

U.S. Customs and Border Protection



19 CFR PART 177

REVOCAION OF ONE RULING LETTER AND REVOCAION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF AN ORNAMENTAL CERAMIC ARTICLE

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

ACTION: Notice of revocation of one ruling letter and of revocation of treatment relating to the tariff classification of an ornamental ceramic article.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking one ruling letter concerning the tariff classification of an ornamental ceramic article 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. 32, on August 9, 2017. No comments supporting the proposed revocation were received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after March 12, 2018.

FOR FURTHER INFORMATION CONTACT: Suzanne Kingsbury, Electronics, Machinery, Automotive and International Nomenclature Branch, Regulations and Rulings, Office of Trade, at (202) 325–0113.

SUPPLEMENTARY INFORMATION:**BACKGROUND**

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with 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 19 U.S.C. §1625(c)(1), a notice was published in the *Customs Bulletin*, Vol. 51, No. 32, on August 9, 2017, proposing to revoke one ruling letter pertaining to the tariff classification of an ornamental ceramic article. 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 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the comment period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this notice.

In New York Ruling Letter ("NY") N201236, dated February 7, 2012, CBP classified an ornamental ceramic article marketed as the "Majestic Pride Elephant & Baby Tea Light Holder" in heading 9405, HTSUS, specifically in subheading 9405.50.40, HTSUS, which provides for "other non-electric lamps and lighting fittings." CBP has reviewed NY N201236 and has determined the ruling letter to be in error. It is now CBP's position that the "Majestic Pride Elephant & Baby Tea Light Holder" is properly classified, in heading 6913, HTSUS, specifically in subheading 6913.90.50, HTSUS, which provides for "other ornamental ceramic articles."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY 201236 and revoking or modifying any other ruling not specifically identified to

reflect the analysis contained in Headquarters Ruling Letter (“HQ”) H274832, set forth as an attachment to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: September 19, 2017

ALLYSON MATTANAH
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachment

HQ H274832

September 19, 2017

CLA-2 OT:RR:CTF:TCM H274832 SKK

CATEGORY: Classification

TARIFF NO.: 6913.90.50

MS. DONNA ROBBINS
PARTYLITE WORLDWIDE, INC.
59 ARMSTRONG ROAD
PLYMOUTH, MA 02360

RE: Revocation of NY N201236; tariff classification of Majestic Pride Elephant and Baby Tea Light Holder; ornamental ceramic article.

DEAR MS. ROBBINS:

This letter pertains to New York Ruling Letter (NY) N201236, issued to you on February 7, 2012, in which U.S. Customs and Border Protection (CBP) classified a ceramic article described as the “Majestic Pride Elephant & Baby Tea Light Holder” under subheading 9405.50.40, Harmonized Tariff Schedule of the United States (HTSUS), as other non-electric lamps and lighting fittings. Upon reconsideration, CBP has determined NY N201236 to be in error. For the reasons set forth below, NY N201236 is hereby revoked.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice proposing to revoke NY N201236 was published on August 9, 2017, in Volume 51, Number 32 of the Customs Bulletin. No comments were received in opposition to the proposed action.

FACTS:

The subject article is comprised of a rectangular base measuring approximately 9 inches wide by 4 inches deep by 0.5 inches tall featuring two ceramic elephants. A circular indentation measuring approximately 1.5 inches in diameter is located at the lower right corner of the base. The two ceramic elephants are finished with a metallic bronze glaze and respectively measure approximately 5 inches tall and 3 inches tall. The article is designed for placement onto a flat surface.

LAW AND ANALYSIS:

Classification under the HTSUS is governed in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods is 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 are then 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 two headings under consideration are, in pertinent part, as follows:

6913 Statuettes and other ornamental ceramic articles:

9405 Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included:

Note 1(l) to Chapter 94 excludes “decorations (other than electric garlands) such as Chinese lanterns (heading 9505)” from the chapter.

The EN to 94.05 provides, in pertinent part:

**(I) LAMPS AND LIGHTING FITTINGS,
NOT ELSEWHERE SPECIFIED OR INCLUDED**

“[L]amps and lighting fittings of this group can be constituted of any material (**excluding** those materials described in Note 1 to Chapter 71) and use any source of light (candles, oil, petrol, paraffin (or kerosene), gas, acetylene, electricity, *etc.*). Electrical lamps and strip fixtures, a starter or a ballast.

This heading covers in particular:

(1) **Lamps and lighting fittings normally used for the illumination of rooms**, *e.g.* : hanging lamps; bowl lamps; ceiling lamps; chandeliers; wall lamps; standard lamps; table lamps; bedside lamps; desk lamps; night lamps; water-tight lamps.

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Note 2(ij) to Chapter 69 provides that this chapter does not cover

“[A]rticles of chapter 94 (for example, furniture, lamps and lighting fittings, prefabricated buildings;... .” Therefore, the initial determination is whether the subject article is classifiable under heading 9405, HTSUS, as a lamp or lighting fitting.

Heading 9405, HTSUS, is an *eo nomine* provision that generally includes all forms of the named articles. As noted above, the EN to heading 9405 includes “[L]amps and lighting fittings *normally* used for the illumination of rooms” [emphasis added]. The EN to heading 9405 also defines “lamps and lighting fittings” to include items that “use any source of light” including “candles.” Heading 9405 therefore includes non-electrical lamps and lighting fittings such as those that use candles for illuminations.

CBP does not view the subject article as *prima facie* classifiable in heading 9405, HTSUS. While the article does feature a circular indentation in its base, no form of illumination is provided with the good. Any article of the size and shape of the indentation, including a narrow vase, other container, or tea light, could be placed in the indentation. Were a tea light placed in the indentation, it would primarily light the decorative article itself, enhancing the decorative nature of the article. Hence, the Majestic Pride Elephant & Baby Tea Light Holder is a decorative article with little utility or ability to illuminate a room in its condition as imported. As such, the subject merchandise is precluded from classification in Chapter 94 by Note 1(l) which excludes decorations.

It is further noted that in Headquarters Ruling Letter (HQ) H015087, dated October 26, 2007, CBP classified an article similar in construction to the subject merchandise, described as a Pilgrim Votive Holder made of calcium carbonate derived from stone material and agglomerated with plastics, as an article of cement. In that ruling, CBP determined that the lighting characteristics of the article simply enhanced the decorative nature of the article.

The subject article is an ornamental ceramic article. In the original submission from the importer in NY N201236, there was no claim that the article was made from porcelain or bone china, nor does it appear from a photograph that the article featured a reddish-colored earthenware body. Accordingly, the article is classifiable under heading 6913.90.50, HTSUS, which provides for “[S]tatuettes and other ornamental ceramic articles: Other: Other: Other... .”

HOLDING:

By application of GRI 1, the Majestic Pride Elephant & Baby Tea Light Holder is classified in subheading 6913.90.50, HTSUS, which provides for “[S]tatuettes and other ornamental ceramic articles: Other: Other: Other... .” The 2017 column one, general rate of duty is 6% *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY N201236, dated February 7, 2012, is hereby revoked.

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

Sincerely,

ALLYSON MATTANAH

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

19 CFR PART 177**REVOCAION OF ONE RULING LETTER AND
REVOCAION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF WOODEN CORNER
BLOCK CONSTRUCTED OF TWO PIECES OF WOOD
LAMINATED TOGETHER**

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

ACTION: Notice of revocation of one ruling letter and of revocation of treatment relating to the tariff classification of wooden corner block constructed of two pieces of wood laminated together.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking one ruling letter concerning tariff classification of a wooden corner block constructed of two pieces of wood laminated together 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. 32, on August 9, 2017. No comments were received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after March 12, 2018.

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

SUPPLEMENTARY INFORMATION:**BACKGROUND**

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with 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 19 U.S.C. § 1625(c)(1), a notice was published in the *Customs Bulletin*, Vol. 51, No. 32, on August 9, 2017, proposing to revoke one ruling letter pertaining to the tariff classification of a wooden corner block constructed of two pieces of wood laminated together. 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 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the comment period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this notice.

In NY N224237, CBP classified the wooden corner block constructed of two pieces of wood laminated together in heading 9401, HTSUS, specifically in subheading 9401.90, HTSUS, which provides for "Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof: Parts." CBP has reviewed NY N224237 and has determined the ruling letter to be in error. It is now CBP's position that the wooden corner block constructed of two pieces of wood laminated together is properly classified, in heading 4421, HTSUS, specifically in subheading 4421.99.94, HTSUS, which provides for "Other articles of wood: Other: Other: Other: Edge-glued lumber."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY N224237 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter ("HQ") H278497, set forth as an attachment to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: September 14, 2017

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H278497

September 14, 2017

OT:RR:CTF:CPM H278497 APP

CATEGORY: Classification

TARIFF NO.: 4421.99.94

Ms. ANGIE COURTEAU
SENIOR CUSTOMS SPECIALIST
LZB MANUFACTURING, INC.
ONE LA-Z-BOY DR.
MONROE, MI 48162

RE: Revocation of NY N224237; Tariff classification of wooden corner block constructed of two pieces of wood laminated together

DEAR Ms. COURTEAU:

This is in response to LZB Manufacturing, Inc.'s ("requestor" or "LZB") letter of March 7, 2016, requesting reconsideration of New York Ruling Letter ("NY") N224237, dated July 19, 2012, regarding the classification, under the Harmonized Tariff Schedule of the United States ("HTSUS"), of a wooden corner block, which was not a solid block cut from a single piece of wood. In NY N224237, U.S. Customs and Border Protection ("CBP") classified the wooden corner block in heading 9401, and more specifically in subheading 9401.90, HTSUS, which provides for "Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof: Parts." We have determined that this ruling is in error with respect to the classification of the wooden corner block. Therefore, for the reasons set forth below we hereby revoke NY N224237.

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. 32, on August 9, 2017, proposing to revoke NY N224237 and to revoke any treatment accorded to substantially identical transactions. No comments were received in response to this notice.

FACTS:

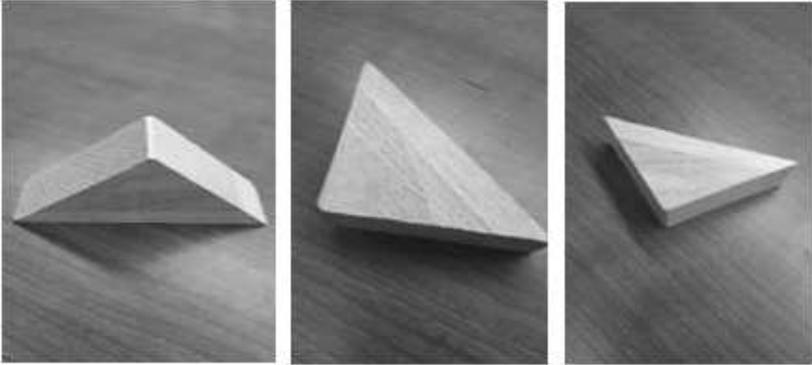
The instant wooden corner block is a triangular piece of wood constructed of two pieces of wood laminated together. The grains of these two pieces are not parallel.

NY N224237 described the wooden corner block as follows:

Item 91000012-00 is a wooden corner block used in the frame assembly of a chair, couch and other similar furniture. The corner block is composed of poplar, and is a triangular prism with a hypotenuse of 5.5 centimeters and sides of 4 centimeters. These blocks are used in the frame assembly to reinforce the frame at stress points. Depending on the application, corner blocks are either glued or glued and stapled in place. Corner blocks are predominately used in the back frame subassembly.

The wooden corner block sample submitted with the request for reconsideration has the same use but is "composed of soft maple, and is in the shape of a triangular prism with a hypotenuse of 3-1/8 inches, sides of 1-1/2 inches,

and a thickness of 13/16 or 1–1/16 inches.” Below are photographs of the submitted sample.



ISSUE:

Whether the wooden corner block is classifiable as wood sawn or chipped lengthwise, sliced or peeled, of a thickness exceeding 6 mm under heading **4407**, HTSUS, or as other articles of wood under heading **4421**, HTSUS, or as part of seats under heading **9401**, HTSUS.

LAW AND ANALYSIS:

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

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. 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.

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.

AUSR 1 provides, in relevant part, that:

1. In the absence of special language or context which otherwise requires— . . . (c) a provision for parts of an article covers products solely or principally used as a part of such articles but a provision for “parts” or “parts and accessories” shall not prevail over a specific provision for such part or accessory; . . .

The HTSUS headings under consideration are as follows:

- 4407** Wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or end-jointed, of a thickness exceeding 6 mm:
- 4421** Other articles of wood:
- 9401** Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof:

Note 1(o) to Chapter 44, HTSUS, states that this chapter does not cover “**Articles** of chapter 94 (for example, furniture, lamps and lighting fittings, prefabricated buildings).” (emphasis added).

Note 2 to Chapter 94, HTSUS, states that:

The articles (other than parts) referred to in headings 9401 to 9403 are to be classified in those headings only if they are designed for placing on the floor or ground. The following are, however, to be classified in the above-mentioned headings even if they are designed to be hung, to be fixed to the wall or to stand one on the other: . . . (b) Seats and beds.

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 general notes to EN 44 state that Chapter 44 covers, among other things:

(2) Sawn, chipped, sliced, peeled, planed, sanded, end-jointed, e.g., finger-jointed (i.e., jointed by a process whereby shorter pieces of wood are glued together end to end, with joints resembling interlaced fingers, in order to obtain a greater length of wood) and continuously shaped wood (headings 44.07 to 44.09).

The general notes to EN 44 also state that “As a general rule, building panels composed of layers of wood and plastics are classified in this Chapter. Classification of these panels depends on their external surface or surfaces which normally give them their essential character in terms of their intended uses . . . Articles of wood presented unassembled or disassembled are classified with the corresponding complete articles, provided the parts are presented together”

EN 44.07 states, in relevant part, that:

With a few exceptions, this heading covers all wood and timber, of any length but of a thickness exceeding 6 mm, sawn or chipped along the general direction of the grain or cut by slicing or peeling. Such wood and timber includes sawn beams, planks, flitches, boards, laths, etc., and products regarded as the equivalent of sawn wood or timber, which are obtained by the use of chipping machines and which have been chipped to extremely accurate dimensions, a process which results in a surface better than that obtained by sawing and which thereby renders subsequent planing unnecessary. It also includes sheets of sliced or peeled (rotary cut) wood, and wooden blocks, strips and friezes for flooring, **other than** those which have been continuously shaped along any of their edges, ends or faces (**heading 44.09**).

It is to be noted that the wood of this heading need not necessarily be of rectangular (including square) section nor of uniform section along the length.

The products of this heading may be planed (whether or not the angle formed by two adjacent sides is slightly rounded during the planing process), sanded or end-jointed, e.g. finger-jointed (see the General Explanatory Note to this Chapter).

EN 44.21 states, in relevant part, that:

This heading covers all articles of wood manufactured by turning or by any other method, or of wood marquetry or inlaid wood, **other than** those specified or included in the preceding headings and **other than** articles of a kind classified elsewhere irrespective of their constituent material (see, for example, Chapter Note 1).

It also covers wooden parts of the articles specified or included in the preceding headings, **other than** those of **heading 44.16**.

The articles of this heading may be made of ordinary wood or of particle board or similar board, fibreboard, *laminated wood* or densified wood (see Note 3 to this Chapter).

The heading includes:

(3) Theatrical scenery; joiners' benches; tables with a screw device for holding the cross threads, used in the hand sewing of books; ladders and steps; trestles; letters, road signs, figures; signs; labels for horticulture, etc.; toothpicks; trellises and fencing panels; level crossing gates; roller blinds, Venetian and other blinds; spigots; templates; rollers for spring blinds; clothes hangers; washing boards; ironing boards; clothes pegs; *dowel pins*; oars, paddles, rudders; coffins

(emphasis added).

EN 94 (notes on parts) states, in relevant part, that:

This Chapter only covers *parts*, whether or not in the rough, **of the goods of headings 94.01 to 94.03 and 94.05**, when identifiable by their shape or other specific features as ***parts designed solely or principally for an article of those headings***. They are classified in this Chapter when not more specifically covered elsewhere.

(emphasis added).

EN 94.01 provides, in relevant part, that:

. . . . The heading also covers ***identifiable parts*** of chairs or other seats, such as backs, bottoms and arm-rests (whether or not upholstered with straw or cane, stuffed or sprung), and spiral springs assembled for seat upholstery

(emphasis added).

The requestor argues that by application of AUSR 1(c), the corner block is classifiable as wood sawn lengthwise under heading 4407, HTSUS and not as

part of seats under heading 9401, HTSUS.¹ LZB asserts that the corner block is not drilled, notched, shaped, or otherwise worked to render itself identifiable as a part solely or principally for use as a furniture part, and is more specifically described under heading 4407, HTSUS.

Chapter 44, HTSUS, provides for, among other things, wood and articles of wood. This chapter is structured so that less processed wood appears at the beginning of the chapter followed by more advanced wood in later headings within the same chapter. For example, heading 4407, HTSUS, is a general provision for wood that has not been processed in any way, other than provided for under that heading, and heading 4421, HTSUS, is a basket provision for articles of wood that cannot be classified elsewhere in Chapter 44, HTSUS.

The terms of heading 4407, HTSUS, allow only for end-jointing of wood to increase length and do not include edge joining or other lamination to increase width or other dimensions. See General notes to EN 44. In *Millenium Lumber Distrib. Ltd. v. United States*, 558 F.3d 1326 (Fed. Cir. 2009), the Court of Appeals for the Federal Circuit held that lumber cut to various even-foot lengths ranging from 5 to 20 feet was classifiable in heading 4407, HTSUS. The merchandise included 2 x 3, 2 x 4, and 2 x 6 spruce/pine/fir lumber of various grades, cut to various even-foot lengths ranging from 5 to 20 feet. Each board had a 90 degrees square-cut end. Some or all of the imported lumber required significant additional processing in order to be assembled into completed wood trusses and was not identifiable as particular pieces of any specific finished truss. In NY J80830, dated March 11, 2003, the lumber pieces had a uniform rectangular cross section and were recognizable only as sawn wood. The instant corner block is precluded from classification in heading 4407, HTSUS because unlike the lumber in *Millenium Lumber Distrib.*, *supra*, and NY J80830, the instant corner block is constructed of two pieces of wood laminated together with grains that are not parallel.

The remaining classification alternative is heading 4421, HTSUS, which provides for other articles of wood. Heading 4421, HTSUS covers “all articles of wood manufactured by turning or by any other method, or of wood marquetry or inlaid wood, **other than** those specified or included in the preceding headings and **other than** articles of a kind classified elsewhere irrespective of their constituent material.” EN 44.21. The articles of this heading may be made of ordinary wood or of particle board or similar board, fibreboard, laminated wood or densified wood. Dowel pins are among the exemplars that are listed in EN 44.21(3). The term “dowel pin” is not defined in the HTSUS. It is well-established that when a tariff term is not defined by the HTSUS or its legislative history, its correct meaning is its common or commercial meaning, which can be ascertained by reference to “dictionaries, scientific authorities, and other reliable information sources” and “lexicographic and other materials.” *Rocknell Fastener, Inc. v. United States*, 267 F.3d 1354, 1356–57 (Fed. Cir. 2001) (citations omitted). The Free Dictionary at <http://www.thefreedictionary.com> defines the term “dowel pin” as “a fastener that is inserted into holes in two adjacent pieces and holds them together.” The subject wooden corner block is akin to the wooden dowel pins enumerated in

¹ LZB cites to NY I85993, dated September 27, 2002 (panels of machined and cut to size plywood to be used as the ends of kitchen cabinets classified in Chapter 44, under heading 4412, HTSUS) and NY J80830, dated March 11, 2003 (sawn wood boards and timbers composed of lumber with a uniform rectangular cross section cut to specific lengths used in outdoor playground sets classified in heading 4407, HTSUS).

EN 44.21(3). Similar to wooden dowel pins, which are used to join all types of furniture,² the corner block is used to join and strengthen the corners of all types of furniture, not just chairs of heading 9401, HTSUS. Since the wooden corner block is made from multiple pieces glued together and is not included in any other headings of Chapter 44, HTSUS, it is classifiable under heading 4421, HTSUS.

Lastly, Chapter 94 only covers parts of heading 9401, HTSUS when identifiable by their shape or other specific features as parts “designed solely or principally” for an article of heading 9401, HTSUS. EN 94 (notes on parts). Furniture parts are classified in Chapter 94, HTSUS when not more specifically covered elsewhere. The wooden corner block is an interchangeable wooden part of general use in furniture of headings 9401 through 9403, HTSUS. It is a cut, triangular shaped block of wood that is not dedicated for a particular article of furniture such as seats of heading 9401, HTSUS.

Therefore, the instant wooden corner block is classified in heading 4421, HTSUS.

HOLDING:

By application of GRIs 1 and 6, the subject wooden corner block is classified under heading 4421, HTSUS, specifically under subheading 4421.99.94, HTSUS, which provides for “Other articles of wood: Other: Other: Other: Edge-glued lumber.”

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 at <https://hts.usitc.gov/current>.

EFFECT ON OTHER RULINGS:

NY N224237, dated July 19, 2012, is hereby REVOKED.

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

Sincerely,

ALLYSON MATTANAH

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

² See generally IEEE Engineering 360, Dowel Pins Information, at http://www.globalspec.com/learnmore/mechanical_components/mechanical_fasteners/dowel_pins (last viewed May 5, 2017).

19 CFR PART 177**REVOCAION OF TWO RULING LETTERS AND
REVOCAION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF PLASTIC AIRBEDS**

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

ACTION: Notice of revocation of two ruling letters and of revocation of treatment relating to the tariff classification of plastic airbeds.

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 plastic airbeds 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. Vol. 51, No. 29, on July 19, 2017. Five comments opposing the proposed action were received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after March 12, 2018.

FOR FURTHER INFORMATION CONTACT: Nicholai Diamond, Chemicals, Petroleum, Metals and Miscellaneous Classification Branch, Regulations and Rulings, Office of Trade, at (202) 325–0292.

SUPPLEMENTARY INFORMATION:**BACKGROUND**

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with 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 19 U.S.C. §1625(c)(1), a notice was published in the *Customs Bulletin*, Vol. 51, No. 29, on July 19, 2017, proposing to revoke two ruling letters pertaining to the tariff classification of plastic airbeds. 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 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the comment period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this notice.

In New York Ruling Letter ("NY") N249247, dated February 10, 2014, and NY K88969, dated September 10, 2004, CBP classified plastic airbeds in heading 9403, HTSUS, specifically in subheading 9403.70.80, HTSUS, which provides for "Other furniture and parts thereof: Furniture of plastics: Other." CBP has reviewed NY N249247 and NY K88969 and has determined the ruling letters to be in error. It is now CBP's position that the subject airbeds are properly classified, by operation of GRI 1, in heading 3926, HTSUS, specifically in subheading 3926.90.75, HTSUS, which provides for "Other articles of plastics and articles of other materials of heading 3901 to 3914: Other: Pneumatic mattresses and other inflatable articles, not elsewhere specified or included."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY N249247 and NY K88969 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter ("HQ") H265674, set forth as an attachment to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: November 20, 2017

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

Attachment

HQ H265674

November 20, 2017

CLA-2 OT:RR:CTF:CPM H265674 NCD

CATEGORY: Classification

TARIFF NO.: 3926.90.7500

PAT FUMAGALLI
PRESIDENT AND CEO
BESTWAY USA, INC.
3249 E. HARBOUR DRIVE
PHOENIX, AZ 85043

RE: Revocation of NY N249247, dated February 10, 2014, and NY K88969, dated September 10, 2004; tariff classification of plastic airbeds

DEAR MR. FUMAGALLI:

This is in reference to New York Ruling Letter (NY) N249247, issued to Bestway USA, Inc. (“Bestway”) on February 10, 2014, involving classification of the Bestway Comfort Quest Premium Air Bed/Queen under the Harmonized Tariff Schedule of the United States (HTSUS). NY N249247 was issued by U.S. Customs and Border Protection (CBP) in response to Bestway’s letter, dated February 10, 2014, requesting classification of the subject airbed under the HTSUS (“ruling request”). We have reviewed NY N249247, determined that it is incorrect, and, for the reasons set forth below, are revoking that ruling.

We have also reviewed NY K88969, dated September 10, 2004, which similarly involves classification of a plastic “airbed” under the HTSUS. As with NY N249247, we have determined that NY K88969 is incorrect and, for the reasons set forth below, are revoking that ruling.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice of the proposed action was published in the Customs Bulletin, Vol. 51, No. 29, on July 19, 2017. Five comments opposing the instant action were received in response to the notice and are addressed below.

FACTS:

Both NY N249247 and NY K88969 involve products designated “airbeds.” In NY N249247, CBP described the product at issue as follows:

SKU number 67404 is described as the Bestway Comfort Quest Premium Air Bed/Queen. The Air Bed is an inflatable queen size bed which can be used for sleeping accommodations for the home or when traveling away, and is designed to be placed on the floor. The Air Bed measures 80 inches in length by 64 inches in width by 19 inches in height when inflated. The Air Bed is made of Polyvinyl chloride (PVC) with flocking material on top, has a built-in pillow and features two inflatable chambers of which the lower chamber serves as a box-spring while the upper chamber serves as a mattress. The Air Bed is supported by internal I-Beam construction which provides for the bed’s sturdiness. Complementing the Air bed is a heavy duty repair patch and a travel bag. This item has a built-in 110–120V electric air pump for ease of inflating.

A bill of materials enclosed with Bestway’s ruling request indicates that the product is made up almost entirely of polyvinyl chloride (PVC) and the

plasticizer diisononyl phthalate (DINP), and contains small amounts of rayon on its uppermost surface. Our research indicates that its internal I-beams are similarly made up of PVC. *See* U.S. Patent App. No. 14/566,075 (filed Dec. 10, 2014); U.S. Patent App. No. 11/789,211 (filed Apr. 23, 2007).

In NY K88969, the product at issue is described as follows:

The merchandise to be imported is a Portable Air Bed, Style No. 248486. The item measures 80”L x 60”W x 22”H when inflated and features dual chamber construction. The upper chamber serves as a mattress with adjustable firmness. The lower chamber doubles as a box spring platform that provides extra firmness and support for a traditional bed. The item is composed of 100% plastic vinyl with a flocked, waterproof nylon top. Included are a fast fill pump and a duffel bag with shoulder strap for transport.

In both NY N249247 and NY K88969, the subject airbeds were classified in heading 9403, HTSUS. They were specifically classified in subheading 9403.70.80, HTSUS, which provides for “Other furniture and parts thereof: Furniture and plastics: Other.”

ISSUE:

Whether the subject plastic airbeds are classified as “other articles of plastics” in heading 3926, HTSUS, or as “other furniture” in heading 9403, HTSUS?

LAW AND ANALYSIS:

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

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in their appropriate order. GRI 3(b) provides, in relevant part, that “composite goods consisting of different materials or made up of different components, and goods put up in sets or retail sale...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 2017 HTSUS provisions under consideration are as follows:

3926	Other articles of plastics and articles of other materials of headings 3901 to 3914:
3926.90	Other:
3926.90.75	Pneumatic mattresses and other inflatable articles, not elsewhere specified or included
9403	Other furniture and parts thereof:
9403.70	Furniture of plastics:
9403.70.80	Other

At the outset, as noted in our proposed decision letter and the above-mentioned comments, both headings under consideration are subject to exclusionary notes referencing products of the chapter in which the other heading falls. Chapter 39, Note 2(x), HTSUS (hereinafter “Note 2(x)” for ease of reference), provides as follows:

This chapter does not cover:

* * *

- (x) Articles of chapter 94 (for example, furniture, lamps and lighting fittings, illuminated signs, prefabricated buildings)...

Chapter 94, Note 1(a), HTSUS (hereinafter “Note 1(a)” for ease of reference), provides as follows:

This Chapter does not cover:

- (a) Pneumatic or water mattresses, pillows or cushions, of Chapter 39, 40 or 63...

An approach to reconciling exclusionary notes of varying specificity was recently set forth by the Court of International Trade (C.I.T.) in *Rubies Costume Co. v. United States*, No. 13–00407, slip. op. at 10–13 (CIT Oct. 31, 2017). That case involved application of Notes 1(l) to Chapter 42 and 1(t) to Section XI, which broadly exclude “[a]rticles of chapter 95” from Chapters 42, 61, and 62, respectively, and Note 1 to Chapter 95, which precludes classification of, specifically, “fancy dress, of textiles, of chapter 61 or 62” and “[s]ports bags or other containers of heading 4202, 4203, or 4204” from classification in Chapter 95. *Id.* Because the notes appertaining to Chapters 42, 62, and 63 set forth broad, chapter-wide exclusions, whereas Note 1 to Chapter 95 sets forth a narrow, specific exclusion with respect to articles of Chapters 61 and 62, the latter was determined to “provide exceptions to the general rule of classification” under Chapter 95. *Id.* at 13. In other words, the C.I.T. held, the statutory scheme “expressly resolve[s] this conflict in favor of classification in chapter 95 unless the article falls into one of Chapter 95’s exclusionary notes.” *Id.* (citing *Michael Simon Design, Inc. v. United States*, 501 F.3d 1303 (Fed. Cir. 2007)). As such, the proper approach to classifying the merchandise at issue was to initially determine whether it fell within the narrow subset of articles enumerated in Note 1 to Chapter 95, in which case it was excluded from Chapter 95, and to subsequently ascertain the correct classification among the remaining provisions at issue. *See id.* (“[T]he Santa Suit components are covered by the exclusions to Chapter 95; thus, the court need not and does not reach the issue of whether they constitute festive articles.”).

Like in *Rubies*, the exclusionary notes at issue in the instant matter are not equal in specificity. While Note 1(a) applies to a narrow subset of goods – pneumatic or water mattresses, pillows or cushions” – Note 2(x) applies sweepingly to “[a]rticles of Chapter 94.” Therefore, in accordance with the approach set forth by the C.I.T. in *Rubies*, Note 1(a) “provides an exception” to “the general rule of classification” under Chapter 94. Should the instant merchandise fall within the scope of Note 1(a), it is precluded from classification in Chapter 94. That being the case, we must initially determine whether the products qualify both as “pneumatic mattresses” and as articles “of Chapter 39” pursuant to the note.

As to the former, the term “pneumatic mattress” does not appear in either of the headings at issue. Nevertheless, it merits treatment as a tariff term by

virtue of its inclusion in a legal note. *See BenQ Am. Corp. v. United States*, 646 F.3d 1371, 1367 (Fed. Cir. 2011) (“According to the HTSUS’s preface, the legal text of the HTSUS includes all provisions enacted by Congress, including Section and Chapter Notes.”). It must therefore be understood in accordance with its ordinary meaning as imparted by, *inter alia*, dictionary definitions. *See Tyco Fire Prods. v. United States*, 841 F.3d 1353, 1359 (Fed. Cir. 2016) (relying on dictionary definitions to determine the meaning of language appearing in Note 1(c) to Chapter 84); *see also Rubie’s Costume Co. v. United States*, 337 F.3d 1350, 1356–57 (Fed. Cir. 2003) (holding that consultation of dictionary definitions to ascertain the scope of exclusionary notes is appropriate). In response to several of the comments, we have undertaken an expansive review of dictionary definitions pertaining to “pneumatic,” “mattress,” “air mattress,” and “airbed,” the latter two of which, while not statutory terms, nevertheless help color our understanding of “pneumatic mattress.”

Definitions of “pneumatic” and “mattress” conjunctively indicate that a “pneumatic mattress” is a sack, case, or pad which, when filled with compressed air, provides a surface upon which one can sleep. *See* AMERICAN HERITAGE COLLEGE DICTIONARY 29, 855, 1073 (4th ed. 2004) (defining “pneumatic” as “filled with air, esp. compressed air” and defining “mattress” in part as “an airtight inflatable pad used as or on a bed”); Definition Pneumatic, MERRIAM-WEBSTER.COM, <https://www.merriam-webster.com/dictionary/pneumatic> (last visited Oct. 6, 2017) (defining “pneumatic” as “adapted for holding or inflated with compressed air”); Definition Mattress, MERRIAM-WEBSTER.COM, <https://www.merriam-webster.com/dictionary/mattress> (last visited Oct. 6, 2017) (defining “mattress” primarily as “a fabric case filled with resilient material” and secondarily as “an inflatable airtight sack for use as a mattress”); Definition Mattress, OXFORDDICTIONARIES.COM, <https://en.oxforddictionaries.com/definition/mattress> (last visited Oct. 6, 2017) (defining mattress as “a fabric case...used for sleeping on”); Definition Pneumatic, OXFORDDICTIONARIES.COM, <https://en.oxforddictionaries.com/definition/pneumatic> (last visited Oct. 6, 2017) (defining “pneumatic” as “containing or operated by air or gas under pressure”).¹ Various dictionaries set forth nearly-identical definitions of “airbed” as an inflatable case which, when filled with air, provides a surface on which one can lie and sleep. *See* Definition Airbed, MERRIAM-WEBSTER.COM <https://www.merriam-webster.com/dictionary/air%20bed> (last visited Oct. 8, 2017) (defining “air bed” as “a soft plastic case that can be filled with air and used as a bed”); Definition, Airbed, DICTIONARY.CAMBRIDGE.ORG, <http://dictionary.cambridge.org/us/dictionary/english/airbed> (last visited Oct. 8, 2017) (defining “airbed” as “a large, rectangular rubber or plastic bag that you fill with air so that you can lie on it in water or use it as a bed”).

Other definitions directly equate “airbeds” with air-filled mattresses and indicate that the terms are used interchangeably. *See* Definition Airbed, Oxforddictionaries.com, <https://en.oxforddictionaries.com/definition/>

¹ *See also* Definition Mattress, DICTIONARY.COM, <http://www.dictionary.com/browse/mattress> (last visited Oct. 4, 2017) (defining mattress primarily as “a large pad for supporting the reclining body” and secondarily as “air mattress,” which is in turn defined as “a mattress...inflated for use”); Definition Mattress, YOURDICTIONARY.COM, <http://www.yourdictionary.com/mattress#websters> (last visited Oct. 4, 2017) (defining “mattress” primarily as “a casing of strong fabric filled with cotton, hair, foam rubber, etc.” and secondarily as “an inflatable pad used in the same way in full air mattress”).

airbed (last visited Oct. 8, 2017) (defining “airbed” as “an inflatable mattress”); Definition Air Bed, MACMILLANDICTIONARY.COM, <http://www.macmillandictionary.com/us/dictionary/american/air-bed> (last visited Oct. 8, 2017) (defining “air bed” as “a mattress...that you fill with air to make a type of temporary bed”); Definition Air Bed, DICTIONARY.COM, <http://www.dictionary.com/browse/air-bed?s=t> *see also* (last visited Oct. 8, 2017) (defining “air bed” as “a bed made by inflating a mattress like bag”); Definition Air Mattress, COLLINSDICTIONARY.COM, <https://www.collinsdictionary.com/us/dictionary/english/air-mattress> (last visited Oct. 6, 2017) (defining “air mattress” in part as “another name for air bed”). In sum, therefore, the dictionary definitions consulted indicate that cases or sacks used for reclining or sleeping upon inflation with compressed air fall within the ambit of “pneumatic mattress,” irrespective of whether they are referred to as “air mattresses” or “air beds.”

Both products at issue are plastic sacks or cases into which air can be injected and retained. To the extent they are inflatable, they indisputably qualify as “pneumatic.” Moreover, when inflated, they provide a surface upon which users can recline, sleep, and generally relax. Therefore, as inflatable cases used to induce or facilitate sleep, they fall squarely within the definition of “pneumatic mattresses,” irrespective of whether they are described in NY N249247 and NY K88969 as “airbeds.” In opposing this determination, various commenters contend that the subject articles cannot be characterized simply as empty sacks given their complex constructions, relatively high durability, and comparatively high price points. However, none of these factors are determinative of whether a given article can be defined as a “pneumatic mattress.” As to commenters’ specific contention that the products’ internal “beams” and dual-chamber construction render them more than “simple, empty blow-up sacks,” there is nothing to suggest that sacks or cases cannot incorporate internal structures. Nor is there anything to indicate that the products at issue are, in essence, anything other than encasements for air. In fact, the inclusion of a single built-in air pump with the Bestway Comfort Quest Premium Air Bed/Queen indicates that the product’s chambers cannot be separately inflated, and are therefore constitutive of a single large case.

The commenters also contend that the products at issue cannot be considered “pneumatic mattresses” insofar as they are designated “airbeds” in commerce. However, as stated above, numerous lexicographic sources indicate that the terms are semantically identical. Moreover, our review of various retail channels indicates that the two terms are even used interchangeably in commerce, despite the commenters’ contentions to the contrary. In fact, Bestway Comfort Quest Airbeds, as well as other Bestway products, are intermittently referred to as “air mattresses” by retailers. *See* Target, Bestway Comfort Quest Air Mattress, <https://www.target.com/p/bestway-comfort-quest-restaira-premium-inflatable-air-mattress-double-high-queen-white/-/A-15720058> (last visited Oct. 6, 2017), and Walmart, Bestway 80x60x17-Inch Inflatable Raised Air Mattress With Built-In Pump | 67552, <https://www.walmart.com/ip/Bestway-80x60x17-Inch-Inflatable-Raised-Air-Mattress-With-Built-In-Pump-67552/46074355> (last visited Oct. 6, 2017) (both characterizing Bestway Comfort Quest products as “air mattresses”).

Other products resembling those at issue in both NY N249247 and NY K88969, insofar as they include lower foundational chambers replete with internal beams or coils, are similarly referred to or categorized as “air

mattresses” by retailers and consumers alike. See Ace Hardware, Intex Raised Downy Queen Air Mattress, <http://www.acehardware.com/product/index.jsp?productId=32442406&cp=2568443.2568448.2626064.41523876> (last visited Oct. 6, 2017); Target, AeroBed® One-Touch Comfort™ Air Mattress - Double High Twin (Gray), <https://www.target.com/p/aerobed-174-one-touch-comfort-153-air-mattress-double-high-twin-gray/-/A-49144242#lnk=sametab> (last visited Oct. 6, 2017); Amazon, Home & Kitchen: Bedding: Air Mattresses & Accessories: Air Mattresses, *supra*; Furniture.com, Definition of Air Bed, <https://www.furniture.com/mattress/glossary/air-bed> (last visited Oct. 8, 2017) (Air beds, also called air mattresses, are inflatable mattresses...”); and The Sleep Judge, Best Air Mattress Reviews: Buyers Guide, <https://www.thesleepjudge.com/best-air-mattress/> (last visited Oct. 8, 2017). As such, while we recognize that the Bestway Comfort Quest Premium Air Bed/Queen and substantially similar products are referred to frequently, albeit non-universally, as “airbeds” in commerce, we are not convinced that this is a sufficient basis to delineate them from “air mattresses” and, by extension, “pneumatic mattresses.” That said, we also recognize that the interchangeability of “beds” and “mattresses” is limited to inflatable items, and that mattresses filled with solid material remain lexicographically and commercially distinct from “beds.”

Having determined that the articles are “pneumatic mattresses” within the meaning of Note 1(a), we next consider whether they are articles “of Chapter 39” for purposes of the note. To this end, heading 3926, HTSUS, applies to “other” articles of plastic. EN 39.26 states, with respect to heading 3926, that “[t]his heading covers articles, not elsewhere specified or included, of plastics.” According to NY K88969, the structure of the product at issue in that ruling is comprised 100% of plastic vinyl. Similarly, in the case of NY N249247, the bill of materials and patents pertaining to the subject product and its internal I-beam collectively indicate that plastic, in the form of PVC and DINP, accounts for the near entirety of the product’s constituent materials. A review of diagrams included in that bill of materials, as well as the above-cited retail product descriptions pertaining to the Bestway Comfort Quest Premium Air Bed/Queen and substantially similar goods, indicates that the plastic comprises the overwhelming majority of the products’ masses and surface areas. We therefore conclude that the products are *prima facie* classifiable in heading 3926 as “articles of plastic.”

We do note that both products incorporate minor non-plastic components and are accompanied by non-plastic accessories. Specifically, the products incorporate top layers of textile flocking and, in the case of NY N249247, an air pump of unknown material(s), and they also include separate carrying bags, a separate repair patch in the case of NY N249247, and a separate air pump in the case of NY K88969. However, even if the articles could be considered “sets” or “composite goods” on account of these non-plastic materials, it is their plastic constituents which clearly impart the articles’ essential character pursuant to GRI 3(b). Again, plastic comprises the entirety of the articles’ structures and the near-entirety of their whole compositions. See EN(VIII) to GRI 3(b) (“Essential character...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.”); see also *Home Depot USA, Inc. v. United States*, 491 F.3d 1334, 1337 (Fed. Cir. 2007) (“Many factors should be considered when determining the essential character...specifically including but not limited to those factors

enumerated in Explanatory Note (VIII) to GRI 3(b).”). Moreover, plastic is clearly the most important constituent with respect to the articles’ use, in that the airbeds could not function as surfaces for reclining, relaxing, and sleeping but for the presence of the plastic. *See Pomeroy Collection, Ltd. v. United States*, 893 F. Supp. 2d 1269, 1287 (Ct. Int’l Trade 2013) (“The function of each article as a whole is to hold and display an object or objects; and the glass vessel is the component that gives the article its ability to serve that function...Thus, the essential character of the Floor Articles is imparted by the glass vessels.”). By any measure, therefore, the subject articles are “articles of plastic” within the meaning of heading 3926, HTSUS. By extension, they are products of Chapter 39 for purposes of Note 1(a).

In sum, the products are “pneumatic mattresses...of Chapter 39” within the meaning of Note 1(a) to Chapter 94. The products are consequently excluded from heading 9403, HTSUS, by application of the note. Moreover, because they fall within the scope of heading 3926, HTSUS, the only remaining provision under consideration, they are classified there.

As to the above analysis, one commenter contests our treatment of Note 1(a) as singly preclusive of the subject articles’ classification in heading 9403, HTSUS. The commenter contends that “where an article is potentially classifiable in different headings which are mutually exclusive, it is improper to rely on an exclusionary note before applying the rule of relative specificity (GRI 3(a)) between competing headings.” To support this proposition, the commenter cites *Sharp Microelec. Tech., Inc. v. United States*, 122 F.3d 1446, 1450–51 (Fed. Cir. 1997), and *Bauer Nike Hockey, USA, Inc. v. United States*, 393 F.3d 1246, 1253 n.6 (Fed. Cir. 2004). However, only the above-discussed *Rubies* sets forth a germane and appropriate framework for reconciling competing exclusionary notes of varying degrees of specificity. *Sharp* did not even involve application of mutual exclusionary notes or GRI 3(a). Rather, at issue in that case was solely the chronological interplay of a “not specified elsewhere” heading requirement and a lone pertinent exclusionary note. *See Sharp*, 122 F.3d at 1450–51. Insofar as the court employed the “rule of relative specificity,” this was solely for the purpose of applying heading text pursuant to GRI 1. *See id.* At no point did the analysis proceed beyond GRI 1, nor should it have, as was made explicit by the trial court and noted by the C.A.F.C. *See id.* at 1449 (“The [trial] court also noted ‘in passing’ that the relative specificity analysis it was undertaking was mandated by heading 9013 and General Rules of Interpretation (GRI) 1 of the HTSUS and not by GRI 3(a).”). To the extent the C.A.F.C. did subsequently address this issue in *Bauer*, it was non-binding *dictum*. Namely, its discussion of GRI 3(a) followed an initial, conclusive determination that the merchandise at issue there was demonstrably classifiable in only one of the two provisions under consideration. *See Bauer*, 393 F.3d at 1250–51; *see also Pima West. v. United States*, 20 C.I.T. 110, 115, 915 F. Supp. 399, 403 (CIT 1996) (determining that where “goods are not classifiable under two or more headings,” any “discussion...of the relative specificity of headings...would be *dictum*”).

Moreover, applying GRI 3(a) as a means of reconciling Note 1(a) and Note 2(x) would constitute a misapplication of the HTSUS. GRI 1 specifically provides that “classification shall be determined according to the terms of the headings and any relative section or chapter notes” and that, only “provided such headings or notes do not otherwise require,” by reference to the remaining GRIs (emphasis added). *See also Faus Group, Inc. v. United States*, 581 F.3d 1369, 1372 (Fed. Cir. 2009) (“When determining the correct classification

for merchandise, a court *first* construes the language of the headings in question, *in light of any related section or chapter notes*...If goods are *prima facie* classifiable under two or more headings, the court compares the language of the headings and classifies the goods under the heading providing the most specific description” (emphasis added).² Similarly, applying the HTSUS and its attendant GRIs in a manner that nullifies the effect of a legal note, as would be the case if the broader exclusion of Note 2(x) were allowed to swallow the narrow exception of Note 1(a), is impermissible. *See Rubies*, No. 13–00407, Slip Op. at 31 (“Note 1(e) excludes a subset of festive articles that also meet certain requirements. Undue emphasis on the festive or make-believe nature of the article would nullify Note 1(e); such an interpretive approach has long been disfavored.”); *see also BenQ*, 646 F.3d at 1376 (“The Section and Chapter Notes ‘are not optional interpretive rules, but are statutory law.’”).

As such, we remain of the view that the subject merchandise is excluded from heading 9403, HTSUS, and is instead classified in heading 3926, HTSUS. This outcome is consistent with CBP’s long-standing treatment of products designated either “airbeds” or “air mattresses.” *See* HQ 954544, dated August 19, 1993; NY N199311, dated January 24, 2012; NY N120304, dated September 10, 2010; NY N105077, dated May 28, 2010; NY N007267, dated March 7, 2007; NY L85321, dated June 20, 2005; NY J85129, dated June 18, 2003; NY G81090, dated August 28, 2000; NY E84859, dated August 5, 1999; NY E84954, dated August 5, 1999; NY D89731, dated March 26, 1999 (all classifying “air mattresses” in heading 3926); *see also* NY N190048, dated November 17, 2011; NY C83496, dated January 28, 1998; NY C81575, dated November 18, 1997 (all classifying “airbeds” in heading 3926). It is not, despite commenters’ assertions to the contrary, inconsistent with rulings classifying other inflatable furniture items in heading 9403, HTSUS, including inflatable “air cribs,” inflatable “sofa beds,” and an inflatable kid’s bed replete with headboards and siderails. *See* NY N039360, dated September 25, 2008; NY N036375, dated August 29, 2008; and NY N018156, dated October 15, 2007 (pertaining to “Air Crib”); *see also* NY L85712, dated June 22, 2005, and NY R01434, dated February 16, 2005 (pertaining to inflatable sofa beds); *see also* NY K81621, dated December 2003 (pertaining to “Kid’s Inflatable Car Bed”).³

Unlike the instant merchandise, the air cribs were made up of separately inflatable components of which most functioned as enclosure mechanisms and only one constituted an actual “pad” for reclining and sleeping, and are thus commercially recognizable as “cribs” rather than “mattresses” or “beds.” *See* Amazon, The Air Crib, <https://www.amazon.com/BTVco-AC101-The-Air-Crib/dp/B0013072J4> (last visited Oct. 8, 2017). Likewise, the inflatable “sofa

² This is fully consistent with our application of Note 1(a) to the subject merchandise. As explained above, our position is that the merchandise is *prima facie* classifiable in heading 3926, HTSUS, for

³ Nor is our determination inconsistent with rulings in which air mattresses combined with sleeping bags, metal frames, or similar items were classified in headings 9403 or 9404, HTSUS. *See* HQ W967672, dated June 2, 2006; NY N227092, dated August 15, 2012; NY N011443, dated May 29, 2007; NY R04382, dated July 17, 2006; NY L89204, dated December 5, 2005; NY L80719, dated December 1, 2004; NY K88497, dated August 19, 2004; NY K80150, dated November 12, 2003; NY I81047, dated April 22, 2002; and NY H87524, dated January 24, 2002.

beds” are in the form of sofas that are convertible to mattresses, and as such, are not lexicographically, commercially, or functionally equivalent to items that function solely as surfaces for reclining and sleeping. *See* Walmart, Pure Comfort 5-in-1 Sofa Bed, Black, <https://www.walmart.com/ip/Pure-Comfort-5-in-1-Sofa-Bed-Black/17641106> (last visited Oct. 8, 2017). The inflatable kid’s bed’s inclusion of side rails and a headboard render it more than an inflatable case upon which the user reclines, particularly if these extra components are separately inflatable. That said, we intend to review NY K81621 in further detail to ensure that it is in fact consistent with the proper application of Note 1(a) to Chapter 94.

Lastly, we disagree with one commenter’s assertion that the present action, would impose a “sudden,” “unexpected,” and “unwarranted” cost with respect to imports of the subject merchandise and substantially similar products. Our action cannot be considered “unwarranted” in light of our statutory duty to rectify inconsistencies in our rulings so as to keep the trade community clearly and completely informed of its obligations. Nor can it be considered “sudden” or “unexpected” in view of the numerous prior rulings classifying “air mattresses” in heading 3926, HTSUS, and, in particular, 1997 and 1998 rulings classifying products specifically described as “airbeds” in the heading. *See* NY C83496, *supra*; NY C81575, *supra*; NY N190048, *supra*.

HOLDING:

Under the authority of GRI 1, the subject airbeds are classified in heading 3926, HTSUS, specifically in subheading 3926.90.7500, HTSUSA (Annotated), which provides for: “Other articles of plastics and articles of other materials of headings 3901 to 3914: Pneumatic mattresses and other inflatable articles, not elsewhere specified or included.” The 2017 column one general rate of duty rate is 4.2% *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 N249247, dated February 10, 2014, and NY K88969, September 10, 2004, are hereby REVOKED in accordance with the above analysis.

Sincerely,

ALLYSON MATTANAH

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

CC: Rolando E. Portal
ABC Distributing, LLC
6301 East 10th Avenue
Hialeah, FL 33013

**PROPOSED REVOCATION OF ONE RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF A GIRL'S UPPER BODY
GARMENT**

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

ACTION: Notice of proposed revocation of one ruling letter and revocation of treatment relating to the tariff classification of a girl's upper body garment.

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 and preferential tariff treatment under the United States-Peru Trade Promotion Agreement ("PETPA") of a girl's upper body garment 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 February 9, 2018.

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

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with 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 19 U.S.C. §1625(c)(1), this notice advises interested parties that CBP is proposing to revoke one ruling letter pertaining to the tariff classification of a girl's upper body garment. Although in this notice, CBP is specifically referring to New York Ruling Letter ("NY") N279310, dated October 13, 2016 (Attachment A), this notice also 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 comment period.

Similarly, pursuant to 19 U.S.C. §1625(c)(2), 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 comment period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY N279310, CBP classified a girl's upper body garment in heading 6109, HTSUS, specifically in subheading 6109.10.00, HTSUS, which provides for "T-shirts, singlets, tank tops and similar garments, knitted or crocheted: Of cotton." CBP has reviewed NY N279310 and has determined the ruling letter to be in error. It is now CBP's position that the girl's upper body garment is properly classified, in heading 6212, HTSUS, specifically in subheading 6212.10.90, HTSUS, which provides for "Brassieres, girdles, corsets, braces, suspenders, garters and similar articles and parts thereof, whether or not knitted or crocheted: Brassieres: Other." Furthermore, in NY N279310, CBP determined that based on the classification of the girl's upper body garment in heading 6109, HTSUS, specifically in subheading 6109.10.00, HTSUS, the girl's upper body garment did not

qualify for preferential tariff treatment under the PETPA. It is now CBP's position that the girl's upper body garment, as properly classified in heading 6212, HTSUS, specifically in subheading 6212.10.90, HTSUS, meets the tariff shift requirement and qualifies for preferential tariff treatment under the PETPA.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke NY N279310 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter ("HQ") H282945, 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: November 30, 2017

LEVA K. O'ROURKE
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N279310

October 13, 2016

CLA-2-61:OT:RR:NC:N3:358

CATEGORY: Classification

TARIFF NO.: 6109.10.0037

Ms. HAYLEY BIRT
LULULEMON ATHLETICA
250-1380 BURRARD STREET
VANCOUVER, BRITISH COLUMBIA
V6Z 2H3

RE: The tariff classification and status under the United States-Peru Trade Promotion Agreement Implementation Act (Peru TPAIA) of a girl's upper body garment from Peru

DEAR Ms. BIRT:

In your letter dated August 10, 2016, and received by this office on September 13, 2016, you requested a ruling on the classification and status under the Peru TPAIA of a girl's upper body garment. A sample of the garment accompanied your letter and will be retained by this office.

The submitted sample, style IG2279S, which you describe as a "girls' sports bra," is a girl's size 7, abbreviated upper body garment intended to be worn under clothing. The garment is constructed from 92 percent cotton and 8 percent spandex finely knit jersey fabric. The garment features double layered back panels and triple layered front panels with openings at the inside side seams to accommodate cup inserts between the inside and middle layers at the discretion of the wearer. The cup inserts are not imported with the garment. A 3/8 inch covered elastic band is sewn into the bottom hem and a clear elastic tape is sewn into the neckline and the binding used to finish the top back edge and armholes. The garment has shoulder straps, 1 centimeter in width, formed from the extension of the self-fabric binding around the armholes; and 88 percent nylon and 12 percent spandex woven elastic adjustable straps. The plastic connectors between the strap components on each side allow for clipping the straps together to allow the wearer to create a racer-back effect. The garment will be imported in girls' sizes 6 - 14 and marketed to 6 - 12 year old girls.

In your letter, you state that you believe the garment is classifiable as a brassiere under subheading 6212.10.9010, Harmonized Tariff Schedule of the United States (HTSUS). We disagree.

Heading 6212, HTSUS, provides for brassieres and other body supporting garments. We recognize that although this garment resembles a bra in appearance, the basic prerequisite for classification as a brassiere has not been met. 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 consult, whenever possible, the terms of the ENs when interpreting the HTSUS. The Explanatory Notes to heading 6212, HTSUS, state brassieres must be "designed for wear as body-supporting garments." The article at issue is marketed to 6-12 year old girls. It is our

opinion, given the age range to which the item is marketed, the essential characteristic and purpose is not to support a part of the body or another garment, as is required by an article classified in heading 6212, but is primarily intended to provide coverage for modesty purposes. Therefore, classification under heading 6212, HTSUS, is precluded.

Heading 6109 provides for knitted T-shirts, singlets, tank tops and similar garments. The Explanatory Notes to heading 6109, HTSUS, include “singlets and other vests” among the types of garments classifiable within this section of the nomenclature. We note that the word “vest” is synonymous with “underwear” and is a term more commonly used in the British vernacular. The garment at issue is similar to an undershirt in that it is designed to be worn under outerwear, on the upper portion of the body. Thus, heading 6109, HTSUS, by its terms, encompasses this article.

The applicable tariff provision for style IG2279S will be 6109.10.0037, HTSUS, which provides for “T-shirts, singlets, tank tops and similar garments, knitted or crocheted: Of cotton: Women’s or girls’: Underwear.” The general rate of duty will be 16.5 percent ad valorem.

You also requested the status of this garment under the Peru TPAIA. The manufacturing operations are as follows:

- Cotton/spandex yarn is made in Peru of cotton from Peru and spandex from the U.S.
- The finely knit jersey fabric is knit in Peru.
- Two types of sewing thread are used; both formed and finished in Peru.
- Plastic connectors and sliders to adjust the straps are manufactured in Austria.
- Silicon tape in the neckline and armholes is made in Peru.
- Woven elastic strap component, care label and heat transfer logo are made in China.
- Rubber tape in bottom hem is made in Italy.
- Garment is cut and sewn in Peru.
- Finished garment is exported from Peru to the United States.

General Note 32, HTSUS, sets forth the criteria for determining whether a good is originating under the PERU TPAIA. General Note 32(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), (m) and (n) thereof, a good imported into the customs territory of the United States is eligible for treatment as an originating good under the terms of this note if—

- (i) the good is a good wholly obtained or produced entirely in the territory of Peru, the United States, or both;
- (ii) the good was produced entirely in the territory of Peru, 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 (n) of this note; or

(B) the good otherwise satisfies any applicable regional value content or other requirements specified in subdivision (n) of this note;

and the good satisfies all other applicable requirements of this note; or

(iii) the good was produced entirely in the territory of Peru, the United States, or both, exclusively from materials described in subdivision (b)(i) or (b)(ii) of this note.

As the garment at issue contains non-originating material, it is appropriate to look to GN 32(b)(ii)(A). The applicable tariff shift rule for an item classified in subheading 6109.10 is:

20. A change to headings 6105 through 6111 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308, 5310 through 5311, 5401 through 5402, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through 5403.49, headings 5404 through 5408, 5508 through 5516 or 6001 through 6006, provided that the good is cut or knit to shape, or both and sewn or otherwise assembled in the territory of Peru, the United States, or both.

Also of relevance are GN 32(n), Chapter 61, chapter rule 3 which requires that goods of the chapter containing fabrics of heading 6002 or subheading 5806.20 be considered originating only if such fabrics are both formed from yarn and finished in the territory of Peru, the United States or both; and chapter rule 4, which requires that goods of the chapter containing sewing thread of heading 5204 or 5401 be considered originating only if such sewing thread is both formed and finished in Peru, the United States, or both. In this case, while the garment meets the tariff shift rule and the two types of sewing thread are formed and finished in Peru, the woven elastic shoulder strap component of subheading 5806.20 is formed in China. Therefore, the use of the narrow woven elastomeric fabric renders style IG2279S ineligible for preferential treatment under Peru TPAIA.

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 ruling, contact National Import Specialist Kim Wachtel at kimberly.a.wachtel@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 H282945

CLA-2 OT:RR:CTF:TCM H282945 GaK

CATEGORY: Classification

TARIFF NO: 6212.10.90

ANDRE LAMORGIA
CARDINAL TRADE ASSOCIATES
601 WALNUT ST. 12TH FLOOR
PHILADELPHIA, PA 19106

RE: Revocation of NY N279310; Classification of a girl's upper body garment from Peru; Eligibility of garments for preferential tariff treatment under the PETPA

DEAR MR. LAMORGIA:

This letter is to inform you that U.S. Customs and Border Protection ("CBP") has reconsidered New York Ruling Letter ("NY") N279310, which was issued to Lululemon Athletica on October 13, 2016. In NY N279310, CBP classified a girl's upper body garment from Peru ("merchandise") under sub-heading 6109.10.00, Harmonized Tariff Schedule of the United States ("HTSUS"), which provides for: "[t]-shirts, singlets, tank tops and similar garments, knitted or crocheted: Of cotton." NY N279310 also denied preferential tariff treatment to the merchandise under the United States-Peru Trade Promotion Agreement ("PETPA"). We have reviewed NY N279310 and found it to be incorrect. For the reasons set forth below, we are revoking this ruling.

FACTS:

In NY N279310, the merchandise was described as follows:

The submitted sample, style IG2279S, which you describe as a "girls' sports bra," is a girl's size 7, abbreviated upper body garment intended to be worn under clothing. The garment is constructed from 92 percent cotton and 8 percent spandex finely knit jersey fabric. The garment features double layered back panels and triple layered front panels with openings at the inside side seams to accommodate cup inserts between the inside and middle layers at the discretion of the wearer. The cup inserts are not imported with the garment. A 3/8 inch covered elastic band is sewn into the bottom hem and a clear elastic tape is sewn into the neckline and the binding used to finish the top back edge and armholes. The garment has shoulder straps, 1 centimeter in width, formed from the extension of the self-fabric binding around the armholes; and 88 percent nylon and 12 percent spandex woven elastic adjustable straps. The plastic connectors between the strap components on each side allow for clipping the straps together to allow the wearer to create a racer-back effect. The garment will be imported in girls' sizes 6 – 14 and marketed to 6 – 12¹ year old girls.

The manufacturing process is as follows:

1. Cotton/spandex yarn is made in Peru of cotton from Peru and spandex from the U.S.
2. The fine knit jersey fabric is knit in Peru.

¹ We note that in your reconsideration request, you stated that the garment is marketed to 6-14 year old girls.

3. Two types of sewing thread are used; both formed and finished in Peru.
4. Plastic connectors and sliders to adjust the straps are manufactured in Austria.
5. Silicon tape in the neckline and armholes is made in Peru.
6. Woven elastic strap component, care label and heat transfer logo are made in China.
7. Rubber tape in bottom hem is made in Italy.
8. Garment is cut and sewn in Peru.
9. Finished garment is exported from Peru to the U.S.

ISSUE:

- I. Whether the merchandise is classified as “[t]-shirts, singlets, tank tops and similar garments, knitted or crocheted,” under heading 6109, HTSUS, or as “[b]rassieres, girdles, corsets, braces, suspenders, garters and similar articles and parts thereof, whether or not knitted or crocheted,” under heading 6212, HTSUS.
- II. Whether the merchandise qualifies for preferential tariff treatment under the PETPA.

LAW AND ANALYSIS:

I. Tariff Classification

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

The HTSUS headings at issue are as follows:

6109 T-shirts, singlets, tank tops and similar garments, knitted or crocheted:

* * *

6212 Brassieres, girdles, corsets, braces, suspenders, garters and similar articles and parts thereof, whether or not knitted or crocheted:

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

EN 62.12 provides as follows:

This heading covers articles of a kind designed for wear as body-supporting garments or as supports for certain other articles of apparel,

and parts thereof. These articles may be made of any textile material including knitted or crocheted fabrics (whether or not elastic).

In NY N279310, CBP concluded that while the garment resembles a bra in appearance, it does not meet the basic prerequisite for classification as a brassiere as provided in EN 62.12. CBP stated that given the age range to which the garment is marketed, the essential characteristic and purpose is not to support a part of the body or another garment, as required by an article classified in heading 6212, HTSUS, but primarily intended to provide coverage for modesty purposes.

CBP has previously addressed the classification of upper body garments available in girls' sizes in NY L80873, dated November 23, 2004; NY J83918, dated May 7, 2003; and NY B87810, dated July 25, 1997. In NY L80873, CBP classified a girls' bralet featuring elasticized shoulder straps, elasticized capping at the garment top, side seams, and a fabric covering ½-inch wide elasticized bottom band under heading 6212, HTSUS. In NY J83918, CBP classified a girls' soft bra featuring shoulder straps measuring approximately ¼-inch wide, side seams, and a fabric covered elasticized bottom band measuring approximately ¾-inch wide under heading 6212, HTSUS. In NY B87810, CBP classified a girls' bra featuring adjustable elasticized straps, a single hook and eye back closure and an elasticized band bottom under heading 6212, HTSUS.

We note that neither the ENs nor the HTSUS makes reference to the age of the wearer for brassieres. CBP's Informed Compliance Publication, titled, "Classification: Apparel Terminology under the HTSUS" (published in June 2008), states that brassieres classified under heading 6212, HTSUS, are "garments worn to mold and/or support the breasts." Several studies have been conducted on breast development and early puberty for girls. The median at onset of breast development was found to be 8.8 years old² and studies have shown that 14 percent of girls are showing breast development by the age of eight³. In addition, retail companies that sell clothing for pre-teens (ages 7–14⁴) also carry bras that are marketed as body supporting for girls⁵. As the instant garment is worn for these purposes, the merchandise at issue is properly classified in heading 6212, HTSUS, specifically,

² Frank M. Biro, MD, *et al.*, *Onset of Breast Development in a Longitudinal Cohort*, 132 *Pediatrics* 6 (2013).

³ Kathleen O'Grady, *Early puberty for girls. The new 'normal' and why we need to be concerned* <http://www.cwhn.ca/en/print/node/39365> (last visited October 24, 2017); Susan Brink, *The new normal: Girls are now developing at age 8 or 9 years old, and even younger for black girls*, *L.A. Times* (2008); Glenn D. Braunstein, M.D. *Is 7 the New 10? Why Do Some Girls Start Puberty So Early?* (2012) https://www.huffingtonpost.com/glenn-d-braunstein-md/early-puberty_b_1826072.html (last visited October 24, 2017); WebMD, *Early Puberty: Causes and Consequences* <https://www.webmd.com/children/causes-symptoms#1> (last visited October 24, 2017).

⁴ https://www.forbes.com/2008/04/10/tween-brands-retail-markets-equity-cx_mp_0410markets31.html

⁵ https://www.walmart.com/ip/Fruit-Of-The-Loom-Girls-Built-Up-Sport-Bra-3-Pack/168339772?action=product_interest&action_type=title&beacon_version=1.0.2&bucket_id=irsbucketdefault&client_guid=67b7397a-1398-41bd-3b65-601d3373ea6c&config_id=72&customer_id_enc&findingMethod=p13n&guid=67b7397a-1398-41bd-3b65-601d3373ea6c&item_id=168339772&parent_anchor_item_id=16932578&parent_item_id=16932578&placement_id=irs-72-b3&reporter=recommendations&source=new_site&strategy=PWWUB&visitor_id=YWIdDecbPFHbw0_sqVXUmM#read-more (last visited October 24, 2017).

subheading 6212.10.90, HTSUS, which provides for “[b]rassieres, girdles, corsets, braces, suspenders, garters and similar articles and parts thereof, whether or not knitted or crocheted: Brassieres: Other: Other”

II. *PETPA Eligibility*

The U.S.-Peru Trade Promotion Agreement Implementation Act, Public Law 110–138, 121 Stat. 1455 (19 U.S.C. § 3805 note) is implemented in the HTSUS at General Note (“GN”) 32.

GN 32(b) provides in relevant part:

For the purposes of this note, subject to the provisions of subdivisions (c), (d), (m) and (n) thereof, a good imported into the customs territory of the United States is eligible for treatment as an originating good under the terms of this note if -

* * *

(ii) the good was produced entirely in the territory of Peru, 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 (n) of this note; or

* * *

and the good satisfies all other applicable requirements of this note.

* * *

As the garment at issue contains non-originating material, it is appropriate to look to GN 32(b)(ii)(A). As the garment is classified in subheading 6212.10.90, HTSUS, the applicable tariff shift rule in GN 32(n) is:

Chapter 62/29. A change to subheading 6212.10 from any other chapter, provided that the good is cut or knit to shape, or both and sewn or otherwise assembled in the territory of Peru, the United States, or both.

The non-originating plastic connectors and sliders are classified in heading 3926, HTSUS, woven elastic strap component are classified in heading 5806, HTSUS, and rubber tape in bottom hem is classified in heading 4008, HTSUS. Since none of the non-originating materials are classified in Chapter 62, HTSUS, and the garment is cut and sewn in Peru, the garment qualifies for preferential tariff treatment under the PETPA.

HOLDING:

Under the authority of GRI 1, the girl’s upper body garment is provided for in heading 6212, HTSUS, specifically in subheading 6212.10.90, HTSUS, which provides for, “[b]rassieres, girdles, corsets, braces, suspenders, garters and similar articles and parts thereof, whether or not knitted or crocheted: Brassieres: Other: Other.” The 2017 column one general rate of duty is 2.7% *ad valorem*.

The girl’s upper body garment qualifies for preferential tariff treatment under the PETPA.

EFFECT ON OTHER RULINGS:

NY N279310, dated October 13, 2016, is hereby REVOKED.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division