic tires of rubber: Of a kind used on buses or trucks: Radial...Off-the-highway: For use on a rim measuring 40.6 cm or more in diameter.

When there are two equally competing headings Customs is directed to use that which occurs *last in the tariff* – in this case, HTS 4011.20.1025 .

Due to a clerical error this tire was incorrectly classified under HTS 4011.20.1015.

The applicable subheading for the *Earthmover Tire XMP Tread* will be 4011.20.1025, Harmonized Tariff Schedule of the United States (HTS), which provides for New pneumatic tires of rubber: Of a kind used on buses or trucks: Radial...Off-the-highway: For use on a rim measuring 40.6 cm or more in diameter. The rate of duty will be 4% ad valorem.

In the case of the *X-Quarry Tread* and the *XH D1 Tread*, these tires 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.”

Due to a clerical error these tires were incorrectly classified under HTS 4011.20.1015 (“On-the-highway” use).

The applicable subheading for the *X-Quarry Tread* and the *XH D1 Tread* will be 4011.20.1025, Harmonized Tariff Schedule of the United States (HTS), which provides for New pneumatic tires of rubber: Of a kind used on buses or trucks: Radial...Off-the-highway: For use on a rim measuring 40.6 cm or more in diameter. The rate of duty will be 4% ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Robert DeSoucey at 646-733-3008.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity
Specialist Division

ATTACHMENT B

NY I85323

September 13, 2002

CLA-2-84:RR:NC:MM:101 I85323

CATEGORY: Classification

TARIFF NO.: 4011.20.1015, 4011.62.0000,
4011.63.0000, 4011.94.4000

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

RE: The tariff classification of *Earthmover Tires XGL A2, XM 27, XHAUL, XF & XSNOPLUS M + S Treads* from France, Spain, and Canada

DEAR MS. WILSON:

In your letter dated August 13, 2002 you requested a tariff classification ruling.

You submitted illustrative literature of machinery on which these tires are used, the different Tread Patterns, and other data from Michelin's Earthmover Data Book. The use of the tires determined by the Tire & Rim Association (TRA) coding system as "L" is defined as the code for "loaders and dozers", "E" is defined as "earthmoving application", and "G" is defined as the code for "graders". You have requested classification for XGLA2 Tread Pattern of Global Part Number CAI 123903; XM 27 Tread Pattern of Global Part Number 123800; XHAUL Tread Pattern of Global Part Number 205207, XF Tread Pattern of Global Part Number 255201; and XSNOPLUS M+S Tread Pattern of Global Part Number 123795.

- | | |
|------------------------------|-------------------------|
| 1. Global Part Number (CAI): | 123903 |
| TRA Code: | L3/G3 |
| Description: | 16.00R24 XGL A2 TL TG** |
| Rim Diameter: | 24 inches (60.96 cm) |
| Tire Tread: | XGL A2 Tread Pattern |
| 2. Global Part Number (CAI): | 123800 |
| TRA Code: | L2 |
| Description: | 19.5LR28TL 152A8 XM27 |
| Rim Diameter: | 28 inches (71.12 cm) |
| Tire Tread: | XM 27 Tread Pattern |
| 3. Global Part Number: | 205207 |
| TRA Code: | E4 |
| Description: | 18.00R33 XHAUL E4P TL** |
| Rim Diameter: | 33 inches (83.82 cm) |
| Tire Tread: | XHAUL Tread Pattern |

4. Global Part Number:	255201
TRA Code:	N/A
Description:	18 R 19.5 TL* TF
Rim Diameter:	19.5 inches (49.53 cm)
Tire Tread:	XF Tread Pattern
5. Global Part Number:	123795
TRA Code:	G2/L2/E2
Description:	20.5R25 XSNOPLUS M+S TL*
Rim Diameter:	25 inches (63.5 cm)
Tire Tread:	XSNOPLUS M+S Tread Pattern

The applicable subheading for the *XGL A2 Tread Pattern* and the *XF Tread Pattern* will be 4011.62.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for New pneumatic tires of rubber: Other, having a “herring-bone” or similar tread: Of a kind used on construction or industrial handling vehicles and machines and having a rim size not exceeding 61 cm. The rate of duty will be *Free*.

The applicable subheading for the *XM 27 Tread Pattern* will be 4011.63.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for New pneumatic tires of rubber: Other, having a “herring-bone” or similar tread: Of a kind used on construction or industrial handling vehicles and machines and having a rim size exceeding 61 cm. The rate of duty will be *Free*.

The applicable subheading for the *XHAUL Tread Pattern* will be 4011.20.1015, Harmonized Tariff Schedule of the United States (HTS), which provides for New pneumatic tires of rubber: Of a kind used on buses or trucks: Radial...On-the-highway: Other. The rate of duty will be 4% ad valorem.

The applicable subheading for the *XSNOPLUS M+S Tread Pattern* will be 4011.94.4000, Harmonized Tariff Schedule of the United States (HTS), which provides for New pneumatic tires of rubber: Other: Of a kind used on construction or industrial handling vehicles and machines and having a rim size exceeding 61 cm: Radial. The rate of duty will be 4% ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Robert DeSoucey at 646-733-3008.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity
Specialist Division

ATTACHMENT C

HQ H272344

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 earthmoving 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.¹

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).

¹ 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.”

The XMP Tread tire is marked on the sidewall with the TRA code E2 and the size designation 14.00R25 (indicating that the section width² 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.³

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 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.

² 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.

³ 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” tire, these include: 1 for “Ribbed”, 2 for “Traction”, 3 for “Rock”, 4 for “Rock (deep tread)”, and 5 for “Rock (very deep tread)”.

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...
...	
	Other:
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. 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. 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. 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).

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**PROPOSED 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 proposed 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) intends to modify one ruling letter concerning the classification of certain textured polyester elastomeric yarn. 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 July 7, 2017.

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

FOR FURTHER INFORMATION CONTACT: 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 proposing to modify 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 (Attachment A), 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 has reviewed the decision and has 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 proposing to modify NY N273725 with regard to the classification of the textured polyester elastomeric yarn as set forth in proposed Headquarters Ruling Letter (HQ) HQ H284749, set forth as Attachment “B” to this notice.

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

Dated: April 26, 2017

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachments

ATTACHMENT A

NY N273725

December 22, 2016

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

CATEGORY: Classification

TARIFF NO.: 6204.62.8011; 5402.31.6000

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

RE: The tariff classification of yarn and the tariff classification and status under the United States-Colombia Trade Promotion Agreement (CTPA) of women's trousers from Colombia

DEAR MR. AGUILAR:

In your letter dated January 22, 2016, you requested a ruling on the classification of yarn and the classification and status of women's trousers under the CTPA. Our response was delayed due to laboratory analysis by the U.S. Customs and Border Protection laboratory, during which the submitted samples were destroyed. You submitted a sample of a yarn put up on a large cone support. You describe the yarn as being processed in Fadis machines and consists of an elastomeric filament core with a textured polyester filament yarn covering the core in a spiral direction. According to the terms of Note 4 to Section XI, Harmonized Tariff Schedule of the United States (HTSUS), the yarn does not meet the definition of "put up for retail sale."

You state that the yarn should be classified under heading 5606. However, the Customs laboratory examined a sample of the yarn, and its findings are contrary to your description of the merchandise. The report noted the following:

The sample, a yarn on a bobbin is 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 yarn is subject to a false twist process. The sample is not a gimped or braided yarn. The sample has an average diameter of .276 mm and weighs 209.6 decitex.

The submitted garment is a pair of women's trousers. In your letter, you state that the trousers are constructed from 75% cotton, 22% polyester, and 3% elastomeric woven fabric. Our laboratory analysis indicates that the garment is constructed from 76.2% cotton, 20.6% polyester, and 3.2% elastomeric woven fabric. The garment features 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.

The applicable subheading for the air-entangled, textured polyester yarn will be 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. The duty rate will be 8 percent ad valorem. The applicable subheading for the women's trousers will be 6204.62.8011, 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): Trousers,

bib and brace overalls, breeches and shorts: Of cotton: Other: Other: Other: Other: Other: Women's trousers and breeches: Blue denim. The rate of duty will be 16.6 percent ad valorem.

You have described the manufacturing and assembly of the garment as follows:

1. The denim fabric will be manufactured in Columbia.
2. This fabric will be produced with cotton yarns made in Colombia from cotton fibers imported from the United States or obtained in Columbia and from air-entangled, textured polyester yarn made in Mexico.
3. The trousers will be cut and sewn in Columbia and then exported directly to the United States.

General Note 34, HTSUS, sets forth the criteria for determining whether a good is originating under the CTPA. General Note 34(b), HTSUS, (19 U.S.C. §1202) states, in pertinent part, that

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 Colombia 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 Colombia or of the United States, or both; (ii) the good is produced entirely in the territory of Colombia 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 Colombia or of the United States, or both, exclusively from materials described in subdivisions (i) or (ii), above.

As the good contains nonoriginating materials, the yarn produced in Mexico, it would have to undergo an applicable change in tariff classification in order to meet the requirements of GN 34(b)(ii)(A). For goods classified under subheading 6204.62, this requires:

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 nonoriginating material used in the production of the garment is classified in subheading 5402.31, HTSUS. As such, the fabric does not meet the terms of the tariff shift rule.

The garment does 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 produced entirely in the territory of Colombia or of the United States, or both.

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 <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 classification of the trousers or the eligibility for preferential treatment under the CTPA, contact National Import Specialist Kimberly Rackett via email at kimberly.rackett@cbp.dhs.gov. If you have any questions regarding the classification of the yarn, contact National Import Specialist Adleasia Lonesome via email at adleasia.a.lonesome@cbp.dhs.gov.

Should you wish to request an administrative review of this ruling, submit a copy of this ruling and all relevant facts and arguments within 30 days of the date of this letter, to the Director, Commercial Rulings Division, U.S. Customs and Border Protection, Regulations & Rulings, 90 K Street N.E. – 10th floor, Washington, DC 20229–1177.

Sincerely,

STEVEN A. MACK

Director

National Commodity Specialist Division

ATTACHMENT B

HQ H284749
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 nonoriginating yarn was classified in subheading 5402.31.60, Harmonized Tariff Schedule of the United States (HTS US) 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.

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(0)/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(0)/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(0)/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.¹ The tariff shift rule for the cotton fabric states:

¹ 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

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.

Sincerely,

YULIYA A. GULIS,
Acting Chief

Valuation & Special Programs Branch

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 MODIFICATION OF ONE RULING LETTER
AND PROPOSED REVOCATION OF TREATMENT
RELATING TO THE TARIFF CLASSIFICATION OF
EARTHMOVER TIRES**

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

ACTION: Notice of proposed modification of one ruling letter and proposed 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 Customs and Border Protection (CBP) proposes to modify New York Ruling Letter (NY) I80181, dated April 15, 2002, relating to the tariff classification of earthmover tires under the Harmonized Tariff Schedule of the United States (HTSUS). CBP also proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before July 7, 2017.

ADDRESS: Written comments are to be addressed to the U.S. Customs and Border Protection, Office of Trade, Regulations & Rulings, Attention: Trade and Commercial Regulations Branch, 90 K St., NE, 10th Floor, Washington, DC 20229–1179. Submitted comments may be inspected at the address stated above during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Claudia Garver, Tariff Classification and Marking Branch: (202) 325–0024

SUPPLEMENTARY INFORMATION:

Background

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

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

Pursuant to section 625 (c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625 (c)(1)), this notice advises interested parties that CBP is proposing to modify one ruling letter pertaining to the tariff classification of earthmover tires. Although in this notice, CBP is specifically referring to the modification of New York Ruling Letter (NY) I80181, dated April 15, 2002 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

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

In NY 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 proposes to modify NY I80181 with respect to the XL and XZ SC tires, and to revoke or modify any other ruling not specifically identified, in order to reflect

the proper classification of the XL tires in subheading 4011.90.20, HTSUS, which provides for “New pneumatic tires, of rubber: Other: Radial”, and of the XSC tire 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,” according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H272344, set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: April 26, 2017

ALLYSON MATTANAH
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

ATTACHMENT A

NY I80181

April 15, 2002

CLA-2-40:RR:NC:MM:101: I80181

CATEGORY: Classification

TARIFF NO.: 4011.20.1025

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

RE: The tariff classification of Earthmover Tires from Netherlands and Canada

DEAR Ms. WILSON:

In your letter dated April 1, 2002 you requested a tariff classification ruling.

You submitted illustrative literature of machinery on which these tires are used, the different Tread Patterns and other data from Michelin's Earthmover Data Book. You are requesting a ruling for XL Tread Pattern of Global Part Number CAI 123434; XGC Tread Pattern of Global Part Number 123691; XHC Tread Pattern Global Part Number 123444; XVC Tread Pattern of Global Part Number 280557 and XZSC Tread Pattern of Global Part Number 123753.

Global Part Number (CAI): 123434 TRA Code: E2 Description: 17.5 R 25 XL B 170E Rim Diameter: 25 inches, which exceeds 61 cm Tire Tread: XL Tread Pattern

Global Part Number (CAI): 123691 TRA Code: E2 Description: 20.5 R 25 XHC 179E Rim Diameter: 25 inches, which exceeds 61 cm Tire Tread: XHC Tread Pattern

Global Part Number (CAI): 123444 TRA Code: E2 Description: 17.5 R 25 XHC 170E Rim Diameter: 25 inches, which exceeds 61 cm Tire Tread: XHC Tread Pattern

Global Part Number (CAI): 280557 TRA Code: E2 Description: 27.00 R 49 XVC TL** Rim Diameter: 49 inches, which exceeds 61 cm Tire Tread: XVC Tread Pattern

Global Part Number (CAI): 123753 TRA Code: E3 Description: 18.00 R 25 XZ SC 203 A5 Rim Diameter: 25 inches, which exceeds 61 cm Tire Tread: XZSC Tread Pattern

You state in your narrative that the use of these tires determined by the Tire & Rim Association (TRA) coding system as "L" is defined as the code for "loaders and dozers", "E" is defined as "earthmoving application", and "G" is defined as the code for "graders".

The applicable subheading for XL Tread Pattern of Global Part Number CAI 123434; XGC Tread Pattern of Global Part Number 123691; XHC Tread Pattern Global Part Number 123444; XVC Tread Pattern of Global Part Number 280557 and XZSC Tread Pattern of Global Part Number 123753 will be 4011.20.1025, Harmonized Tariff Schedule of the United States (HTS), which provides for New pneumatic tires of rubber: Of a kind used on buses or trucks: Radial...Off-the-highway: For use on a rim measuring 40.6 cm or more in diameter. The rate of duty will be 4% ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Robert DeSoucey at 646-733-3008.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

ATTACHMENT B

HQ H272342

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 earthmoving 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.

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 width¹ 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.²

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).

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).

¹ 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.

² 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” tire, these include: 1 for “Ribbed”, 2 for “Traction”, 3 for “Rock”, 4 for “Rock (deep tread)”, and 5 for “Rock (very deep tread)”.

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...
...	
	Other:
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.³

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 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-

³ 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.

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).

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 NURSING/BREAST PADS

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 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) intends to revoke one ruling letter concerning tariff classification of nursing/breast pads 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 July 7, 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: Parisa J. Ghazi, Tariff Classification 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, this notice advises interested parties that CBP is proposing to revoke one ruling letter pertaining to the tariff classification of nursing/breast pads. Although in this notice, CBP is specifically referring to New York Ruling Letter (“NY”) N264127, dated May 11, 2015 (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 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 proposing to revoke NY N264127 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H283468, 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: April 26, 2017

ELIZABETH JUNIOR

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachments

ATTACHMENT A

N264127

May 11, 2015

CLA-2-63:OT:RR:NC:N3:351

CATEGORY: Classification

TARIFF NO.: 6307.90.9889

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

RE: The tariff classification of breast/nursing pads from Turkey

DEAR MS. O'MARA:

In your letter dated April 21, 2015, you requested a tariff classification ruling.

You have submitted photographs of 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.

The applicable subheading for breast/nursing pads will be 6307.90.9889, Harmonized Tariff Schedule of the United States, (HTSUS), which provides for "Other made up textile articles, including dress patterns: Other: Other: Other: Other: Other." The rate of duty will be 7 percent ad valorem.

Please note that separate Federal Trade Commission (FTC) marking and labeling requirements exist concerning country of origin, fiber content, and other information that must appear on many textile items. You should contact the Federal Trade Commission, Division of Enforcement, 6th and Pennsylvania Avenue, N.W., Washington, D.C., 20580 for information on the applicability of these requirements to this item, particularly with regard to the labeling of artificial fibers derived from bamboo. Information can also be found at the FTC website www.ftc.gov (click on "Tips and Advice", "Business Center", "Selected Industries" and then "Clothing and Textiles"). You may find the FTC publication, "How to Avoid Bamboozling Your Customers," <https://www.ftc.gov/system/files/documents/plain-language/alt172-how-avoid-bamboozling-your-customers.pdf>, particularly helpful with respect to the advertising and labeling of the breast/nursing pads.

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/>.

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 Kim Wachtel at kimberly.a.wachtel@cbp.dhs.gov.

Sincerely,

GWENN KLEIN KIRSCHNER

Director

National Commodity Specialist Division

ATTACHMENT B

HQ H283468
CLA-2 OT:RR:CTF:TCM 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.

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:

6307	Other made up articles, including dress patterns: * * *
9619.00	Sanitary towels (pads) and tampons, diapers and diaper liners for babies and similar articles, of any material: * * *
	Other, of textile materials: Knitted or crocheted: * * *
9619.00.64	Of man-made fibers * * *
	Other: * * *
9619.00.74	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)¹. 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

¹ 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.

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/.

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.

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 NUT SETTERS**

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

ACTION: Notice of proposed modification of one ruling letter and modification 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) intends to modify one ruling letter concerning tariff classification of nut setters 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 July 7, 2017.

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

FOR FURTHER INFORMATION CONTACT: Reema G. Radwan, Tariff Classification and Marking 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, this notice advises interested parties that CBP is proposing to modify one ruling letter pertaining to the tariff classification of nut setters. Although in this notice, CBP is specifically referring to New York Ruling Letter ("NY") E84374, dated July 8, 1999 (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 E84374, CBP classified nut setters in heading 8207, HTSUS, specifically in subheading 8207.90.60, HTSUS, which provides for "[i]nterchangeable tools, 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: Other interchangeable tools, and parts thereof: Other: Other: Not suitable for

cutting metal, and parts thereof: For handtools, 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 “[h]and-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 proposing to modify NY E84374 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H280763, set forth as Attachment B to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: May 03, 2017

ALLYSON MATTANAH
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

NY E84374

July 8, 1999

CLA-2-82:RR:NC:1:115 E84374

CATEGORY: Classification

TARIFF NO.: 8207.90.6000

Ms. ADONICA-JO R. WADA

SANDLER, TRAVIS & ROSENBERG AND GLAD & FERGUSON

1 SUTTER STREET 10TH FLOOR

SAN FRANCISCO, CA 94104

RE: The tariff classification of Insert Bits for Phillips Screws and Nut Setters from Taiwan.

DEAR Ms. WADA:

In your letter dated June 29, 1999 you requested a tariff classification ruling on behalf of your client John Wagner Associates, Inc.

The samples submitted are 1/4" Insert Bits for Phillips Screws and Nut Setters. 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.

The applicable subheading for the Insert Bit and Nut Setter will be 8207.90.6000, Harmonized Tariff Schedule of the United States (HTS), which provides for Interchangeable tools for hand tools, wheter or not power-operated, or for machine tools: Other: not suitable for cutting metal, and parts thereof: For hand tools, and parts thereof. The rate of duty will be 4.3% ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Melvyn Birnbaum at 212-637-7017.

Sincerely,

ROBERT B. SWIERUPSKI

*Director,**National Commodity Specialist Division*

[ATTACHMENT B]

HQ H280763
CLA-2 OT:RR:CTF:TCM H280763 RGR
CATEGORY: Classification
TARIFF NO.: 8204.20.00

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, HTSUS, as “[i]nterchangeable 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 remaining analysis of NY E84374 remains unchanged.¹

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.

ISSUE:

Whether nut setters are classified under heading 8207, HTSUS, as “[i]nterchangeable tools for handtools” or under heading 8204, HTSUS, as “socket wrenches, with or without handles”?

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

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)² 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).

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

² 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.

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 “[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*.

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:

New York Ruling Letter 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

PROPOSED 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 proposed revocation of two ruling letters and 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) intends to revoke two ruling letters concerning tariff classification of nursing/breast pads 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 July 7, 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: Parisa J. Ghazi, Tariff Classification 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, this notice advises interested parties that CBP is proposing to revoke two ruling letters pertaining to the tariff classification of nursing/breast pads. Although in this notice, CBP is specifically referring to New York Ruling Letter ("NY") N245827, dated September 27, 2013 (Attachment A) and NY N213901, dated May 16, 2012 (Attachment B), this notice covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the 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 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 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 proposing to revoke NY N245827 and NY N213901 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H283476, set forth as Attachment C to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: May 04, 2017

ELIZABETH JUNIOR
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N245827

September 27, 2013

CLA-2-63:OT:RR:NC:N3:351

CATEGORY: Classification

TARIFF NO.: 6307.90.9889

MS. KRISTINA SCHMITT
NUK-USA
728 BOOSTER BOULEVARD
REEDSBURG, WI 53959

RE: The tariff classification of reusable nursing pads from China

DEAR MS. SCHMITT:

In your letter dated September 3, 2013, you requested a tariff classification ruling.

You submitted specification information describing reusable nursing pads, product number 885131629098. 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.

The applicable subheading for the reusable nursing pad, product number 885131629098, will be 6307.90.9889, Harmonized Tariff Schedule of the United States, (HTSUS), which provides for other made up textile articles, other. The rate of duty will be 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 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 Mitchel Bayer at (646) 733-3102.

Sincerely,

MYLES B. HARMON,
Acting Director

National Commodity Specialist Division

[ATTACHMENT B]

N213901

May 16, 2012

CLA-2-63:OT:RR:NC:N3:351

CATEGORY: Classification

TARIFF NO.: 6307.90.9889

MS. DAWN WILCOX
PHOENIX INTERNATIONAL FREIGHT SERVICES, LTD.
4659 WORLD PARKWAY CIRCLE
ST. LOUIS, MO 63134

RE: The tariff classification of disposable breast pads from China

DEAR MS. WILCOX:

In your letter dated April 13, 2012, you requested a tariff classification ruling on behalf of your client, Simplisse Incorporated.

You submitted samples of flower-shaped die-cut disposable breast pads made from 60% Mater Bi®, 30% cotton and 10% plastic. Mater Bi in fiber form is a biodegradable natural polymer derived from starch, and is used to make up the absorbent textile fibers in the center of the breast pad. The cotton is used to make up the layers facing the skin with the plastic layers facing the clothing.

The applicable subheading for the Simplisse Disposable Breast Pads will be 6307.90.9889, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other made up textile articles, other. The rate of duty will be 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 <http://www.usitc.gov/tata/hts/>.

The samples will be retained as part of the case file.

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 Mitchel Bayer at (646) 733-3102.

Sincerely,

THOMAS J. RUSSO

Director

National Commodity Specialist Division

[ATTACHMENT C]

HQ H283476

CLA-2 OT:RR:CTF:TCM 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.

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:

6307	Other made up articles, including dress patterns:			
		*	*	*
9619.00	Sanitary towels (pads) and tampons, diapers and diaper liners for babies and similar articles, of any material:			
		*	*	*
	Other, of textile materials:			
	Knitted or crocheted:			
		*	*	*
9619.00.64	Of man-made fibers			
		*	*	*
	Other:			
		*	*	*
9619.00.74	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)¹. 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

¹ 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.

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 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)², 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/.

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.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division



**PROPOSED REVOCATION OF ONE RULING LETTER AND
PROPOSED MODIFICATION OF TWO RULING LETTERS
AND REVOCATION 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 proposed revocation of one ruling letter and proposed modification of two ruling letters, and 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) intends

² 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.

to revoke one ruling letter and modify two ruling letters concerning tariff classification of various foot sleeves 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 July 7, 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 revoke one ruling letter and to modify two ruling letters pertaining to the tariff classification of various foot sleeves. Although in this notice, CBP is specifically referring to revocation of New York Ruling Letter (“NY”) N222103, dated July 18, 2012 (Attachment A), and to modification of NY K86082, dated May 20, 2004 (Attachment B) (Style 0A394), and NY L85061, dated June 15, 2005 (Attachment C) (Styles 9205, 9414, 3876, and 9284), 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 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]lantyhose, tights, stockings, socks and other hosiery, including stockings for various 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 GRI 1, 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 proposing to revoke NY N222103, and to modify NY K86082, and NY L85061 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H242873, 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: May 04, 2017

Sincerely,

ELIZABETH JENIOR

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

NY N222103

July 18, 2012

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

CATEGORY: Classification

TARIFF NO.: 6115.96.9020

MICHELE TWOMLEY PLUTA
JAS FORWARDING WORLDWIDE
6165 BARFIELD ROAD
ATLANTA, GA 30328

RE: The tariff classification of hosiery from Thailand.

DEAR Ms. PLUTA:

In your letter dated June 11, 2012, on behalf of your client, Benchmark Brands, you requested a tariff classification ruling. The samples are being retained by this office.

Item 40332, High Arch Sleeve; Item 40333/40335, Forefoot Camisole and Bunionette; Item 40334, Stay and Separate; and Item 40352, Arch Sleeve are hosiery. They are constructed of 84% nylon and 16% spandex knit fabric. These items are used to add comfort to the foot while walking.

It is your opinion that Items 40332, 40333/40335, 40334 and 40352 would be classified under subheading 6307.90.9889 of the Harmonized Tariff Schedule of the United States, (HTSUS). We disagree with your proposed classification. The merchandise is more specifically provided for in subheading 6115.96, HTSUS.

The applicable subheading for Items 40332, 40333/40335, 40334 and 40352 will be 6115.96.9020, HTSUS, which provides for panty hose, tights, stockings, socks and other hosiery, including stockings for varicose veins, and footwear without applied soles, knitted or crocheted: other: of synthetic fibers: other... other. The rate of duty will be 14.6 percent ad valorem.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Rosemarie Hayward at (646) 733-3064.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

[ATTACHMENT B]

NY K86082

May 20, 2004

CLA-2-61:RR:NC:3:353 K86082

CATEGORY: Classification

TARIFF NO.: 6115.93.9020, 6307.90.9889

Ms. SANDRA TOVAR
CST, INC.
120 C COMMERCE CIRCLE
FAYETTEVILLE, GA 30214

RE: The tariff classification of a half sock and foot pads from Korea or China.

DEAR Ms. TOVAR:

In your letter dated May 11, 2004, on behalf of Sara Lee Intimates & Hosiery, you requested a classification ruling.

Two samples were submitted with your request. Style 0A394 is a ped-style sock item composed of knit mesh nylon fabric. The pad that fits beneath the foot is made of knit 76% nylon/15% polyurethane/9% rubber. The item is worn by slipping the toes under the nylon mesh. The nylon mesh covers the toes and the pad fits beneath the ball of the foot. Affixed ribbons lace around the leg and tie. The item is designed to be worn with open heel shoes.

Style 0A401 is a set of foot pads designed to add comfort under the balls of the feet. The loops are placed around the first toe and the last toe to hold the pad in place. The pads are composed of knit 76% nylon, 15% polyurethane and 9% rubber.

The applicable subheading for the ped-style sock, style 0A394 will be 6115.93.9020, Harmonized Tariff Schedule of the United States (HTS), which provides for "Panty hose...socks...without applies soles...knitted or crocheted: Other: Of synthetic fibers: Other: Other, Other." The duty rate will be 14.6% ad valorem. The applicable subheading for the foot pads, style 0A401 will be 6307.90.9889, Harmonized Tariff Schedule of the United States (HTS), which provides for other made up textile articles, other. The duty rate will be 7% ad valorem. There are no quota restraints or visa requirements on this merchandise.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Kenneth Reidlinger at 646-733-3053.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT C]

NY L85061

June 15, 2005

CLA-2-61:RR:NC:3:353 L85061

CATEGORY: Classification

TARIFF NO.: 6115.93.9020

MR. BRIAN KAVANAUGH
DERINGER LOGISTICS CONSULTING GROUP
1 LINCOLN BLVD, SUITE 225
ROUSES POINT, NY 12979

RE: The tariff classification of foot tubes, toe covers and foot covers from China.

DEAR MR. KAVANAUGH:

In your letter dated May 18, 2005, on behalf of Doris International, you requested a classification ruling.

The submitted samples are Styles 9205 Foot Tubes, 9414, 3876 and 9284 Toe Covers, and 9263 Foot Covers. All styles are "one size."

The Style 9205 Foot Tubes are constructed of knit 89% nylon and 11% elastane. The foot tube measures approximately 2½ by ¾ when flat and fits over the arch of the foot and is commonly worn with mule-style footwear.

The Style 9414 Toe Covers are constructed of sheer knit 100% nylon with a sewn-in foam pad sole cushion. The item covers the toes, front and ball of the foot and is commonly worn with open back-style footwear.

The Style 3876 Toe Covers are constructed of sheer knit 44% polyester, 35% polyurethane and 21% nylon with a sewn in padded sole cushion. The item is open-toed, covers the front and ball of the foot and is commonly worn with open toe/back-style footwear and sandals.

The Style 9284 Toe Covers are constructed of knit 89% nylon, 11% spandex with tread dots on the bottom. The item, commercially known as a toe sock, covers the toes, front and ball of the foot and is commonly worn with open back-style footwear.

The Style 9263 Foot Covers are constructed of knit 88% nylon and 14% spandex. The nude item, commercially known as a ped, covers the foot from heel to toe.

You suggest classification in either subheading 6307.90 or 6117.80.9540. Classification in heading 6307 is for other made up textile articles; merchandise is classified in this heading only when it is not included more specifically in other headings of Section XI. Classification in heading 6117 is for other knitted or crocheted made up clothing accessories. Classification in heading 6115 is for knitted or crocheted panty hose, tights, stockings, socks, other hosiery and footwear without applied soles. General Rule of Interpretation 3(a) states that "The heading which provides the most specific description shall be preferred to headings providing a more general description..." The items are properly classified in heading 6115.

The applicable subheading for the Styles 9205 Foot Tubes, 9414, 3876 and 9284 Toe Covers, and 9263 Foot Covers will be 6115.93.9020, Harmonized Tariff Schedule of the United States (HTS), which provides for "Panty hose, tights, stockings, socks, and other hosiery, including stockings for varicose veins, and footwear without applied soles, knitted or crocheted: Other: Of synthetic fibers: Other: Other, Other. The duty rate will be 14.6% ad valorem.

Styles 9205 Foot Tubes, 9414, 3876 and 9824 Toe Covers, and 9263 Foot Covers fall within textile category designation 632. Quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information as to whether quota and visa requirements apply to this merchandise, we suggest that you check, close to the time of shipment, the “Textile Status Report for Absolute Quotas” available at our web site at www.cbp.gov. In addition, you will find current information on textile import quotas, textile safeguard actions and related issues at the web site of the Office of Textiles and Apparel, at otexa.ita.doc.gov.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Kenneth Reidlinger at 646-733-3053.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT D]

HQ H242873
CLA-2 OT: RR: CTF: TCM 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, 2004¹, and NY L85061, dated June 15, 2005², 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.

FACTS:

In NY N222103, CBP described the merchandise as follows:

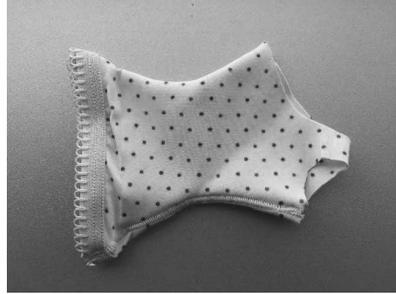
Item 40332, High Arch Sleeve; Item 40333/40335, Forefoot Camisole and Bunionette; Item 40334, Stay and separate; and Item 40352, Arch Sleeve . . . constructed of 84% nylon and 16% spandex knit fabric. These items are used to add comfort to the foot while walking.

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 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:

¹ 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.

² 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.”

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/.

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,

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 AN AQUA GLOBE WATERING
SYSTEM (GLASS PLANT WATERING BULB)**

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 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) intends to revoke 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 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 July 7, 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: Alben Peters, Chemicals, Petroleum, Metals and Miscellaneous 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, this notice advises interested parties that CBP is proposing to revoke one ruling letter pertaining to the tariff classification of the Aqua Globe (glass plant watering bulb). Although in this notice, CBP is specifically referring to New York Ruling Letter (“NY”) N020311, dated December 13, 2007 (Attachment A), this notice covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the NY N020311 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 N020311, CBP classified an Aqua Globe (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 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 proposing to revoke NY N020311 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H258963, set forth as Attachment B to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: May 08, 2017

Sincerely,

ALLYSON MATTANAH

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N020311

December 13, 2007

CLA-2-98:OT:RR:E:NC:N1:106

CATEGORY: Classification

TARIFF NO.: 7020.00.6000, 9817.00.5000

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

RE: The tariff classification of an Aqua Globe watering system from China.

DEAR MS. CROSSLEY:

In your letter dated November 29, 2007 you requested a tariff classification ruling. You included a description and photos with your request.

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.

The applicable subheading for the Aqua Globe will be 7020.00.6000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other articles of glass: other. The general rate of duty will be 5 percent ad valorem.

Subheading 9817.00.5000, HTSUS, is the provision covering machinery, equipment, or implements to be used in agricultural or horticultural pursuits. This is an actual use provision subject to the certification process found in Sections 10.131 – 10.139 of the Customs Regulations. The use of the Aqua Globe satisfies a horticultural pursuit. As a result, these items will also be classified in the alternative subheading of 9817.00.5000, HTSUS, subject to certification. The conditional rate of duty will be free.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Mark Palasek at 646-733-3013.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT B]

HQ H258963
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, this ruling revokes NY N020311 pursuant to the following analysis.

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:

7013	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:
7013.99	Other:
7020.00	Other articles of glass:
9817.00.50	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 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.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

19 CFR PART 177**WITHDRAWAL OF PROPOSED REVOCATION OF TWO RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF NON-STRUCTURAL LAMINATED FIBERBOARD CEILING, WALL, AND FLOORING PANELS**

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

ACTION: Withdrawal of notice of proposed revocation of treatment relating to the tariff classification of non-structural laminated fiberboard ceiling, wall, and flooring panels.

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 withdrawing its proposed revocation of two ruling letters concerning the tariff classification of certain non-structural laminated fiberboard ceiling, wall, and flooring panels under the Harmonized Tariff Schedule of the United States (HTSUS). Notice of the proposed action was published in the *Customs Bulletin*, Vol. 50, No. 25, on June 22, 2016. No comments were received in response to the proposed revocation. After further review, CBP has determined that the classification of the merchandise in the subject rulings was correct and that revocation of the rulings is not necessary.

EFFECTIVE DATE: This action is effective immediately.

FOR FURTHER INFORMATION CONTACT: Laurance W. Frierson, Tariff Classification and Marking 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) (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility**.” These concepts are premised on the idea that in order to maximize voluntary

compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations.

Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the 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, CBP published a notice in the *Customs Bulletin*, Vol. 50, No. 25, on June 22, 2016, proposing to revoke two ruling letters, New York Ruling Letter ("NY") N235680, dated December 20, 2012, and NY N238576, dated March 22, 2013, in which CBP classified certain non-structural laminated fiberboard ceiling, wall, and flooring panels under heading 4411, HTSUS, which provides for "Fiberboard of wood or other ligneous materials, whether or not bonded with resins or other organic substances." In the Notice, CBP proposed to classify the merchandise under heading 4418, HTSUS, which provides for "Builders' joinery and carpentry of wood, including cellular wood panels and assembled flooring panels; shingles and shakes." No comments were received in response to the proposed revocation.

Upon further examination of guidance provided by U.S. courts concerning the applicable tariff provisions, CBP has determined that the non-structural laminated fiberboard ceiling, wall, and flooring panels are properly classified under heading 4411, HTSUS. Accordingly, CBP has determined that ruling letters NY N235680 and N238576 are correct, and that revocation of the rulings is not necessary.

Pursuant to 19 U.S.C. § 1625(c) and 19 C.F.R. 19 U.S.C. § 177.7(a), which states, in relevant part, that "[n]o ruling letter will be issued... in any instance in which it appears contrary to the sound administration of the Customs and related laws to do so," CBP is withdrawing its proposed revocation of ruling letters NY N235680 and N23576.

In accordance with 19 U.S.C. § 1625(c), this action is effectively immediately upon publication in the *Customs Bulletin*.

Dated: May 04, 2017

GREG CONNOR
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

**PROPOSED REVOCATION OF TWO RULING LETTERS
AND MODIFICATION OF ONE RULING LETTER AND
REVOCATION 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 proposed revocation of two ruling letters and proposed modification of one ruling letter and 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) intends to revoke two ruling letters concerning tariff classification of Chelal Fe (CAS 12389-75-2 and CAS 85959-68-8) and modify one ruling letter concerning the 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 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 July 7, 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: Alben Peters, Chemicals, Petroleum, Metals and Miscellaneous 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, this notice advises interested parties that CBP is 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). Although in this notice, CBP is specifically referring to New York Ruling Letter (“NY”) A88070, dated February 5, 1997 (Attachment A), NY A87653, dated September 26, 1996 (Attachment B) and NY H86531, dated February 4, 2002 (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 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: Other."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke NY A88070 and NY A87653, and to modify NY H86531, and to revoke any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter ("HQ") H265102, 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: May 08, 2017

Sincerely,

ALLYSON MATTANAH

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

NY A88070

February 5, 1997

CLA-2-29:RR:NC:2:236 A88070

CATEGORY: Classification

TARIFF NO.: 2942.00.5000

MR. ALAN RUBIN
BMS MICRO-NUTRIENTS NV
5405 ALTON PARKWAY, SUITE 5-A-612
IRVINE, CALIFORNIA 92714

RE: The tariff classification of Chelal Fe from Belgium.

DEAR MR. RUBIN:

In your letter dated September 24, 1996, you requested a tariff classification ruling.

The sample, Chelal Fe, is composed of an aqueous solution of either [N,N-Bis[2-[Bis(carboxymethyl) amino] ethyl] glycinato(5)]-ferrate(2-) sodium hydrogen or [N,N-Bis[2-[Bis(carboxymethyl) amino] ethyl] glycinato (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 applicable subheading for Chelal Fe whether made from either one, but not a mixture of both, of the above mentioned chemicals will be 2942.00.5000, Harmonized Tariff Schedule of the United States, which provides for other organic compounds: Other. The rate of duty will be 3.7 percent ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist V. Gaulario at 212-466-5744.

Sincerely,

GWENN KLEIN KIRSCHNER

Chief,

Special Products Branch

National Commodity

Specialist Division

[ATTACHMENT B]

NY A87653

September 26, 1996

CLA-2-29:RR:NC:FC:239 A87653

CATEGORY: Classification

TARIFF NO.: 2942.00.5000

MR. ALAN RUBIN
BMS MICRO-NUTRIENTS NV
5405 ALTON PARKWAY, SUITE 5-A-612
IRVINE, CA 92714

RE: The tariff classification of Chelal Fe from Belgium.

DEAR RUBIN:

In your letter dated June 29, 1996, you requested a tariff classification ruling for Chelal Fe. 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 applicable subheading will be 2942.00.5000, Harmonized Tariff Schedule of the United States (HTS), which provides for Other organic compounds: Other. The rate of duty will be 3.7 percent ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Thomas Brady at 212-466-5747.

Sincerely,

ROGER J. SILVESTRI

Director

National Commodity

Specialist Division

[ATTACHMENT C]

NY H86531

February 4, 2002

CLA-2-29:RR:NC:2:239 H86531

CATEGORY: Classification

TARIFF NO.: 2942.00.1000, 2942.00.5000

MS. KATHLEEN M. MURPHY
 KATTEN MUCHIN ZAVIS
 525 WEST MONROE ST., SUITE 1600
 CHICAGO, IL 60661-3693

RE: The tariff classification of Dissolvine® Q-Fe-6 (CAS 16455-61-1);
 D-Fe-6 (CAS 85959-68-8); D-Fe-11 (CAS 12389-75-2); and AMFE-52
 (CAS 68413-60-5) from the Netherlands.

DEAR MS. MURPHY:

In your letter dated December 4, 2001, on behalf of your client Akzo Nobel Functional Chemicals LLC, you requested a tariff classification ruling for the above chemicals.

The applicable subheading for Q-Fe-6 (Chemical Name - Ferrate(1-), [[a,a'-[1,2-ethanediyldi(imino-kN)]bis[2-(hydroxy-kO)benzeneacetato-kO]](4-)]-, sodium), which you have stated is used in agriculture and horticulture and in hydroponics applications, will be 2942.00.1000, Harmonized Tariff Schedule of the United States (HTS), which provides for other organic compounds: aromatic: other. The rate of duty will be 7.9 percent ad valorem.

The applicable subheading for 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-); and AMFE-52 (Chemical Name - Ferrate(2-), [[N,N'-1,2-ethanediyldi[N-[(carboxy-kO)methyl] glycinato-kN,kO]](4-)]hydroxy-, diammonium), all of which are used in agriculture and horticulture, will be 2942.00.5000, Harmonized Tariff Schedule of the United States (HTS), which provides for other organic compounds. The rate of duty will be 3.7 percent ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Andrew Stone at 646-733-3032.

Sincerely,

ROBERT B. SWIERUPSKI,
 Director

National Commodity Specialist Division

[ATTACHMENT D]

HQ H265102
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, this ruling revokes NY A88070 and NY A87653, and modifies NY H86531 pursuant to the following analysis.

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] glycinato(5)]-ferrate(2-) sodium hydrogen or [N,N-Bis[2-[Bis(carboxymethyl) amino] ethyl] glycinato (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-κO)methyl]amino-κN]ethyl]-N-[2-[(S)-[(carboxy-κO)methyl](carboxymethyl)amino κN]ethyl]glycinato(5-)-κN,κO]-ferrate(2-), diammonium); D-FE-11 (Chemical Name- [rel-[N(R)]-N-[2-[bis[(carboxy-κO)methyl]amino-κN]ethyl]-N-[2-[(S)-[(carboxy-κO)methyl] (carboxymethyl)amino-κN]ethyl] glycinato(5-)-κN,κO]-, 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-κO)methyl]amino-κN]ethyl]-N-[2-[(S)-[(carboxy-κO)methyl](carboxymethyl)amino-κN]ethyl]glycinato(5-)-κN,κO]-, sodium hydrogen (1:1:1)
CAS Number:	12389-75-2; Not listed in the Chemical Appendix to the HTSUS (2017) Fertilizer
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-κO)methyl]amino-κN]ethyl]-N-[2-[(S)-[(carboxy-κO)methyl](carboxymethyl)amino-κN]ethyl]glycinato(5-)-κN,κO]-, 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 subchapter 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.¹ The parent of this family of ligands is the amino acid glycine.² 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.”

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>.

¹ 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).

² See *id.*

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.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

AGENCY INFORMATION COLLECTION ACTIVITIES:**Ship's Store Declaration**

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.

DATES: Comments are encouraged and will be accepted (no later than July 21, 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 1651-0018 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 collec-

tion 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: Ship's Stores Declaration.

OMB Number: 1651-0018.

Form Number: CBP Form 1303.

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours. There is no change to the information collected or CBP Form 1303.

Type of Review: Extension (without change).

Affected Public: Businesses.

Abstract: CBP Form 1303, Ship's Stores Declaration, is used by the carriers to declare articles to be retained on board the vessel, such as sea stores, ship's stores (e.g. alcohol and tobacco products), controlled narcotic drugs or bunker fuel in a format that can be readily audited and checked by CBP. This form collects information about the ship, the ports of arrival and departure, and the articles on the ship. CBP Form 1303 form is provided for by 19 CFR 4.7, 4.7a, 4.81, 4.85 and 4.87 and is accessible at: <http://www.cbp.gov/sites/default/files/documents/CBP%20Form%201303.pdf>.

Estimated Number of Respondents: 8,000.

Estimated Number of Responses per Respondent: 13.

Estimated Number of Total Annual Responses: 104,000.

Estimated Total Annual Burden Hours: 26,000.

Dated: May 17, 2017.

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

[Published in the Federal Register, May 22, 2017 (82 FR 23281)]

