

U.S. Customs and Border Protection



GENERAL NOTICE

19 CFR PART 177

REVOCATION OF ONE RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF AUTOMATIC STEREO TURNABLE SYSTEM FROM CHINA

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 automatic stereo turntable system from China.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking one ruling letter concerning tariff classification of automatic stereo turntable system from China under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 50, No. 45, on November 9, 2016. 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EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after September 10, 2018.

FOR FURTHER INFORMATION CONTACT: Patricia Fogle, Electronics, Machinery, Automotive, and International Nomenclature Branch, Regulations and Rulings, Office of Trade, at (202) 325–0061.

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. 50, No. 45, on November 9, 2016, proposing to revoke one ruling letter pertaining to the tariff classification of an automatic stereo turntable system from China. 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") N268674, dated September 30, 2015, CBP classified an automatic stereo turntable system from China in heading 8519, HTSUS, specifically in subheading 8519.30.10, HTSUS, which provides for "Sound recording or reproducing apparatus: Turntables (record-decks): With automatic record changing mechanism." CBP has reviewed NY N268674 and has determined the ruling letter to be in error. It is now CBP's position that the automatic stereo turntable system from China is properly classified, in heading 8519, HTSUS, specifically in subheading 8519.89.20, HTSUS, which provides for "Sound recording or reproducing appa-

tus: Other apparatus: Other: Record players, other than those operated by coins, banknotes, bank cards, tokens or by other means of payment: Other.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY N268674 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in HQ H271390, 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: April 23, 2018

GREG CONNOR

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachment

HQ H271390

April 23, 2018

HQ H271390

CLA-2 OT:RR:CTF:TCM H271390 PF

CATEGORY: Classification

TARIFF NO.: 8519.89.20

MR. DAVID RUTT

GENERAL MANAGER, COMPLIANCE

*DAMCO CUSTOMS SERVICES, INC.**9300 ARROWPOINT BLVD.**CHARLOTTE, NC 28273*

RE: Revocation of NY N268674; Classification of an automatic stereo turntable system from China

DEAR MR. RUTT:

This is in reference to New York Ruling Letter (NY) N268674, dated September 30, 2015, issued to you on behalf of your client Barnes and Nobel Purchasing Inc., concerning the tariff classification of an automatic stereo turntable system from China, under the Harmonized Tariff Schedule of the United States (HTSUS). In NY N268674, U.S. Customs and Border Protection (CBP) classified the subject product in subheading 8519.30.1000, HTSUS, which provides for: "Sound recording or reproducing apparatus: Other apparatus: Other: Record players, other than those operated by coins, banknotes, bank cards, tokens or by other means of payment: Other."

We have reviewed NY N268674 and find it to be in error. For the reasons set forth below, we hereby revoke NY N268674.

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 N268674 was published on November 9, 2016, in Volume 50, Number 45 of the Customs Bulletin. No comments were received in response to the proposed action.

FACTS:

In NY N268674, CSP described the merchandise as follows:

The merchandise under consideration is an automatic stereo turntable system, which consists of a turntable (part number ATLP60BK) and two speakers (part AT-SP121 BK), which are imported together packaged for retail sale. The turntable, which reproduces sound from classic vinyl records, has fully automatic belt-drive. It also has a built-in switchable phone preamp that allows the turntable to be connected directly to the included power speakers, as well as a computer, a home stereo, and other components that have no dedicated turntable input. Furthermore, the subject is supplied with an integral phone cartridge with a replaceable stylus. By virtue of General Rule of Interpretation 3 (b), this system is considered a set for tariff classification purposes, with the turntable imparting the essential character of the set.

Your request for reconsideration and the product literature, provided additional facts that clarified that for increased flexibility of use, the turntable also has an internal stereo phono pre-amplifier, which allows it to amplify sound by itself.

ISSUE:

What is the proper classification of the automatic stereo turntable system from China?

LAW AND ANALYSIS:

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

There is no dispute that the merchandise is properly classified under heading 8519, HTSUS by virtue of the turntable component imparting the subject set with its essential character per GRI 3(b). At issue is whether the subject turntable component falls under the scope of subheading 8519.30, HTSUS. Therefore, we must apply GRI 6 to determine the correct classification of the merchandise. GRI 6 provides:

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

* * * *

The HTSUS provisions under consideration are as follows:

8519 Sound recording or reproducing apparatus

8519.30 Turntables (record-decks):

8519.30.10 With automatic record changing mechanism

Other apparatus

8519.89 Other

Record players, other than those operated by coins, banknotes, banks cards, tokens or by other means of payment

8916.89.2000 Other

* * * *

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

Explanatory Note 85.19 provides, in relevant part, as follows:

(II) TURNTABLES (RECORD-DECKS)

These apparatus rotate the discs mechanically or electrically. They may or may not incorporate a sound-head, but they do not include an acoustic device

nor electrical means of amplifying sound (see “record players” below). They may be fitted with an automatic device enabling a series of records to be played in succession.

A review of the product literature and specifications indicates that the instant product has a “built-in switchable stereo phono/line level pre-amplifier.” Furthermore, its user manual indicates that for “increased flexibility of use, this turntable has an internal stereo phono pre-amplifier.” While the user does have the option to connect to external amplifiers, it is not necessary because the product incorporates its own electrical means of amplifying sound. As shown above, record-decks of subheading 8519.30, HTSUS, specifically covers only “turntables” without acoustic capabilities. Therefore, the component that imparts the subject automatic stereo turntable system with its essential character falls outside the scope of subheading 8519.30, HTSUS, and is thus properly classified under subheading 8519.89.20, HTSUS.

This is consistent with EN 85.19(ii) above, which indicates that the provision for “turntables” “do[es] not include an acoustic device nor electrical means of amplifying sound (see ‘record players below’)”.

HOLDING:

By application of GRI 3(b), we find the subject automatic stereo turntable system is classified heading 8519, HTSUS. By application of GRI 6, it is specifically provided for under subheading 8519.89.20, HTSUS, which provides for “Sound recording or reproducing apparatus: Other apparatus: Other: Record players, other than those operated by coins, banknotes, bank cards, tokens or by other means of payment:

Other.” The column one, general rate of duty is free.

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

EFFECT ON OTHER RULINGS:

NY N268274, dated September 30, 2015, 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,

GREG CONNOR

for

MYLES B. HARMON, DIRECTOR
Commercial and Trade Facilitation Division

**PROPOSED REVOCATION OF TWO RULING LETTERS
AND REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF CORDIERITE PIZZA STONES**

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

ACTION: Notice of proposed revocation of two ruling letters, and revocation of treatment relating to the tariff classification of cordierite pizza stones.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke two ruling letters concerning tariff classification of cordierite pizza stones 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 August 11, 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: Lindsay Heebner, Chemicals, Petroleum, Metals and Miscellaneous Classification Branch, Regulations and Rulings, Office of Trade, at (202) 325–0266.

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 two ruling letters pertaining to the tariff classification of cordierite pizza stones. Although in this notice, CBP is specifically referring to New York Ruling Letter (“NY”) N134696, dated December 15, 2010 (Attachment A), and NY N021167, dated December 28, 2007 (Attachment B), 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 two identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the 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 N134696 and NY N021167, CBP classified cordierite pizza stones in heading 6912, HTSUS, specifically in subheading 6912.00.4810, HTSUS, which provides for “Ceramic tableware, kitchenware... other than of porcelain or china: Tableware and kitchenware... Other, Suitable for food or drink contact.” CBP has reviewed NY N134696 and NY N021167 and has determined the ruling letters to be in error. It is now CBP’s position that cordierite pizza stones are properly classified, in heading 7116, HTSUS, specifically in subheading 7116.20.4000, HTSUS, which provides for “Articles of natural or cultured pearls, precious or semiprecious stones (natural, synthetic or reconstructed): Of precious or semiprecious stones (natural, synthetic or reconstructed): Other... Other.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY N134696 and NY N021167 and to revoke or modify any other ruling

not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H281863, set forth as Attachment C to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: April 24, 2018

ALLYSON MATTANAH

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachments

ATTACHMENT A

N134696

December 15, 2010

CLA-2-69:OT:RR:NC:N4:428

CATEGORY: Classification

TARIFF NO.: 6912.00.4810

MR. DARREN YOKOPENIC

HSN

1 HSN DRIVE

ST. PETERSBURG, FL 33729

RE: The tariff classification of a pizza baking stone set from China.

DEAR MR. YOKOPENIC:

In your letter dated November 22, 2010, you requested a tariff classification ruling.

The submitted sample is a pizza baking stone set identified as a "Pizza Kit," item number 958884. It is comprised of the following items:

13" round pizza stone made of cordierite ceramic

13" carbonized bamboo pizza paddle with locking antiqued hinge

12" carbonized bamboo ladle

6" stainless steel rolling pizza cutter

The Explanatory Notes to the Harmonized Tariff System provide guidance in the interpretation of the Harmonized Commodity Description and Coding System at the international level. Explanatory Note X to GRI 3(b) provides that the term "goods put up in sets for retail sale" means goods that: (a) consist of at least two different articles which are, prima facie, classifiable in different headings; (b) consist of articles put up together to meet a particular need or carry out a specific activity; and (c) are put up in a manner suitable for sale directly to users without repacking. Goods classifiable under GRI 3(b) are classified as if they consisted of the material or component which gives them their essential character, which may 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 article. The "Pizza Kit" is a set for tariff classification purposes, with the essential character imparted by the cordierite ceramic pizza stone.

Your sample is being returned as requested.

The applicable subheading for the pizza baking stone set will be 6912.00.4810, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Ceramic tableware, kitchenware... other than of porcelain or china: Tableware and kitchenware...Other, Suitable for food or drink contact." The rate of duty will be 9.8% ad valorem.

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

Ceramic table/kitchenware may be subject to certain requirements under the regulations administered by the Food and Drug Administration (FDA). If you have any questions regarding these requirements, you may contact the FDA at: Food and Drug Administration, Division of Import Operations and Policy, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: 1-888-463-6332.

Certain ceramic table and kitchen articles may be subject to The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (The Bioterrorism Act), which is regulated by the FDA. Information on the Bioterrorism Act can be obtained by calling the FDA at telephone number (301) 575-0156, or at the Web site www.fda.gov/oc/bioterrorism/bioact.html.

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 Sharon Chung at (646) 733-3028.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

ATTACHMENT B

N021167

December 28, 2007

CLA-2-69:OT:RR:NC:1:128

CATEGORY: Classification

TARIFF NO.: 6912.00.4810

MR. JOSEPH STINSON
JOSEPH STINSON CHB
645 E. BUTLER AVE.
NEW BRITAIN, PA 18901

RE: The tariff classification of a "Pizza Making Kit for Dummies" from China.

DEAR MR. STINSON:

In your letter dated December 19, 2007, you requested a tariff classification ruling.

The submitted sample is identified as "Pizza Making Kit for Dummies". It is comprised of the following items:

- 13" nonstick pizza pan made of steel with a nonstick coating
- 15" pizza stone made of cordierite ceramic
- Pizza cutter made of stainless steel, with a plastic handle
- Pizza server made of stainless steel, with a plastic handle
- Cheese grater made of stainless steel, with a plastic handle
- Mini sauce ladle made of stainless steel
- Instructional pamphlet

The items are packaged and sold together in a cardboard box.

The Explanatory Notes to the Harmonized Tariff System provide guidance in the interpretation of the Harmonized Commodity Description and Coding System at the international level. Explanatory Note X to GRI 3(b) provides that the term "goods put up in sets for retail sale" means goods that: (a) consist of at least two different articles which are, *prima facie*, classifiable in different headings; (b) consist of articles put up together to meet a particular need or carry out a specific activity; and (c) are put up in a manner suitable for sale directly to users without repacking. Goods classifiable under GRI 3(b) are classified as if they consisted of the material or component which gives them their essential character, which may 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 article. The "Pizza Making Kit for Dummies" is a set for tariff classification purposes, with the essential character imparted by the cordierite ceramic pizza stone.

Your sample is being returned as requested.

The applicable subheading for the "Pizza Making Kit for Dummies" will be 6912.00.4810, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Ceramic tableware, kitchenware... other than of porcelain or china: Tableware and kitchenware... Other, Suitable for food or drink contact." The rate of duty will be 9.8% ad valorem.

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

Ceramic table/kitchenware may be subject to certain requirements under the regulations administered by the Food and Drug Administration (FDA). If

you have any questions regarding these requirements, you may contact the FDA at: Food and Drug Administration, Division of Import Operations and Policy, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: 1-888-463-6332.

Certain ceramic table and kitchen articles may be subject to The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (The Bioterrorism Act), which is regulated by the FDA. Information on the Bioterrorism Act can be obtained by calling the FDA at telephone number (301) 575-0156, or at the Web site www.fda.gov/oc/bioterrorism/bioact.html.

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 Sharon Chung at 646-733-3028.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

ATTACHMENT C

HQ H281863

OT:RR:CTF:CPMM:LMH

CATEGORY: Classification

TARIFF NO.: 7116.20.4000

DARREN YOKOPENIC

HSN

1 HSN DRIVE

ST. PETERSBURG, FL 33729

JOSEPH STINSON

JOSEPH STINSON CHB

645 E. BUTLER AVE.

NEW BRITAIN, PA 18901

RE: Revocation of NY N134696; Revocation of NY N021167; Tariff classification of pizza kits with cordierite pizza stones

DEAR MR. YOKOPENIC AND MR. STINSON,

U.S. Customs and Border Protection (CBP) issued you New York Ruling Letters (NY) N134696, dated December 15, 2010 and NY N021167, dated December 28, 2007. Those rulings pertain to the tariff classification under the Harmonized Tariff Schedule of the United States, (HTSUS) of pizza kits with cordierite pizza stones. We have since reviewed these rulings and find them to be in error, which is described in detail herein.

FACTS:

NY N134696 states the following, in relevant part:

The submitted sample is a pizza baking stone set identified as a "Pizza Kit," item number 958884. It is comprised of the following items:

13" round pizza stone made of cordierite ceramic 13" carbonized bamboo pizza paddle with locking antiqued hinge 12" carbonized bamboo ladle 6" stainless steel rolling pizza cutter. The Explanatory Notes to the Harmonized Tariff System provide guidance in the interpretation of the Harmonized Commodity Description and Coding System at the international level. Explanatory Note X to GRI 3(b) provides that the term "goods put up in sets for retail sale" means goods that: (a) consist of at least two different articles which are, prima facie, classifiable in different headings; (b) consist of articles put up together to meet a particular need or carry out a specific activity; and (c) are put up in a manner suitable for sale directly to users without repacking. Goods classifiable under GRI 3(b) are classified as if they consisted of the material or component which gives them their essential character, which may 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 article. The "Pizza Kit" is a set for tariff classification purposes, with the essential character imparted by the cordierite ceramic pizza stone.

The applicable subheading for the pizza baking stone set will be 6912.00.4810, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Ceramic tableware, kitchenware... other than of porcelain or china: Tableware and kitchenware...Other, Suitable for food or drink contact." The rate of duty will be 9.8% ad valorem.

NY N021167 states the following, in relevant part:

13" nonstick pizza pan made of steel with a nonstick coating 15" pizza stone made of cordierite ceramic Pizza cutter made of stainless steel, with a plastic handle Pizza server made of stainless steel, with a plastic handle Cheese grater made of stainless steel, with a plastic handle Mini sauce ladle made of stainless steel Instructional pamphlet

The items are packaged and sold together in a cardboard box.

The Explanatory Notes to the Harmonized Tariff System provide guidance in the interpretation of the Harmonized Commodity Description and Coding System at the international level. Explanatory Note X to GRI 3(b) provides that the term "goods put up in sets for retail sale" means goods that: (a) consist of at least two different articles which are, *prima facie*, classifiable in different headings; (b) consist of articles put up together to meet a particular need or carry out a specific activity; and (c) are put up in a manner suitable for sale directly to users without repacking. Goods classifiable under GRI 3(b) are classified as if they consisted of the material or component which gives them their essential character, which may 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 article. The "Pizza Making Kit for Dummies" is a set for tariff classification purposes, with the essential character imparted by the cordierite ceramic pizza stone.

The applicable subheading for the "Pizza Making Kit for Dummies" will be 6912.00.4810, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Ceramic tableware, kitchenware... other than of porcelain or china: Tableware and kitchenware... Other, Suitable for food or drink contact." The rate of duty will be 9.8% *ad valorem*.

ISSUE:

Whether the cordierite pizza stones are classified as ceramic kitchenware of heading 6912, HTSUS, or articles partly of semiprecious stone of heading 7116, HTSUS.

LAW AND ANALYSIS:

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

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

6912.00 Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china:

Tableware and kitchenware:

Other:

Other:

Other:

6912.00.48	Other...
6912.00.4810	Suitable for food or drink contact
* * *	
7116	Articles of natural or cultured pearls, precious or semiprecious stones (natural, synthetic or reconstructed):
7116.20	Of precious or semiprecious stones (natural, synthetic or reconstructed):
	Other:
7116.20.40	Other

General Note 2(c) to Chapter 69, Section XIII, HTSUS, states:

2. This chapter does not cover:

(c) Articles of chapter 71 (for example, imitation jewelry)

General Note 1(a) to Chapter 71, Section XIV, HTSUS, states:

1. Subject to note 1(a) to section VI and except as provided below, all articles consisting wholly or partly:

(a) Of natural or cultured pearls or of precious or semiprecious stones (natural, synthetic or reconstructed)...

In understanding the language of the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System, which constitute the official interpretation of the HTSUS at the international level, may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. See T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989). The Explanatory Notes' Annex to heading 7103, HTSUS, lists cordierite as a semiprecious stone.

Both rulings at issue found the pizza kits to be sets under GRI 3(b), with the cordierite pizza stone imparting the essential character to the set. We affirm this determination. However, though cordierite has some ceramic properties, cordierite is designated a semiprecious stone of chapter 71. General Note 2(c) to chapter 69, HTSUS, *excludes* goods of chapter 71 from classification in chapter 69 and General Note 1(a) to chapter 71, HTSUS, provides in pertinent part that *all* articles wholly or partly of semiprecious stones (natural, synthetic, or reconstructed) are classified in chapter 71, unless excluded (emphasis added). Therefore, the cordierite pizza stones are classified in chapter 71.

HOLDING:

By application of GRIs 1 and 3(b) the subject pizza making kits with cordierite pizza stones are classified in heading 7116, HTSUS. They are specifically provided for in subheading 7116.20.40, HTSUS, which provides for, “Articles of natural or cultured pearls, precious or semiprecious stones (natural, synthetic or reconstructed): Of precious or semiprecious stones (natural, synthetic or reconstructed): Other...” The 2018 column one general rate of duty is 10.5% 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 N134696, dated December 15, 2010 and NY N021167, dated December 28, 2007, are hereby REVOKED.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**PROPOSED REVOCATION OF TWO RULING LETTERS
AND REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF FLOOR SINKS**

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

ACTION: Notice of proposed revocation of two ruling letters and revocation of treatment relating to the tariff classification of cast iron, porcelain-coated floor sinks.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke two ruling letters concerning tariff classification of floor sinks 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 August 11, 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: Nicholai Diamond, Electronics, Machinery, Automotive and International Nomenclature Branch, Regulations and Rulings, Office of Trade, at (202) 325-0292.

SUPPLEMENTARY INFORMATION:

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 two ruling letters pertaining to the tariff classification of floor sinks. Although in this notice, CBP is specifically referring to New York Ruling Letter (“NY”) N259783, dated December 15, 2014 (Attachment A), and NY N244050, dated August 6, 2013 (Attachment B), 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 two identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the 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 N259783 and NY N244050, CBP classified floor sinks in heading 7326, HTSUS, specifically in subheading 7326.90.85 of the 2013 and 2014 HTSUS, which provided for “Other articles of iron or steel: Other: Other: Other.” CBP has reviewed NY N259783 and NY N244050 and has determined the ruling letters to be in error. It is now CBP’s position that the floor sinks are properly classified, in heading 7324, HTSUS, specifically in subheading 7324.90.00, HTSUS, which provides for “Sanitary ware and parts thereof, of iron and steel: Other, including parts.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY N259783 and NY N244050 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H265069, set forth as Attachment C to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: April 23, 2018

ALLYSON MATTANAH

For

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachments

ATTACHMENT A

N259783

December 15, 2014

CLA-2-73:OT:RR:NC:N1:113

CATEGORY: Classification

TARIFF NO.: 7326.90.8588

Ms. IRENE CHAN

CHL CUSTOMS HOUSE BROKER

9133 S. LA CIENEGA BLVD., SUITE 120

INGLEWOOD, CA 90301

RE: The tariff classification of an iron floor sink from China

DEAR Ms. CHAN:

In your letter received by our office on December 2, 2014, you requested a tariff classification ruling on behalf of your client, Crestline Trading Inc. Technical drawings of the floor sink under consideration were submitted for our review.

The article in question is described in your letter as a porcelain enameled cast iron floor sink. You indicated that at the time of importation the subject article is a complete and finished floor sink. You stated that the floor sink will be used to drain excess water from commercial space. The floor sinks will be installed under large commercial and industrial appliances including grocery store freezers and refrigerators, where condensation and wastewater need to be drained. The floor sinks will also be installed in restaurant kitchens which have a need for drainage under appliances and food preparation areas.

The applicable subheading for the iron floor sink will be 7326.90.8588, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other articles of iron or steel, other, other, other, other, other. The rate of duty will be 2.9 percent ad valorem.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Ann Taub at ann.taub@cbp.dhs.gov.

Sincerely,

GWENN KLEIN KIRSCHNER

*Director**National Commodity Specialist Division*

ATTACHMENT B

N244050

August 6, 2013

CLA-2-73:OT:RR:NC:N1:113

CATEGORY: Classification

TARIFF NO.: 7326.90.8588

MR. TOBY CHOW

215 W. POMONA BLVD., STE 301

MONTEREY PARK, CA 91754

RE: The tariff classification of an iron floor sink from an unknown country

DEAR MR. CHOW:

In your letter dated July 3, 2013, you requested a tariff classification ruling. Photographs and drawings of the floor sink under consideration were submitted for our review.

The subject article is described in your letter as a porcelain, enamel-coated, cast-iron floor sink with a grate. You indicated in your letter that the sink under consideration will be used in the kitchen, restroom, supermarket, laundromat, etc. The floor sink in question will be used to channel water or fluid into the drainage system.

The applicable subheading for the iron floor sink will be 7326.90.8588, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other articles of iron or steel, other, other, other, other, other. The rate of duty will be 2.9 percent ad valorem.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Ann Taub at (646) 733-3018.

Sincerely,

DEBORAH C. MARINUCCI

*Acting Director**National Commodity Specialist Division*

ATTACHMENT C

HQ H265069
CLA-2 OT:RR:CTF:CPMM H265069 NCD
CATEGORY: Classification
TARIFF NO.: 7324.90.0000

SHANSHAN LIANG
THE MOONEY LAW FIRM LLC
1911 CAPITAL CIRCLE N.E.
TALLAHASSEE, FL 32308

RE: Revocation of NY N259783 and NY N244050; Classification of floor sinks

DEAR MS. LIANG:

This is in response to your letter of May 14, 2015 letter on behalf of Crestline Trading, Inc. requesting reconsideration of New York Ruling Letter (NY) N259783, issued by U.S. Customs and Border Protection (CBP) on December 15, 2014. We have reviewed NY N259783, which involved classification of floor sinks under the Harmonized Tariff Schedule of the United States (HTSUS), and determined that it is incorrect. For the reasons set forth below, are revoking that ruling.

We have also reviewed NY N244050, dated August 6, 2013, which similarly involves classification of floor sinks, and determined that it is incorrect. We are accordingly revoking NY N244050.

FACTS:

The subject floor sinks consist of cast iron basins whose top rims and interior surfaces are coated with porcelain enamel, and whose bases contain apertures covered by aluminum strainers. Included with the floor sinks at issue in NY N244050 are grate covers of an unidentified composition. While NY N259783 does not indicate whether grates are similarly included with the floor sinks at issue there, your May 14, 2015 letter (hereinafter “reconsideration request”) states that porcelain top grates are “optional.” Your reconsideration request also states that the cast iron accounts for the “vast majority” of the weight of the floor sinks at issue in NY N259783.

Your reconsideration request provides the following depictions, among others, of the floor sinks at issue in NY N259783:



The floor sinks at issue in both rulings are designed for installment directly in floors for the purpose of collecting liquids directed toward them, separating denser material for separate removal, and channeling the collected liquid to the connected drain pipes for disposal. According to your reconsideration

request, and consistent with the descriptions contained in NY N259783, the floor sinks at issue in that ruling are installed in kitchens, supermarkets, grocery stores, and other “commercial spaces” so as “to drain condensed water from large freezers or refrigerators, to drain waste water from floor wash-downs, to drain waste water from food preparation areas, and/or to separate food residuals, fats or other large particles from waste water.” Your reconsideration request further states that the floor drains are installed in hospitals and clinics. According to NY N244050, the floor sinks at issue in that ruling are similarly used in a wide range of environments, including kitchens, restrooms, supermarkets, and laundromats.

In both NY N259783 and NY N244050, the subject floor sinks were classified in heading 7326, HTSUS. They were specifically classified in subheading 7326.90.85 of the 2013 and 2014 HTSUS, which provided for “Other articles of iron or steel: Other: Other: Other.” We note that subheading 7326.90.85, HTSUS, was superseded by subheading 7326.90.86, HTSUS, as part of the 2017 revisions to the HTSUS, but that the provisions are substantively identical.

ISSUE:

Whether the subject floor sinks are classified in heading 7324, HTSUS, as sanitary ware of iron, in heading 7325, HTSUS, as “other” cast articles of iron, or in heading 7326, HTSUS, as “other” articles of iron.

LAW AND ANALYSIS:

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

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

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

The 2018 HTSUS provisions under consideration are as follows:

7324	Sanitary ware and parts thereof, of iron or steel:
7324.90.00	Other, including parts
7325	Other cast articles of iron or steel:
	Other:
7325.99	Other:
7325.99.10	Of cast iron

7326	Other articles of iron or steel:	
7326.90	Other:	
		Other:
7326.90.86		Other

As a preliminary matter, the subject floor sinks can only be classified in heading 7326, HTSUS, if they are not more specifically classifiable in heading 7324 or heading 7325, HTSUS. See EN 73.26 (“This heading covers all iron or steel articles...other than articles included in the preceding headings of this Chapter.”). Accordingly, we initially consider whether the subject articles fall within the scope of heading 7324.

Heading 7324, HTSUS, applies, *inter alia*, to sanitary ware of iron. EN 73.24 states, in pertinent part, as follows:

This heading comprises a wide range of iron or steel articles, not more specifically covered by other headings of the Nomenclature, used for sanitary purposes.

These articles may be cast, or of iron or steel sheet, plate, hoop, strip, wire, wire grill, wire cloth, etc., and may be manufactured by any process (moulding, forging, punching, stamping, etc.). They may be fitted with lids, handles or other parts or accessories of other materials provided that they retain the character of iron or steel articles.

The heading includes, baths, bidets, hip-baths, foot-baths, sinks, wash basins, toilet sets; soap dishes and sponge baskets; douche cans, sanitary pails, urinals, bedpans, chamber-pots, water closet pans and flushing cisterns whether or not equipped with their mechanisms, spittoons, toilet paper holders.

Per its plain language, and as explicated in EN 73.24, heading 7324 applies to articles which are describable both as “sanitary ware” and as “of iron or steel.” With respect to the former criterion, the term “sanitary” is left undefined in the HTSUS. The term must therefore be construed in accordance with its common meaning, which may be ascertained by reference to “standard lexicographic and scientific authorities” and to the pertinent ENs. See *GRK Can., Ltd. v. United States*, 761 F.3d 1354, 1357 (Fed. Cir. 2014). According to the Oxford English Dictionary, “sanitary” adjectivally refers to “conditions affecting health, esp. with references to cleanliness and precautions against infection and other deleterious diseases.” Definition Sanitary, Oxford English Dictionary, <http://www.oed.com/view/Entry/170705?redirectedFrom=sanitary> (last visited April 13, 2018); see also Headquarters Ruling Letters (HQ) H201156 and HQ H201157, both dated December 16, 2014 (citing MacMillan Dictionary definition of “sanitary” as “relating to people’s health, especially to the system of supply water and dealing with human waste”). Consistent with this, EN 73.24 lists, as exemplars of “sanitary ware,” various articles used to remove waste that could potentially serve as vectors for disease. See *LeMans Corp. v. United States*, 660 F.3d 1311, 1320–21 (Fed. Cir. 2011) (holding that use of EN examples to define the scope of a tariff term is permissible). Among these listed exemplars are sinks and wash basins, both of which are used to funnel waste – human, food, or otherwise – from relatively wide receptacles to narrower drainage systems for disposal. See *id.*; see also HQ H201156 and H201157, *supra* (finding that

inclusion of “sinks” among EN 73.24 exemplars is consistent with definition of “sanitary ware” in Merriam-Webster’s Collegiate Dictionary). In consideration of the above, we are of the view that “sanitary ware” applies to basins, wherever positioned, that similarly collect and facilitate the drainage of organic or inorganic waste for the purpose of preventing the incubation and spread of disease.*

The subject floor sinks satisfy this description, insofar as they are designed to assist in the disposal of waste water from areas like bathrooms, food preparation and storage areas, and medical facilities, among others. Like traditional sinks and wash basins, the floor sinks collect broad swaths of waste water directed toward them and funnel this water toward underlying drainage pipes for disposal. In so doing, the floor sinks additionally separate and aggregate denser waste material for subsequent manual removal. In this manner, the floor sinks help mitigate pathological health risks in areas that are particularly effective disease incubators. It is immaterial that they are installed in floors, rather than atop them as upright units, given that their functionality is akin to that of traditional sink bowls or basins. Therefore, the subject floor sinks satisfy the definition of “sanitary ware” for purposes of heading 7324, HTSUS. We note that this determination finds support in prior CBP rulings. See NY R03830, dated May 19, 2006; NY L86937, dated September 2, 2005; and NY 883008, dated February 26, 1993 (all classifying substantially similar floor drains as “sanitary ware” of heading 7324).

As to whether the floor sinks are “of iron or steel,” per the second criterion listed above, EN 73.24 states that sanitary ware of the heading may incorporate components or include accessories made up of “other materials” so long as it “retains the character” of iron or steel. The extent to which incorporation of a non-steel, non-iron material deprives a sanitary ware of its iron or steel character is left unaddressed by the EN, the HTSUS, and CBP precedent alike. However, we have previously determined that steel or iron articles coated with “other materials” are *prima facie* classifiable in heading 7324, HTSUS. See HQ 958421, dated March 18, 1996. This is also consistent with various decisions involving heading 7323, HTSUS, which similarly pertains to composite goods – albeit “kitchen articles” – which “retain the character” of iron or steel. See EN 73.23 (“These articles...may be fitted with lids, handles or other parts or accessories of other materials provided that they retain the character of iron or steel articles.”). Per the latter rulings, articles with iron or steel bodies retain the character of those metals even when coated with and/or comprised in minor, non-structural part of other substances. See HQ 966953, dated March 25, 2004 (classifying “microradiant cooker consist[ing] of a thermal ceramic [steel] tripod-pedestal and a Teflon-coated steel pan and lid” in heading 3923); see also HQ 963777, dated April 2, 2001 (determining that chrome-plated strainers with plastic handles “retain the character of iron or steel articles” for purposes of heading 3923). However, when accompanied by separate, non-metal items which are in and of themselves distinct articles of commerce, those goods can no longer be classified solely as articles “of iron or steel.” See HQ 966953, *supra* (classifying oven mitts included with steel pedestal and pan and lid in heading

* In HQ 962658, dated July 18, 2000, which pertained to the classification of steel waste baskets, we stated as follows: “The ENs imply that sanitary ware of heading 7324 only include articles associated with cleaning or caring for the body and its hygienic functions.” In view of the above analysis, we do not consider this statement to be an accurate interpretation of “sanitary ware” for purposes of heading 7324.

6304, HTSUS); see also HQ 961935, dated September 25, 1998 (determining that combination of steel or iron spice rack and twelve glass jars could not be classified in heading 7323 because the jars were distinct articles of commerce that imparted the set's essential character). In view of this, it is our position that sanitary ware retains the character of iron or steel where any "other materials" included are clearly subordinate to the constituent iron or steel in terms of relative size and structural importance, and where those materials lack any independent commercial significance.

In the instant case, the structures of the basins comprising the floor sinks' bodies are wholly iron. While the basins are coated with porcelain along their rims and interior surfaces, the entirety of their exteriors and bottommost surfaces consist solely of uncoated iron. As such, it cannot be said that the porcelain content forms, or even lends to, the structure of the floor sinks. Nor can the aluminum strainers covering the floor sinks' base aperture be considered structurally important, as they are merely placed upon the pre-existing structure for purposes of assisting in the filtering of larger waste residue for separate removal. As to your contention that the iron content in the basins vastly exceeds that of porcelain and aluminum, this remains unverified in the absence of supporting evidence. However, a simple inspection of the depictions included in your ruling request, as well as others found in various online retail channels, indicates that the iron content does in fact predominate by surface area and mass. Lastly, even if grates of porcelain or other materials are included with the basins at entry, the grates cannot be considered distinct articles of commerce insofar as their unique form and dimensions narrow their use to that of accessories for the floor sinks. As such, they do not render the character of floor sinks something other than articles of iron. We therefore conclude that the subject merchandise, as sanitary ware of iron, is within the scope of heading 7324, HTSUS.

We next consider heading 7325, HTSUS, which applies, *inter alia*, to "other cast articles of iron." EN 73.25 provides, in pertinent part, as follows:

This heading covers all cast articles of iron or steel, not elsewhere specified or included.

* * *

The heading...excludes:

- (a) Articles of a kind described above obtained by processes other than casting (e.g., sintering) (heading 73.26).

Like the term "sanitary", the term "cast" is not defined in the HTSUS. The Oxford English Dictionary provides that in conjunction with "iron", "cast" denotes a production process whereby molten iron is inserted into pre-formed moulds and subsequently cooled and hardened. Definition Cast Iron, OXFORD ENGLISH DICTIONARY, <http://www.oed.com/view/Entry/28580?redirectedFrom=cast+iron#eid> (last visited October 30, 2017); see also HQ H169835, dated August 25, 2015 (surveying similar dictionary definitions in discussing the meaning of "cast"). This is consistent with CBP's long-standing understanding of "cast articles" as those derived strictly by the following process:

Molten blast furnace iron [is] bottom poured into a mold. After sufficient time for solidification and cooling, the castings are removed from the mold by a shakeout machine. The casting process is considered complete when surface imperfections are removed by blast cleaning, chipping, burning or combinations of these processes.

See, e.g., HQ H249997, dated December 9, 2015 and HQ W968382, dated July 21, 2008 (both referencing HQ 959315, dated October 1, 1996). Because CBP views casting as limited to the above-described steps, we have consistently ruled that articles cannot be considered “cast” when they are subjected to processing that goes beyond those steps, including, inter alia, coating of the cast articles with additional substances. See HQ W968382 and HQ 959315, *supra* (determining that the galvanization of, respectively, cast iron drainage equipment and socket caps rendered the articles more than “cast”). As EN 73.25 makes clear, such articles are excluded from heading 7325.

In NY N259783, NY N244050, and your reconsideration request alike, the subject merchandise is consistently described as porcelain enamel-coated cast iron sinks. The uncontested implication of this description is that the floor sinks have been obtained by the casting of iron followed by the coating of the resultant castings with protective porcelain enamel. Per the above-cited CBP precedent, therefore, the floor sinks have indisputably been subjected to processing that renders them more than merely “cast” within the meaning of heading 7325. Because the floor sinks fall outside the scope of heading 7325 and, as discussed above, fall within the scope of heading 7324, they are properly classified in the latter heading.

HOLDING:

By application of GRI 1, the subject floor sinks are classified in heading 7324, HTSUS, specifically in subheading 7324.90.0000, HTSUSA (Annotated), which provides for: “Sanitary ware and parts thereof, of iron or steel: Other, including parts.” The 2018 column one general rate of duty is free.

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

EFFECT ON OTHER RULINGS:

New York Ruling Letters N259783, dated December 15, 2014, and NY N244050, dated August 6, 2013, are hereby REVOKED in accordance with the above analysis.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

CC: Toby Chow

215 W. Pomona Blvd., Suite 301
Monterey Park, CA 91754

19 CFR PART 177**REVOCATION OF ONE RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF JUMPSMART TRAMPOLINE**

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 JumpSmart Trampoline.

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 JumpSmart Trampoline 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. 52, No. 8, on February 21, 2018. 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 September 10, 2018.

FOR FURTHER INFORMATION CONTACT: Michele A. Boyd, Chemicals, Petroleum, Metals and Miscellaneous Articles Branch, Regulations and Rulings, Office of Trade, at (202) 325–0136.

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. 52, No. 8, on February 21, 2018, proposing to revoke one ruling letter pertaining to the tariff classification of JumpSmart Trampoline. 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 ("NY") N012532, dated June 29, 2007, CBP classified JumpSmart Trampoline in heading 9503, HTSUS, specifically in subheading 9503.00.0080, HTSUSA, which provides for "Other toys; reduced-scale ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof...Other...Other."¹ CBP has reviewed NY N012532 and has determined the ruling letter to be in error. It is now CBP's position that JumpSmart Trampoline is properly classified, in heading 9506, HTSUS, specifically in subheading 9506.91.0030, HTSUSA, which provides for "Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof: ... Other: Articles and equipment for general physical exercise, gymnastics or athletics; parts and accessories thereof ...Other."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY N012532 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter ("HQ") H212596, 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.

¹ Please note that in N012532, the applicable subheading for the JumpSmart Trampoline was 9503.00.0080, HTSUSA (2007). However, the "Other" provision in the subheading 9503.00.0080, HTSUSA (2007), has been replaced by 9503.00.0090, HTSUSA (2017). The free rate of duty has not changed.

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

Dated: April 23, 2018

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H212596

April 23, 2018

CLA-2 OT:RR:CTF:CPMMA H212596 MAB

CATEGORY: Classification

TARIFF NO.: 9506.91.0030

Toys “R” Us, Inc.

ONE GEOFFREY WAY

WAYNE, NJ 07470

ATTN: Legal and Risk Management Department

Re: Revocation of NY N012532; Classification of JumpSmart Trampoline

TO WHOM IT MAY CONCERN:

This is in reference to New York Ruling Letter (NY) N012532 dated June 29, 2007, issued to legal counsel of Etoys Direct, Inc., a company acquired by Toys “R” Us, Inc., in 2009² concerning the tariff classification of a musical trampoline for children identified as the “JumpSmart Trampoline” under the Harmonized Tariff Schedule of the United States (HTSUS). In that ruling, U.S. Customs and Border Protection (CBP) classified the merchandise as a toy under heading 9503, HTSUS. More specifically, the instant merchandise was classified in subheading 9503.00.0080, HTSUSA (Annotated).³ We have reviewed NY N012532 and find it to be in error with respect to the tariff classification. For the reasons set forth below, we hereby revoke NY N012532.

Pursuant to Section 6125(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 CBP is revoking the above noted ruling concerning the classification of Jump Smart Trampoline, under the HTSUS. Similarly, CBP is revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed revocation was published on February 21, 2018, in Volume 52, Number 8, of the *Customs Bulletin*. No comments were received in response to the proposed notice.

FACTS:

The subject merchandise at issue in NY N012532 is a musical trampoline for children called the JumpSmart Trampoline (item number 4849). It measures approximately 42 inches by 36 inches and is designed for children ages three to eight years of age, weighing up to 80 pounds. The trampoline has accompanying music and learning games when children are jumping on it.

² Assoc. Press, *Toys R Us acquires EToys.com*, L.A.TIMES (Feb. 13, 2009), <http://articles.latimes.com/2009/feb/13/business/fi-toys13>.

³ Please note that in N012532, the applicable subheading for the JumpSmart Trampoline was 9503.00.0080, HTSUS (2007). However, the “Other” provision in subheading 9503.00.0080, HTSUS (2007), has been replaced by 9503.00.0090, HTSUS (2017). The free rate of duty has not changed.

In addition to the original descriptive information set forth in NY N012532, we have reviewed representative product specific literature that is available on the Internet⁴



and watched several YouTube videos.⁵ JumpSmart Trampoline is triangular-shaped with a trampoline mat secured to a metal frame by bungee cording. The mat appears to be composed of either polyvinyl chloride (PVC) or other fabric material. The bungee cording provides the trampoline mat its bounce. There is a second piece of cascading fabric that covers the bungees and the edges of the triangular metal frame. The JumpSmart Trampoline also has two waist-high handles that are similar to bicycle handles for children to hold onto, providing balance while jumping. There is a piece of what appears to be heavy-duty plastic connecting the two handlebars with a row of buttons that control the music, learning games, and volume. The instant merchandise requires three AA batteries that are not included.

JumpSmart Trampoline as seen on Amazon.com

ISSUE:

Whether the JumpSmart Trampoline is a toy of heading 9503, HTSUS, or an article for general physical exercise of heading 9506, 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. GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or

⁴ TOYS R US, <https://www.toysrus.com> (last visited Nov. 14, 2017) provides information on the JumpSmart Trampoline. While the product is no longer in stock, the product information is considered representative for the instant merchandise at issue given that it is consistent with the other descriptive information previously provided in NY N012532. See <https://www.toysrus.com/buy/outdoor-play/jumpsmart-trampoline-00135-3553708> (last visited Nov. 14, 2017); see also AMAZON, https://www.amazon.com/Diggin-00135-JumpSmart-Trampoline/dp/B00264GIFO?SubscriptionId=AKIAJO7E5OLQ67NVPFZA&camp=&ascsubtag=412912137-16-&camp=2025&creative=165953&creativeASIN=B00264GIFO&linkCode=xm2&tag=d_2b_a_p-20 (last visited Nov. 14, 2017); WALMART, <https://www.walmart.com/ip/JumpSmart-Kids-Electronic-Trampoline/33455551> (last visited on Nov. 14, 2017).

⁵ YouTube, <http://www.youtube.com>: JumpSmart! Professional assembly required (tim-boutillier); JumpSmart Electronic Trampoline (Mastermind Toys); JumpSmart Kids Trampoline Review (twonewparents); Jump Smart Toy (prinket) (last visited on Nov. 14, 2017).

chapter notes and, unless otherwise required, according to the remaining GRIs taken in their appropriate order. The HTSUS provisions under consideration are the following:

9503	Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls, other toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof
9503.00.0090	Other: * * * * *
9506	Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof: Other:
9506.91.00	Articles and equipment for general physical exercise, gymnastics or athletics; parts and accessories thereof
9506.91.0030	Other

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

Although the term "toy" is not specifically defined in the tariff, the ENs to chapter 95, HTSUS, state the following:

This Chapter covers toys of all kinds whether designed for the amusement of children or adults. It also includes equipment for indoor or outdoor games, appliances and apparatus for sports, gymnastics or athletics, certain requisites for fishing, hunting or shooting, and roundabouts and other fairground amusements.

The ENs to heading 9503 provide, in relevant part, as follows:

(D) Other toys.

This group covers toys intended essentially for the amusement of persons (children or adults)....This groups includes:

* * * * *

- (ix) Toy sports equipment, whether or not in sets (e.g., gold sets, tennis sets, archery sets, billiard sets; baseball bats, cricket bats, hockey sticks).

The EN to heading 9506 states, in pertinent part, the following:

(A) Articles and equipment for general physical exercise, gymnastics or athletics, e.g.,:





Trapeze bars and rings; horizontal and parallel bars; balance beams, vaulting horses; pommel horses; spring boards; climbing ropes and ladders; wall bars; Indian clubs; dumb bells and bar bells; medicine balls; rowing, cycling and other exercising apparatus; chest expanders; hand grips; starting blocks; hurdles; jumping stands and standards; vaulting poles; landing pit pads; javelins, discs,

throwing hammers and putting shots; punch balls (speed bags) and punch bags (punching bags); boxing or wrestling rings; assault course climbing walls.

As noted above, Chapter 95 divides “toys” and “equipment for general physical exercise” into two separate headings - 9503, HTSUS, for toys and 9506, HTSUS, for exercise equipment. In order to be considered a toy, an article must be principally designed for amusement and not practicality. *See, e.g., Streetsurfing LLC v. United States*, 11 F. Supp. 3d 1287, 1298 (CIT 2014); *Minnetonka Brands, Inc. v. United States*, 110 F. Supp. 2d 1020, 1026 (CIT 2000)). Furthermore, if the article consists of a utilitarian feature, it must be incidental to any amusement the item may provide. *See Ideal Toy Corp. v. United States*, 78 Cust. Ct. 28, 33, C.D. 4688 (1977).

The term trampoline is undefined in the tariff. The courts and CBP construe statutorily undefined terms in accordance with their common and commercial meaning, which is presumed to be the same. *See E.M. Chems. v. United States*, 920 F.3d 910, 913 (Fed. Cir. 1990). The Oxford Dictionary defines trampolines as: “[a] strong fabric sheet connected by springs to a frame, used as a springboard and landing area in doing acrobatic or gymnastic exercises.” Miriam-Webster defines them as: “[a] resilient sheet or web (as of nylon) supported by springs in a metal frame and used as a springboard and landing area in tumbling” and Wikipedia states: “[a] trampoline is a device consisting of a piece of taut, strong fabric stretched over a steel frame using many coiled springs.”

Mini-trampolines, however, do not have springs, but use a number of tension resistance bands to provide the bounce. They are depicted below:

				
	This item: Pure Fun 38-inch Mini Trampoline	Stamina 36 inch Folding Trampoline #1 Best Seller in Trampolines	Stamina 38-inch Intone Plus Rebounder	Sunny Health & Fitness 40" Foldable Trampoline with Bar
Customer Rating	☆☆☆☆☆ (449)	☆☆☆☆☆ (711)	☆☆☆☆☆ (185)	☆☆☆☆☆ (410)
Price	\$40.26	\$28.83	\$38.00	\$60.16
Shipping	FREE Shipping	FREE Shipping	FREE Shipping	FREE Shipping
Sold By	Amazon.com	Amazon.com	Amazon.com	Amazon.com
Item Weight	14.25 pounds	12.8 pounds	13 pounds	28 pounds

Like the resistant bands found in these mini-trampolines, the JumpSmart Trampoline’s bungee cords provide the same bouncing and jumping experience, thereby providing exercise.

In NY R01614 (dated March 22, 2005), CBP considered the issue of whether a child-sized “Mini Trampoline” that was circular in shape and measuring 37.4 inches in circumference, should be classified as a toy of heading 9503, HTSUS, or an article of exercise equipment of heading 9506, HTSUS. The trampoline’s frame was constructed of steel and the trampoline mat, as well as the material covering the edges, was made of PVC. CBP classified the item in subheading 9506.91.0030, noting the following: “[f]or tariff purposes, we believe that the provision for exercise equipment specifically describes this item while the toy provision does not do so.”

CBP has classified other more traditional-style recreational trampolines with galvanized steel frames, safety pads constructed of PVC, metal springs to provide bounce, and ranging in size from 11' – 14', in heading 9506, HTSUS, as exercise equipment. *See* NY N144678 (dated February 14, 2011). More recently, in HQ H270403 (dated October 31, 2017), CBP classified the Skywalker Trampolines, for outdoor use, measuring 16' x 14' in size with 96 springs and including the "Triple Toss Game" as exercise equipment in heading 9506, HTSUS.

The JumpSmart Trampoline also incorporates games into its smaller trampoline.

In HQ 963284 (dated June 21, 2001), Customs cited HQ 950758 which ruled that a "Mini-Court" miniature basketball game was a scaled version of standard basketball equipment, consisting of a metal basketball hoop with a net attached to a wooden backboard supported by a two-part metal tubular post approximately six feet tall. It was determined that it could function as a recreational article and provide physical activity, especially for children.

HQ 963284 went on to state that an item does not have to be a regulation or "official" size to be considered sports equipment, provided that it is sufficiently sturdy and challenging to qualify as a "junior edition" of more expensive, larger portable basketball systems. Following the decision in *New York Merchandise Co. v. United States*, 62 Cust. Ct. 38, C.D. 3671, 294 F.Supp. 971 (1969), *appeal dismissed* 56 C.C.P.A. 133 (1969), Customs explained:

...a junior edition of a larger, more expensive article will be classified under the provision of the more expensive article if the cheaper, smaller article performs the same function on a smaller scale. Therefore, sports equipment reduced in size and material quality for use by children is classified in heading 9506, HTSUS, as long as the equipment is of a character suitable for use in the serious organized play or practice of games or sports or athletic recreation.

The instant JumpSmart Trampoline is constructed of a sturdy metal frame and is capable of holding weight up to 80 pounds. Jumping on a child-sized trampoline provides physical recreation and athletic coordination similar to jumping on a larger one.

The same Triple Toss Game on the outdoor trampoline is included in this miniature version. Outdoor games are classified in heading 9506, HTSUS.

In HQ 965431 (dated July 15, 2002), when discussing whether a one-wheeled skate was properly classified in the same provision as roller skates, Customs stated the following:

To hold the term 'roller skate' in marketing and sporting circles is restricted to the traditional concept of pairs of wheels, is to ignore an important function of the tariff schedule, namely to provide *eo nomine* classification for most of the articles in international trade. **HQ 086626**, dated January 15, 1991. 'Tariff provisions should be open to the invention of new and different products.' *Id.* 'Congress could not have intended to foreclose future innovations in [goods] from classification under the [*eo nomine*] provisions.' *Simmon Omega, Inc. v. United States*, 83 Cust.Ct. 14, C.D. 4815 (1979). 'To hold otherwise would result in the classification of any and every new product in the basket provisions of the nomenclature.' **HQ 086626**.

We note, too, that the instant trampoline being sold in some toy stores does not automatically qualify it as a toy for tariff purposes. *See* HQ 963284 (June 12, 2001) (Customs notes that well-known toy stores such as Toys R Us sell toys, sporting and recreational equipment, and other things directed at a young consumer, but the appearance of the product in a toy store does not automatically make it a toy for tariff purposes).

Therefore, the Jump Start Trampoline, functioning the same as larger trampolines, while constructed without springs, should not be excluded from classification as a trampoline so long as it provides exercise via jumping. Trampolines are “other exercising apparatus,” making the junior versions classifiable under the same provision. The proper heading for the JumpSmart Trampoline should be in subheading 9606.91.0030, HTSUSA (Annotated), which references articles and equipment for general physical exercise.

HOLDING:

By application of GRIs 1 and 6, the JumpSmart Trampoline is classified under subheading 9506.91.0030, HTSUS, which provides for “Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof: ... Other: Articles and equipment for general physical exercise, gymnastics or athletics; parts and accessories thereof ... Other.” The 2017 column one, general rate of duty is 4.6 percent *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY N012532, dated June 29, 2007, is hereby revoked.

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

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

19 CFR PART 177**REVOCATION OF ONE RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF TRAMPOLINE SAFETY
ENCLOSURE**

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 trampoline safety enclosure.

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 trampoline safety enclosure 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. 52, No. 8, on February 21, 2018. 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 September 10, 2018.

FOR FURTHER INFORMATION CONTACT: Michele A. Boyd, Chemicals, Petroleum, Metals and Miscellaneous Articles Branch, Regulations and Rulings, Office of Trade, at (202) 325–0136.

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. 52, No. 8, on February 21, 2018, proposing to revoke one ruling letter pertaining to the tariff classification of a trampoline safety enclosure. 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") R03134, dated January 27, 2006, CBP classified trampoline safety enclosure in heading 9506, HTSUS, specifically in subheading 9506.99.6080, HTSUSA (Annotated), which provides for "Articles and equipment for general physical exercise, gymnastics, athletics, other sports...parts and accessories thereof: Other: Other: Other...Other." CBP has reviewed NY R03134 and has determined the ruling letter to be in error. It is now CBP's position that trampoline safety enclosure is properly classified, in heading 9506, HTSUS, specifically in subheading 9506.91.0030, HTSUSA, which provides for "Articles and equipment for general physical exercise, gymnastics or athletics; parts and accessories thereof.. Other."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY R03134 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter ("HQ") H292029, 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: April 23, 2018

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H292029

April 23, 2918

CLA-2 OT:RR:CTF:CPMMA H292029 MAB

CATEGORY: Classification

TARIFF NO.: 9506.91.0030

TSA CORPORATE SERVICES INC.

1050 WEST HAMPDEN AVE.

ENGLEWOOD, CO 80110

ATTN: MS. SHARON DIXON

Re: Revocation of NY R03134; Classification of Trampoline Safety Enclosure

DEAR MS. DIXON:

This is in reference to New York Ruling Letter (NY) R03134 dated January 27, 2006, issued to TSA Corporate Services Inc., concerning the tariff classification of a trampoline safety enclosure under the Harmonized Tariff Schedule of the United States (HTSUS). In that ruling, U.S. Customs and Border Protection (CBP) classified the merchandise in subheading 9506.99.6080, HTSUSA (Annotated). We have reviewed NY R03134 and find it to be in error with respect to the tariff classification. For the reasons set forth below, we are revoking NY R03134.

FACTS:

The subject merchandise at issue in NY R03134 is identified as a trampoline safety enclosure. The components of the item are as follows: polyethylene mesh netting assembled on a zinc steel frame with foam tubes. The foam tubes are designed to be attached to a trampoline by means of zinc clamps. The instant merchandise was classified in subheading 9506.99.6080 as "Articles and equipment for general physical exercise, gymnastics, athletics, other sports...parts and accessories thereof: Other: Other: Other...Other."

Pursuant to Section 1625(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 CBP is revoking the above noted ruling concerning the classification of Trampoline Safety Enclosure, under the HTSUSA. Similarly, CBP is revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed revocation was published on February 21, 2018, in Volume 52, Number 8, of the *Customs Bulletin*. No comments were received in response to the proposed notice.

ISSUE:

Whether the Trampoline Safety Enclosure is of subheading 9506.91.0030, HTSUS, and classified as an accessory of general exercise equipment...Other or of subheading 9506.99.6080, HTSUS, and classified as an accessory of general exercise equipment...Other: Other: Other...Other.

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. GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in their appropriate order. The HTSUS provisions under consideration are the following:

9506	Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof:
	Other:
9506.91.00	Articles and equipment for general physical exercise, gymnastics or athletics; parts and accessories thereof
9506.91.0030	Other
9506.99	Other:
9506.99.60	Other
9506.99.6080	Other

Legal Note 3 to Chapter 95, HTSUS, provides the following:

3. Subject to note 1 above, parts and accessories which are suitable for use solely or principally with articles of this chapter are to be classified with those articles.

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

The EN to heading 9506 states, in pertinent part, the following:

(A) Articles and equipment for general physical exercise, gymnastics or athletics, e.g.,:

Trapeze bars and rings; horizontal and parallel bars; balance beams, vaulting horses; pommel horses; spring boards; climbing ropes and ladders; wall bars; Indian clubs; dumb bells and bar bells; medicine balls; rowing, cycling and other exercising apparatus; chest expanders; hand grips; starting blocks; hurdles; jumping stands and standards; vaulting poles; landing pit pads; javelins, discuses, throwing hammers and putting shots; punch balls (speed bags) and punch bags (punching bags); boxing or wrestling rings; assault course climbing walls.

CBP has classified recreational trampolines with galvanized steel frames, safety pads constructed of PVC, metal springs to provide bounce, and ranging in size from 11' – 14', in subheading 9506.91.0030, HTSUS, as exercise equipment. *See* NY N144678 (dated February 14, 2011). More recently, in HQ H270403 (dated October 31, 2017), CBP classified the Skywalker Trampolines, measuring 16' x 14' in size with 96 springs to provide bounce, as exercise equipment in subheading 9506.91.0030, HTSUS. Trampoline safety

enclosures that consist of mesh netting assembled on steel frames with foam tubes are common accessories that accompany most of these types of recreational trampolines.

Note 3 to Chapter 95 states that subject to note 1, “parts and accessories which are suitable for use solely or principally with articles of this chapter are to be classified with those articles.” As constructed, the instant Trampoline Safety Enclosure is identifiable as an accessory that is suitable for use solely or principally with recreational trampolines and will be classified accordingly.

Therefore, the applicable subheading for the instant Trampoline Safety Enclosure is subheading 9606.91.0030, HTSUS, which references articles and equipment for general physical exercise.

HOLDING:

By application of GRIs 1 and 6, the Trampoline Safety Enclosure is classified in subheading 9506.91.0030, HTSUSA, which provides for “Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof: ... Other: Articles and equipment for general physical exercise, gymnastics or athletics; parts and accessories thereof ... Other.” The 2017 column one, general rate of duty is 4.6 percent *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY R03134, dated January 27, 2006, is hereby revoked.

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

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

19 CFR PART 177

WITHDRAWAL OF PROPOSED REVOCATION OF RULING LETTERS AND TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF CHILDREN'S FISHING ROD AND REEL COMBINATIONS

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

ACTION: Notice of withdrawal of proposed revocation of tariff classification ruling letters and treatment relating to the classification of children's fishing rod and reel combinations.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI ("Customs Modernization") of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection ("CBP") is withdrawing its intent to revoke two rulings concerning the tariff classification of children's fishing rod and reel combinations under the Harmonized Tariff Schedule of the United States ("HTSUS"). Similarly, CBP is withdrawing its intent to revoke any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed revocation was published in the *Customs Bulletin*, Vol. 50, No. 38, on September 21, 2016. Two comments opposing the proposed revocation were received in response to that notice. Both comments are addressed in this decision.

FOR FURTHER INFORMATION CONTACT: Michele Boyd, Chemicals, Petroleum, Metals and Miscellaneous Articles Branch, Regulations and Rulings, Office of Trade, at (202) 325–0136.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade commu-

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the *Customs Bulletin*, Vol. 50, No. 38, on September 21, 2016, proposing to revoke New York Ruling Letters ("NY") N003439, dated November 30, 2006, and NY N004939, dated January 12, 2007, both of which involve classification of children's fishing rod and reel combinations. In both NY N003439 and NY N004939, CBP classified the subject children's fishing rod and reel combinations in heading 9503, HTSUS, specifically in subheadings 9503.90.80 and 9503.70.00, HTSUS, respectively. Heading 9503, HTSUS, provides for "Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls, other toys; reduced-scale ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof."

In the above-referenced September 21, 2016, notice, CBP stated that it had determined the ruling letters to be in error and that the children's fishing rod and reel combinations are properly classified in subheading 9507.30, HTSUS, which provides for "Fishing rods, fish hooks and other line fishing tackle; fish landing nets, butterfly nets and similar nets; decoy "birds" (other than those of heading 9208 or 9705) and similar hunting or shooting equipment; parts and accessories thereof: Fishing reels and parts and accessories thereof." CBP further stated that it accordingly intended to revoke NY N003439 and NY N004939, and to revoke or modify any other heretofore unidentified rulings classifying children's fishing rod and reel combinations in heading 9503, HTSUS, to reflect the analysis contained in the proposed Headquarters Ruling Letter ("HQ") H194140. However, we are now of the view that NY N003439 and NY N004939 are correct and that the children's fishing rod and reel combinations are properly classified in subheading 9503.90.80 and 9503.70.00, HTSUS, respectively and we are accordingly withdrawing our proposed revocation of the two ruling letters and of any other ruling not specifically identified.

In NY N003439, CBP provided the following description of the children's fishing rod and reel combination at issue:

You are requesting the tariff classification on a product called Shrek® Fun Casting Combo. There is no designated style number for the product. The item, a toy fishing rod, is a hard plastic rod with fishing line that can be attached to the soft plastics casing plug. The article is designed to teach children to fish who may not have the fine motor skills required.

In NY N004939, the children's fishing rod and reel combination at issue is described as follows:

The submitted sample is described as a Shrek® Fun Casting Kit; there is not designated item number for the item. The product is made up of the following components: a toy casting rod with fishing line, a casting plug, protective sunglasses, and a small utility box packaged in a clear plastic backpack.

Samples and information included in one of the above-referenced comments confirms the descriptions of both the Shrek Fun® Casting Combo and the Shrek® Fun Casting Kit. Upon inspection of the samples and review of this information, we have learned that the products were designed for children between the ages of three and six to develop basic casting skills and allow them to pretend to fish. The casting rods measure two feet and six inches in length. As noted on the packaging, the fishing rods are designed to be used as toys and not for sport fishing. They do not include reel fishing hooks. Instead, using the casting plugs, children can practice casting across the yard or into a body of water, e.g., tub, pool, pond, etc.

One of the above-referenced comments also provides the following statement by a subject matter expert on fishing and fishing products:

The combo is not designed for and does not have the characteristics required to function properly in a recreational fishing environment. It is not designed nor intended to be used in actual fishing activities due to its lack of proper rod action and strength required to hook and fight an active fish. The line used is simplistic and is not of recreational activity quality. The spincast type reel is deliberately selected to provide minimal tangles due to its stiffness which is counterproductive when considered for actual fishing activities.

Upon our request, the manufacturer of the instant products provided additional information and has advised that the monofilament line is 8-pounds, the gear ratio is 1.2:6, and the glass fiber tip rod has no power rating.

In proposed HQ H194140, we determined that because the amusement value does not outweigh the utilitarian value of the instant children's fishing rod and reel combinations at issue, the merchandise is not *prima facie* classifiable as a toy.¹ Relying on NY C89170, dated June 22, 1998, wherein CBP classified a child's fishing rod and reel – described as a “four foot six inch fishing rod blister packed with a reel containing monofilament line, and a small practice casting plug” – in heading 9507, HTSUS, as fishing rods, fish hooks and other line fishing tackle, we stated as follows:

Similar to the merchandise at issue in ruling letter NY C89170, the Shrek®-themed children's fishing rods and reels each consist of a child-sized fishing rod, a reel with monofilament line, and a practice casting plug. The casting plug is not permanently attached to the monofilament line and can be easily removed and replaced with line fishing tackle. Accordingly, this office finds that because the Shrek®-themed fishing reel is equipped with monofilament line and is attached to rod of sufficient length to enable casting, the children's fishing rods and reels are designed for the utilitarian purpose of fishing. Consequently, CBP concludes that the merchandise is *prima facie* classifiable under heading 9507, HTSUS, which provides, in pertinent part, for “Fishing rods, fish hooks and other line fishing tackle”

We also stated:

In classifying the Shrek®-themed children's fishing rods and reels as articles of heading 9507, HTSUS, CBP is mindful that the fishing rods and reels are decorated with cartoon motifs, bright colors, and are packaged with a plastic practice casting plug. However, this office finds that the physical characteristics of the Shrek®-themed children's fishing rods and reels do not support the classification of the merchandise as toys of heading 9503, HTSUS. Unlike toy fishing rods and games that CBP has previously classified in heading 9503, HTSUS, CBP observes

¹ “In the tariff context, the ‘amusement’ quality of an article is considered in contrast to its utilitarian function, and in *Ideal Toy Corp. v. United States*, 78 Cust. Ct. 28, C.D. 4688 (1977), the court stated that, “[W]hen amusement and utility become locked in controversy, the question becomes one of determining whether the amusement is incidental to the utilitarian purpose, or the utility purpose incidental to the amusement.” Therefore, if the level of amusement of the article is not sufficient to constitute its principal use, the article is not a toy. See *United States v. Topps Chewing Gum, Inc.*, 440 F.2d 1384 (1973). Accordingly, the courts have used a variety of factors in determining whether an article is principally used for amusement, diversion, or play purposes and recently identified an article's ‘general physical characteristics’ as an important aspect in deciding if the article is *prima facie* classifiable as a toy of heading 9503, HTSUS, *Infantino, LLC v. United States*, 36 Int'l Trade rep. (BNA) 1534 (Ct. Int'l Trade Dec. 24, 2014); see also *United States v. Carborundum Co.*, 536 F.2d 373 (Fed. Cir. 1976).”

that the physical characteristics of the instant merchandise render the fishing rods and reels suitable for sport fishing.

Based on the foregoing analysis and comments received, we have reexamined fishing rods and reels in general and children's fishing rods and reels as they relate to the physical characteristics making them suitable for sport fishing. Specifically, our inquiry includes the following: monofilament line, gear ratios, and power ratings.

Our research² indicates that monofilament line is fishing line made from a single fiber of plastic and is used in a variety of fishing applications. Most fishing lines currently on the market today are monofilament because these types of fibers are cheap to produce and come in a range of diameters which have different tensile (i.e., tension) strengths. Fishing line strength is called 'test' and is measured in "pounds." "Pound test" is a measurement of how much stress can be put on fishing line before it breaks and should roughly match the weight of the species one is fishing for (e.g., use line in the 30-pound test for tuna in the 30-pound range), illustrating there are many considerations when choosing the right line for sport fishing. According to various fishing websites, 8-pound monofilament line is easy to use, for general purposes, suitable with all reel types, and can be forgiving. As noted above, the manufacturer has advised CBP that the monofilament line of its Shrek®-themed fishing rods and reels is 8-pound.

Gear ratios determine the speed at which a reel picks up line. The number before the colon denotes the rotations the spool makes per one complete turn of the reel's handle. For example, fishing reels with a gear ratio of 6.3:1 signifies that the spool rotates 6.3 times for every 360-degree turn of the reel handle. The larger the first number, the more line that is retrieved on each crank. Casting reels offer a wider range of gear ratios than spinning models for spinning rods. Most spinning reels feature a gear ratio of 5.2:1 to 6.2:1. The professional fishermen use high speed models (7.1:1 to 9.1:1) for most applications because it is easier to slow down and retrieve with a fast reel than it is to crank faster with a low-speed model. The manufacturer has advised CBP that the gear ratio of the instant products is 1.2:6.

Power rating relates to the strength of the rod or its lifting power. Power ratings are usually described as heavy, medium heavy, medium, light, etc. Power is closely related to the line strength in that heavier power rods will handle heavy line weights and lighter powers

² See OUTDOOR LIFE, <http://www.outdoorlife.com/> (last visited Mar. 10, 2018); TACKLE WAREHOUSE, <http://www.tacklewarehouse.com/guides/rodselection.html> (last visited Mar. 10, 2018); ANGELFIRE, <http://www.angelfire.com/ia3/fishing/howtofish.htm> and <http://www.angelfire.com/ia3/fishing/kidsnfishin.htm> (last visited Mar. 10, 2018); FISHING BOYS' LIFE, <https://fishing.boyslife.org/category/advice/> (last visited Mar. 10, 2018)

are good for light lines. Power ratings vary by the type of rod. It is recommended to use the line pound test within the limits specified on the rod since a heavy power rod will snap light lines too easily and heavy lines can snap a light rod. The manufacturer of the instant products has advised CBP that its glass fiber solid tip rod has no power rating.

Finally, our research indicates that most children's sport fishing poles come equipped with 8–10 pound line, reels with a 3.1:1 gear ratio, and rods with a “medium” power rating.

When comparing the physical characteristics of typical children's sport fishing rods and reels combinations as described above to the Shrek®-themed children's fishing rods and reels at issue, we note that the 8-pound line of the Shrek®-themed children's fishing rod and reel combinations fall within the range of what is typically found, i.e., 8–10 pound line. However, the Shrek®-themed fishing rod and reel combinations have an inferior or simplistic gear ratio and no power rating. In other words, they do not meet two out of the three physical characteristics that are typically found in children's sport fishing rods and reels. In short, in both appearance and based on technical specifications, the Shrek®-themed fishing rod and reel combinations are toy like in appearance and construction and, with the exception of their monofilament line, simply are not sturdy or agile enough for successful and regular sport fishing.

Our finding is consistent with the expert opinion as noted above wherein the expert describes how the instant products do not have the characteristics required to function properly in a recreational fishing environment. It is also consistent with the packaging on the instant products which clearly states they are toys and not to be used for sport.

If the Shrek®-themed children's fishing rod and reel combinations were designed to function as junior versions of sport fishing rods and reels then, in addition to the 8-pound line, at a minimum, the physical characteristics would include reels with a gear ratio of 3.1:1 (or close to it) and rods with a medium power rating. Also, a reasonable consumer would expect the packaging to state clearly that the products are intended to be used by children to introduce them to sport fishing and are not toys. Typically, too, in junior versions of sports equipment, consumers expect to find “use instructions” explaining how the product should be assembled, used, safety precautions, etc. We note that none are found in the instant products, which reinforces

our view they are designed primarily to be used as toys and provide amusement.³

In consideration of the above, it is now our view that the amusement value of the Shrek®-themed children's fishing rod and reel combinations outweighs their utility value for sport fishing. We therefore agree with the commenters that the instant children's fishing rod and reel combinations are classified in heading 9503, HTSUS, as other toys rather than heading 9507, HTSUS, as fishing rods, fish hooks, and other line fishing tackle. As such, NY N003439 and N004939 are correct and will not be revoked.

In accordance with the foregoing, CBP is hereby withdrawing its intent to revoke NY N003439 and N004939 and any other previously-unidentified rulings classifying similar children's fishing rod and reel combinations in heading 9507, HTSUS. Additionally, CBP is withdrawing its intent to revoke any treatment previously accorded by CBP to substantially identical transactions.

Dated: April 30, 2018

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

³ Of course this does not preclude young children (hopefully with adult supervision) to replace the casting plug with a genuine fishing hook and bait to perhaps by chance catch a small fish. However, this use is unintended and clearly not recommended for this age group (ages three to six) for safety reasons.

**PROPOSED MODIFICATION OF ONE RULING LETTER
AND REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF SOILED DISH TABLES AND
UNDERCOUNTER DISH TABLES MADE OF STAINLESS
STEEL**

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

ACTION: Notice of proposed modification of one ruling letter and revocation of treatment relating to the tariff classification of soiled dish tables and undercounter dish tables made of stainless steel.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to modify one ruling letter concerning tariff classification of soiled dish tables and undercounter dish tables made of stainless steel 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 August 11, 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: Albena 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), this notice advises interested parties that CBP is proposing to modify one ruling letter pertaining to the tariff classification of soiled dish tables and undercounter dish tables made of stainless steel. Although in this notice, CBP is specifically referring to New York Ruling Letter ("NY") N278687, dated September 28, 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 ruling identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the 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 N278687, CBP classified soiled dish tables and undercounter dish tables made of stainless steel in heading 7324, HTSUS, specifically in subheading 7324.10.00, HTSUS, which provides for "Sanitary ware and parts thereof, of iron or steel: Sinks and wash basins, of stainless steel," by application of General Rule of Interpretation ("GRI") 3(a). CBP has reviewed NY N278687 and has determined the ruling letter to be in error. It is now CBP's position that the subject soiled dish tables and undercounter dish tables made of stainless steel are properly classified in heading 7324, HTSUS, specifically in subheading 7324.10.00, HTSUS, which provides for "Sanitary ware

and parts thereof, of iron or steel: Sinks and wash basins, of stainless steel,” by operation of GRIs 1 and 6.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to modify NY N278687 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H281936, set forth as Attachment B to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: May 9, 2018

ALLYSON MATTANAH

For

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachments

ATTACHMENT A

N278687

September 28, 2016

CLA-2-73:OT:RR:NC:N1:121

CATEGORY: Classification

TARIFF NO.: 7324.10.0050

MR. MICHAEL G. HODES

HODES, KEATING & PILON

134 NORTH LASALLE STREET, SUITE 1300

CHICAGO, IL 60602

RE: The tariff classification of stainless steel sink/tables from China

DEAR MR. HODES

In your letter dated August 10, 2016, you requested a tariff classification ruling on behalf of Elkay Manufacturing Company.

The products under consideration are identified as “Soiled Dish Tables,” and “Under Counter Dish Tables.” You explain in your letter that they are collectively known as “food service dish tables” that are used in restaurants and food preparation facilities to stage and rinse dirty dishes and utensils before placing them in dish washing machines. The Soiled Dish Tables come in six models: DDT 36-LX, DDT 48-RX, DDT 60-LX, DDT 72-RX, DDT 96-RX and DT 30-120-1-X. The Under Counter Dish Tables come in two models: UDT-50-LX and UDT-60-RX. The various models differ in their length and the orientation of their legs (right or left sided).

Each “food service dish table” is made of welded construction and consists of one 6-inch deep stainless steel sink bowl and counter, a stainless steel U-channel and either an 8-inch or a 10-inch high stainless steel backsplash. In most cases, they are imported with pre-punched holes for plumbing connections (e.g. hot and cold water and drain in the sink basin). Each is supported by a set of left-side or right-side galvanized steel legs, depending on the orientation of the table. Exceptions are model DDT 96-RX that has two sets of galvanized steel legs and model DT30-102-1-X that has three sink bowls and three sets of stainless steel legs.

The Soiled Dish Tables and Under Counter Dish Tables differ only in their physical relationship to the dish washing machine. Soiled Dish Tables are positioned next to the dish washing machine and attach to it at the unsupported side of the counter. Under Counter Dish Tables are positioned over the dishwashing machine, which sits underneath the counter.

You propose classification for the subject articles in subheading 9403.20.0030, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other furniture and parts thereof, other metal furniture. This office disagrees.

GRI 3(a) provides, in relevant part, that when goods are *prima facie* classifiable under two or more headings, the heading which provides the most specific description shall be preferred to headings providing a more general description. EN (IV) to GRI 3(a) explains that: “in general it may be said that: (a) A description by name is more specific than a description by class” and “(b) If the goods answer to a description which more clearly identifies them, that description is more specific than one where identification is less complete.” Our courts have interpreted this so-called “rule of relative specificity” to

mean that “we look to the provision with requirements that are more difficult to satisfy and that describe the article with the greatest degree of accuracy and certainty.” *Orlando Food Corp. v. United States*, 140 F.3d 1437, 1441 (Fed. Cir. 1998). Accordingly, we find that the subject food service tables are more specifically described in heading 7324, HTSUS, which provides for sanitary ware of iron or steel.

The applicable subheading for the food service dish tables will be 7324.10.0050, HTSUS, which provides for sanitary ware and parts thereof, of iron or steel, sinks and wash basins, of stainless steel, other. The general rate of duty will be 3.4 percent ad valorem.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Barbara Kaiser at barbara.kaiser@cbp.dhs.gov.

Sincerely,

STEVEN A. MACK

Director

National Commodity Specialist Division

ATTACHMENT B

HQ H281936
OT:RR:CTF:CPMM H281936 APP
CATEGORY: Classification
TARIFF NO.: 7324.10.00

MICHAEL G. HODES, ESQ.
HODES, KEATING & PILON
134 NORTH LASALLE STREET, SUITE 1300
CHICAGO, IL 60602

RE: Modification of NY N278687; Tariff classification of soiled dish tables and undercounter dish tables made of stainless steel

DEAR MR. HODES:

This is in response to your letter of October 31, 2016, filed on behalf of Elkay Manufacturing Company (“requestor”), requesting reconsideration of New York Ruling Letter (“NY”) N278687, dated September 28, 2016, regarding the classification, under the Harmonized Tariff Schedule of the United States (“HTSUS”), of soiled dish tables and undercounter dish tables (collectively “dish tables”) made of stainless steel.

In NY N278687, U.S. Customs and Border Protection (“CBP”) classified the subject dish tables in heading 7324, HTSUS, more specifically in subheading 7324.10.00, HTSUS, which provides for “Sanitary ware and parts thereof, of iron or steel: Sinks and wash basins, of stainless steel,” by application of General Rule of Interpretation (“GRI”) 3(a). We have determined that the instant dish tables of stainless steel are classifiable in subheading 7324.10.00, HTSUS, by application of GRI 1. For the reasons set forth below, we hereby modify NY N278687.

FACTS:

The products under consideration are used in restaurants and food preparation facilities to stage and rinse dirty dishes, and utensils, before placing them in dishwashing machines. The soiled dish tables come in six models: DDT-36-LX, DDT-48-RX, DDT-60-LX, DDT-72-RX, DDT-96-RX, and DT-30-120-1-X. The undercounter dish tables come in two models: UDT-50-LX and UDT-60-RX.

Each dish table is made of welded construction and consists of a 6-inch deep stainless steel sink bowl and counter, a stainless steel U-channel, and either an 8-inch or a 10-inch high stainless steel backsplash. In most cases, the dish tables are imported with pre-punched holes for plumbing connections. Each is supported by a set of left-side or right-side galvanized steel legs, depending on the orientation of the table.¹ The soiled dish tables are positioned next to the dishwashing machine and attach to it at the unsupported side of the counter. The undercounter dish tables are positioned over the dishwashing machine, which sits underneath the counter. Below are pictures² of the dish tables:

¹ Exceptions are model DDT-96-RX (two sets of galvanized steel legs) and model DT-30-102-1-X (three sink bowls and three sets of stainless steel legs).

² See Elkay Foodservice Dish Tables, [http://www.elkayfoodservice.com/ssp_summary_page4.asp?pag=2&var=Dish Tables](http://www.elkayfoodservice.com/ssp_summary_page4.asp?pag=2&var=Dish%20Tables) (last visited Apr. 16, 2018).



DDT-36-LX



DDT-48-RX



DDT-60-LX



DDT-72-RX



UDT-50-LX



UDT-60-RX



DDT-96-RX

The models pictured³ above are demarcated as “DDT” for soiled dish tables and “UDT” for undercounter dish tables (straight design, the width of the entire product in inches, galvanized legs with adjustable plastic feet), and the letter “R” or “L” for the location of the two legs. The other side of the dish tables is attached to a dishwashing machine and the “backsplash” with tile edge is affixed to the wall by screws. The items feature raised rolled edges and the sink basins measure 20 ¼ inches each.

Once installed, a dish rack containing soiled dishes is placed onto the drain board, positioned in or over the basin, and rinsed. The dish tables are installed at an angle with a 1/8-inch rise, so that liquid and food particles will drain into the sink basin. The dish rack full of rinsed dishes is then slid into a dishwasher.

ISSUE:

Whether the dish tables are classifiable under heading 7324, HTSUS, as sanitary ware made of steel, or under heading 9403, HTSUS, as other furniture.

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 GRIs and, in the absence of special language or context which requires otherwise, by the Additional U.S. Rules of Interpretation (“AUSRI”). The GRIs and the AUSRI are part of the HTSUS and are to be considered statutory provisions of law for all purposes.

³ Model DT-30-102-1-X (three sink bowls and three sets of stainless steel legs) is not pictured above.

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. 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. Pursuant to GRI 6, classification at the subheading level uses the same rules, *mutatis mutandis*, as classification at the heading level.

The following HTSUS provisions are under consideration:

7324	Sanitary ware and parts thereof, of iron or steel:
7324.10.00	Sinks and wash basins, of stainless steel
...	
9403	Other furniture and parts thereof:
9403.20.00	Other metal furniture
...	

Your proposed classification of the dish tables is in heading 9403, HTSUS, specifically under subheading 9403.20.00, HTSUS, as other metal furniture. You assert that: (1) this classification can be made by application of GRI 1; (2) CBP cannot proceed to a GRI 3(a) analysis because there are not two *prima facie* classifications that apply; and (3) a classification in heading 7324, HTSUS, for purposes of GRI 3(a), is precluded as a matter of law by Section XV, Note 1(k), HTSUS. While we agree with this critique of the analysis of NY N278687, we affirm the result for the reasons below.

Pursuant to Note 1(k) to Section XV, HTSUS, Chapter 73, which is contained within Section XV, does not cover articles of Chapter 94, HTSUS. Therefore, we must first determine whether the dish tables are articles of Chapter 94.

Note 2 to Chapter 94, HTSUS states that:

2. 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:

- (a) Cupboards, bookcases, other shelved furniture (including single shelves presented with supports for fixing them to the wall) and unit furniture;
- (b) Seats and beds.

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 or 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 (August 23, 1989).

EN 73.24 states, in relevant part, as follows:

This heading comprises a wide range of iron or steel articles, **not more specifically covered** by other headings of the Nomenclature, used for sanitary purposes.

These articles may be cast, or of iron or steel sheet, plate, hoop, strip, wire, wire grill, wire cloth, etc., and may be manufactured by any process (moulding, forging, punching, stamping, etc.). They may be fitted with lids, handles or other parts or accessories of other materials **provided** that they retain the character of iron or steel articles.

The heading includes, baths, bidets, hip-baths, foot-baths, sinks, wash basins, toilet sets; soap dishes and sponge baskets; douche cans, sanitary pails, urinals, bedpans, chamber-pots, water closet pans and flushing cisterns whether or not equipped with their mechanisms, spittoons, toilet paper holders.

The heading **excludes** : . . . (b) Small hanging medicine and toilet wall cabinets and other furniture of **Chapter 94**.

The General EN to Chapter 94 defines the term “furniture” as follows:

- (A) Any “movable” articles (**not included** under other more specific headings of the Nomenclature), which have the essential characteristic that they are constructed for placing on the floor or ground, and which are used, mainly with a utilitarian purpose, to equip private dwellings, hotels, theatres, cinemas, offices, churches, schools, cafés, restaurants, laboratories, hospitals, dentists’ surgeries, etc., or ships, aircraft, railway coaches, motor vehicles, caravan-trailers or similar means of transport. (It should be noted that, for the purposes of this Chapter, articles are considered to be “movable” furniture even if they are designed for bolting, etc., to the floor, e.g., chairs for use on ships). Similar articles (seats, chairs, etc.) for use in gardens, squares, promenades, etc., are also included in this category.
- (B) Cupboards, bookcases, other shelved furniture (including single shelves presented with supports for fixing them to the wall) and unit furniture, designed to be hung, to be fixed to the wall or to stand one on the other or side by side, for holding various objects or articles (books, crockery, kitchen utensils, glassware, linen, medicaments, toilet articles, radio or television receivers, ornaments, etc.) and separately presented elements of unit furniture . . .

Except for the goods referred to in subparagraph (B) above, the term “furniture” **does not apply** to articles used as furniture but designed for placing on other furniture or shelves or for hanging on walls or from the ceiling.

It therefore follows that this Chapter **does not cover** other wall fixtures such as coat, hat and similar racks, key racks, clothes- brush hangers and newspaper racks, nor furnishings such as radiator screens.

Headings 94.01 to 94.03 cover articles of furniture **of any material** (wood, osier, bamboo, cane, plastics, base metals, glass, leather, stone, ceramics, etc.). Such furniture remains in these headings whether or not stuffed or covered, with worked or unworked surfaces, carved, inlaid, decoratively painted, fitted with mirrors or other glass fitments, or on castors, etc.

The instant merchandise is composed of a sink with drain board welded together seamlessly. After importation, each article is assembled with its legs, affixed to the dishwasher at an angle, and caulked at the seam of the

wall. Even though each dish table is placed on the floor of a food service facility, once properly installed, it is not moveable. It is supported by the wall, a dishwasher, and the two legs, adjusted to assure proper drainage.

While placement on the floor or ground is necessary to the determination of classification as furniture (except for certain wall-hung items listed in Note 2 to Chapter 94, HTSUS), it is not sufficient. Many kitchen articles placed on the floor or ground (*e.g.*, refrigerators, stoves, dishwashers, and sinks) are not furniture. In addition, the instant merchandise is not a cupboard, a bookshelf, a single shelf presented with supports, a seat, or a bed. Neither is it unit furniture because the subject dish tables are not composed of smaller complementary items designed to be assembled together in various ways according to the consumer's individual needs to hold various objects or articles. *See Storewall, LLC v. United States*, 644 F.3d 1358, 1361 (Fed. Cir. 2011).

The dish tables resemble sinks with drain boards because dirty dishes are rinsed in the sink. Requestor's website pictures sinks with drain boards similar to the instant dish tables in the section titled "sinks." These items are used to clean dishes and then stack the clean dishes to dry. The drain board is the area used to temporarily place the dishes until they dry. That the additional space with drainage here is used to stack dirty dishes in preparation for their being rinsed in the sink and then loaded into a dishwasher, rather than to allow clean dishes to dry, is irrelevant.

Neither item is like the examples of furniture covered by heading 9403, HTSUS. Neither style of sink is designed to contain or store other articles. As we already noted above, the soiled dish tables are not "movable" articles covered by Chapter 94, HTSUS, because they are attached to the dishwasher and affixed to the wall. EN 94.03(c) clarifies that heading 9403 does not include furniture for "[b]uilders' fittings (*e.g.*, frames, doors and shelves) for cupboards, etc. to be built into walls." The subject dish tables have a back-splash and are made to be attached to the wall and the adjacent dishwasher. They are constructed at an angle to drain liquids and debris into the sink. Thus, the instant dish tables are not furniture within the meaning of Chapter 94, HTSUS.

By application of GRI 1, the dish tables are *prima facie* classifiable as "sanitary ware" in heading 7324, HTSUS. Heading 7324, HTSUS, provides for steel sanitary ware and parts of sanitary ware, of iron or steel. Heading 7324 includes most sinks used for personal hygiene, as well as mop sinks, kitchen sinks, and laundry sinks, regardless of the type of cleansing for which they are associated.

The term "sanitary" is not defined in the HTSUS and the ENs. When terms are not defined in the HTSUS or the ENs, they are construed in accordance with their common and commercial meaning. *See Nippon Kogaku (USA), Inc. v. United States*, 69 C.C.P.A. 89, 673 F. 2d 380 (1982); *C.J. Tower & Sons v. United States*, 69 C.C.P.A. 128, 673 F. 2d 1268 (1982). According to Dictionary.com, the term "sanitary ware" covers "plumbing fixtures, as sinks or toilet bowls, made of ceramic material or enameled metal."⁴ The Macmillan Dictionary defines "sanitary" as "relating to people's health, especially to the

⁴ Sanitary Ware Definition, Dictionary.com, <http://www.dictionary.com/browse/sanitary-ware?s=t> (last visited Nov. 6, 2017).

system of supply water and dealing with human waste.”⁵ The Oxford Dictionary, defines “sanitary” as “[r]elating to the conditions that affect hygiene and health, especially the supply of sewage facilities and clean drinking water” and as “hygienic and clean.”⁶

In addition, the CBP Informed Compliance Publication entitled, *What Every Member of the Trade Community Should Know About: Household Articles of Base Metal* 9, Part (d) (Mar. 2007) states, “Sanitary ware includes certain fixtures used to cleanse the body, such as sinks and baths and certain vessels used for the removal of waste, such as bedpans. It includes other items used exclusively in the bathroom, such as toilet paper holders and soap dishes. It does not include items provided for elsewhere, such as faucets.” The instant dish tables are sinks with drain board, backsplash, and legs. The drain board is an extension of the sink. This molded piece of metal has a sanitary function because it is used for placement of dirty dishes for washing, for rinsing and partially cleaning dirty dishes in preparation for disinfection and sterilization in a dishwasher, and for placing the rinsed dishes on their way to the dishwasher.

In NY N243764, dated July 15, 2013, CBP classified stainless steel sinks, including standard sinks, hand sinks, bar sinks, ice sinks, and mop sinks as “sanitary ware” in heading 7324, HTSUS. The bowl of each sink was welded to the drain board, backsplash, and legs to form the finished product. In NY N237840, dated Feb. 8, 2013, CBP classified stainless steel sinks with fabricated bowls in heading 7324, HTSUS. Just like the sinks in NY N243764, the instant dish tables are sinks welded to a drain board with backsplash and legs. Similarly to the sinks in NY N237840, the instant sinks with drain board have sanitary functions. A dish rack containing soiled dishes is placed onto the drain board and then positioned in or over the basin and rinsed. Liquid and food particles drain into the sink basin. Only rinsed dishes are placed into the dishwasher.

Accordingly, the subject dish tables are “sanitary ware” and are classifiable under heading 7324, HTSUS.

HOLDING:

By application of GRIs 1 and 6, the subject soiled dish tables and under-counter dish tables are classified under heading 7324, HTSUS, specifically under subheading 7324.10.00, HTSUS, which provides for “Sanitary ware and parts thereof, of iron or steel: Sinks and wash basins, of stainless steel.” The 2018 column one, general rate of duty is 3.4% *ad valorem*.

Duty rates are provided for 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>.

The merchandise may also be subject to additional duties pursuant to Subchapter III of Chapter 99, HTSUS.

Additionally, the merchandise in question may be subject to antidumping or countervailing duties (“AD/CVD”). We note that the International Trade Administration in the U.S. Department of Commerce is not necessarily bound by a country of origin or classification determination issued by CBP, with

⁵ Sanitary Definition, MACMILLAN DICTIONARY, <https://www.macmillandictionary.com/us/dictionary/american/sanitary> (last visited Nov. 6, 2017).

⁶ Sanitary Definition, OXFORD DICTIONARY, <https://en.oxforddictionaries.com/> (last visited Nov. 6, 2017).

regard to the scope of AD/CVD orders. Written decisions regarding the scope of AD/CVD orders are issued by the International Trade Administration and are separate from tariff classification and origin rulings issued by CBP. The International Trade Administration can be contacted at <http://www.trade.gov/ia/>. A list of current AD/CVD investigations at the U.S. International Trade Commission can be viewed on its website at <http://www.usitc.gov>. AD/CVD cash deposit and liquidation messages can be searched using ACE, the system of record for AD/CVD messages, or the AD/CVD Search tool at <http://adcvd.cbp.gov/index.asp?ac=home>.

EFFECT ON OTHER RULINGS:

NY N278687, dated September 28, 2016, is hereby MODIFIED.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**PROPOSED REVOCATION OF TWO RULING LETTERS
AND REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF DECORATIVE GLASSWARE
WITH LIDS**

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

ACTION: Notice of proposed revocation of two ruling letters and revocation of treatment relating to the tariff classification of decorative glassware imported with lids.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke two ruling letters concerning the tariff classification of decorative glassware imported with lids 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 August 11, 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: 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), this notice advises interested parties that CBP is proposing to revoke two ruling letters pertaining to the tariff classification of decorative glassware imported with lids. Although in this notice CBP is specifically referring to New York Ruling Letters (NYs) N036984, dated September 25, 2008 (Attachment A), and N110556, dated July 7, 2010 (Attachment B), 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 two identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the 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 NYs N036984 and N110556 CBP classified decorative glassware imported with lids in heading 9405, HTSUS, specifically in subheading 9405.50.40, HTSUS, which provides for "other non-electric lamps and lighting fittings." CBP has reviewed NYs N036984 and N110556 and has determined the ruling letters to be in error. It is now CBP's position that the decorative glassware imported with lids is properly classified in heading 7013, HTSUS, specifically in subheading 7013.99.50, HTSUS, which provides for "other glassware of a kind used for indoor decoration, valued over \$0.30 but less than \$3 each."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NYs N036984 and N110556, and to revoke or modify any other ruling not specifically identified, to reflect the analysis contained in the pro-

posed HQ H286689, set forth as Attachment C to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: April 23, 2018

ALLYSON MATTANAH

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachments

ATTACHMENT A

N036984

September 25, 2008

CLA-2-94:OT:RR:NC:1:110

CATEGORY: Classification

TARIFF NO.: 9405.50.4000

MR. WILLIAM BALDWIN
JOEL R. JUNKER & ASSOCIATES
435 MARTIN ST., SUITE 3060
BLAIN, WA 98230

RE: The tariff classification of a candle jar from China.

DEAR MR. BALDWIN:

In your letter dated August 25, 2008, you requested a tariff classification ruling on behalf of your client, Olympic Mountain and Marine Products.

The merchandise under consideration is the Dome-top Candle Jar, item number 26GJ10DMFR. A sample was submitted with your ruling request and will be returned to you.

The Dome-top Candle Jar is a clear glass article designed for a filled candle, which is a candle produced and used within the same vessel, as defined by the American Society for Testing and Materials (ASTM). Made of clear glass with a floral frosted design, this candle jar is a disposable, cylindrical vessel measuring approximately 4 inches tall with an inside diameter of 3 inches, and is flared approximately ½ inch around the base. The candle jar is imported with a frosted glass lid, which is fitted with a plastic seal designed to contain the fragrance from a scented candle. The candle jar and lid are imported together with a warning label securely affixed to the bottom of the vessel, in accordance with ASTM F2058-00 standards. Once imported, the candle jar and lid are transported directly to a packing plant where it is filled with candle wax and a wick, packaged and labeled for retail sale. Photographs of retail packaging were provided with your ruling request along with test reports indicating that this article was tested and achieved satisfactory performance characteristics in compliance with ASTM F2179-02 standards.

The applicable subheading for the Dome-top Candle Jar, item number 26GJ10DMFR, will be 9405.50.4000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Lamps and lighting fittings...: Non-electrical lamps and lighting fittings: Other: Other." The general rate of duty will be 6 percent ad valorem.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Thomas Campanelli at (646) 733-3016.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

ATTACHMENT B

N110556

July 7, 2010

CLA-2-94:OT:RR:NC:1:110

CATEGORY: Classification

TARIFF NO.: 9405.50.4000

MS. MELISSA MOORE
HANNA'S CANDLE CO.
2700 ARMSTRONG AVENUE
FAYETTEVILLE, AR 72701

RE: The tariff classification of glass candle container from China.

DEAR MS. MOORE:

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

The merchandise under consideration are the PDQ Mixed Tumblers, item number 16100004. Samples of the items in their imported condition were submitted with your ruling request and will be returned to you.

The PDQ Mixed Tumblers are cup-like glass containers measuring approximately 3 inches high with an outside diameter of 2¾ inches. One sample is made of transparent frosted glass, and the other of clear glass. Both are designed for the production of filled candles. A filled candle, as defined by the American Society for Testing and Materials (ASTM), is a candle produced and used within the same vessel. As imported, these candle holders are disposable vessels made of thin glass. The PDQ Mixed Tumblers are imported with PVC lids. These lids are fitted to go over the tops of the container after the candles are poured. From the information you provided, upon importation to the United States, your company will fill the containers with wax and a wick, fit them with the lids, and package the candles for retail sale in your own facility. You also state that the PDQ Mixed Tumblers are in compliance with ASTM standards (F2179) for glass containers that are produced for use as filled candles.

The applicable subheading for the PDQ Mixed Tumblers will be 9405.50.4000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Lamps and lighting fittings...: Non-electrical lamps and lighting fittings: Other: Other." The general rate of duty will be 6 percent ad valorem.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Thomas Campanelli at (646) 733-3016.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

ATTACHMENT C

HQ H286689

CLA-2 OT:RR:CTF:CPM H286689 SKK

CATEGORY: Classification

TARIFF NO.: 7013.99.50

MR. WILLIAM BALDWIN

JOEL R. JUNKER & ASSOCIATES

435 MARTIN ST., STE. 3060

BLAINE, WA 98230

RE: Revocation of NYs N036984 and N110556; tariff classification of glassware imported with lid; household decorative article.

DEAR MR. BALDWIN:

This ruling is in reference to New York Ruling Letter (NY) N036984, issued to Olympic Mountain and Marine Products on September 25, 2008, regarding the classification of an article identified as a "Dome-Top Candle Jar" under the Harmonized Tariff Schedule of the United States (HTSUS). In NY N036984, U.S. Customs and Border Protection (CBP) classified the subject article as a candleholder under subheading 9405.50.40, HTSUS, which provides for, in pertinent part, other non-electric lamps and lighting fittings. Since the issuance of that ruling, we have reviewed the classification of substantially identical articles and have determined that NY N034984 is in error.

In addition, CBP has also reviewed NY N110556, dated July 17, 2010, which involves the classification of substantially identical glassware under subheading 9405.50.40, HTSUS. As with NY N036984, we have determined that the tariff classification of the subject merchandise in this ruling is incorrect.

Pursuant to the analysis set forth below, CBP is revoking NYs N036984 and N110556.

FACTS:

In NY N036984, the subject merchandise is described as a clear glass "Dome-Topped Candle Jar." The article measures approximately 4 inches in height by 3 inches in diameter with a slight $\frac{1}{2}$ " outward flare at the base. The article is imported together with a frosted glass lid which is fitted with a plastic seal designed to create an air-tight seal. A warning label is affixed to the bottom of the glass article in accordance with American Society for Testing and Materials (ASTM) standards F2058-00. After importation, the article and lid are transported to a packing plant where the article is filled with a wick and poured candle wax, packaged, and labeled for retail sale. Test reports were submitted to CBP in conjunction with the ruling request which indicate that the subject article was tested and was found to be in compliance with ASTM F2179-02 standards. This specification covers the minimum requirements for annealed soda-lime-silicate glass containers that are to be used as candle containers. The merchandise was classified as a candle holder under subheading 9405.50.40, HTSUS, which provides for, in pertinent part, non-electric lamps and lighting fittings.

In NY N110556, the subject articles are described as "PDQ Mixed Tumblers, item number 16100004." The PDQ Mixed Tumblers are glass containers measuring approximately 3 inches in height by $2\frac{3}{4}$ inches in diameter and

are described as disposable vessels made of thin glass. One sample is made of transparent frosted glass, and the other of clear glass. The glass articles will be filled with candle wax and wick after importation. Both articles are imported with PVC lids which are designed to go over the tops of the container after the candles are poured. The importer states that the PDQ Mixed Tumblers are in compliance with ASTM standards (F2179) for glass containers that are produced for use as filled candles. The PDQ Mixed Tumblers were classified as candle holders under subheading 9405.50.4000, HTSUS.

ISSUE:

Whether the subject articles are classifiable as other non-electrical lamps and lighting fittings of subheading 9405.50.40, HTSUS, other glass containers for the conveyance or packing of goods under subheading 7010.90.50, HTUSA, or as other glassware of a kind used for indoor decoration under subheading 7013.99.50, HTSUS.

LAW AND ANALYSIS:

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

The tariff provisions under consideration in this ruling are set forth below:

7010	Carboys, bottles, flasks, jars, pots, vials, ampoules and other containers, of glass, of a kind used for the conveyance or packing of goods;
7013	Glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018):
7013.37	Other drinking glasses, other than of glass-ceramics:
7013.41	Glassware of a kind used for table (other than drinking glasses) or kitchen purposes, other than of glass-ceramics:
7013.99	Other glassware: Other:
7013.99.35	Votive-candle holders
7013.99.50	Other: Other: Valued over \$0.30 but not over \$3 each
* * *	
9405	Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included;

Note 1(e) to Chapter 70, HTSUS, excludes “[L]amps or lighting fittings, illuminated signs, illuminated name-plates or the like, having a permanently fixed light source, or parts thereof of heading 9405.”

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

The EN to 94.05 provides, in pertinent part:

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

Lamps 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 lighting fittings of this heading may be equipped with lamp-holders, switches, flex and plugs, transformers, etc., or, as in the case of fluorescent 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.

* * *

(6) Candelabra, candlesticks, candle brackets, e.g., for pianos.

* * * *

As Note 1(e) to Chapter 70, HTSUS, excludes articles of heading 9405, HTSUS, the initial issue is whether the subject article is a form of lamp or lighting fitting classifiable in heading 9405, HTSUS.

In *Pomeroy Collection, Ltd. v. United States*, 893 F. Supp. 2d 1269, 1281 (Ct. Int'l Trade 2013), the Court of International Trade (CIT) held:

As an *eo nomine* tariff provision, heading 9405 generally encompasses all forms of the article. *See, e.g., Pomeroy II*, 32 CIT at 549, 559 F. Supp. 2d at 1396 (concluding that heading 9405 “is clearly identifiable as an *eo nomine* provision,” not a principal use provision); Pl.’s Brief at 6, 15, 16 (stating that heading 9405 is *eo nomine* provision); Def.’s Reply Brief at 5 (same); *Carl Zeiss, Inc. v. United States*, 195 F.3d 1375, 1379 (Fed. Cir. 1999) (explaining that *eo nomine* provisions ordinarily cover all forms of named article).¹

In *Pomeroy*, the CIT cited to various dictionary definitions to determine the scope of the legal text of heading 9405, HTSUS. Citing *Merriam-Webster’s Collegiate Dictionary* (10th edition, 1997), the court noted:

[A] ‘lamp’ is defined as ‘any of various devices for producing light or sometimes heat’... ‘[L]ighting’ is synonymous with ‘illumination,’ and ‘fitting’ is defined as ‘a small often standardized part,’ *e.g.*, an electrical fitting... Dictionary terms are similarly instructive in interpreting terms such as ‘candlestick’ and ‘candelabra.’ One dictionary defines ‘candlestick’ as ‘a holder with a socket for a candle’ and defines ‘candelabra’ as a ‘branched candlestick or lamp with several lamps’... [A]nother dictionary defines a ‘candlestick’ as ‘a holder with a cup or spike for a candle’ and ‘candelabrum’ as ‘a large decorative candlestick having several arms or branches.

Id. at 1283.

In applying these standards to the merchandise at issue in NYs N036984 and N110556, it is clear that the subject glass articles do not, in their

¹ “*Pomeroy II*” refers to *Pomeroy Collection, Ltd., v. United States*, 32 CIT at 549, 559 F. Supp. 2d at 1396 (Fed. Cir. 2008).

condition as imported, possess physical features that would serve to hold a candle securely in place such as sockets, cups or spikes as do the exemplars listed in the EN to heading 9405 (candelabras, candlesticks, or candle brackets). Although the glass articles at issue in both NYs N036984 and N110556 are purported to satisfy ASTM standard F2179-02, which, as noted *supra*, prescribes the minimum requirements for annealed soda-lime-silicate glass containers that are to be used as candle containers, this fact is not determinative of classification in heading 9405, HTSUS, in that the articles do not possess the court-prescribed features of a candle holder. Similarly, the glass article at issue in NY N036984, which features a warning label affixed to its bottom in accordance with ASTM standard F2058-00, is not a candle holder for purposes of heading 9405, HTSUS, as it does not possess the requisite physical features to securely hold a candle in place. For these reasons, the glass articles the subject of NYs N036984 and N110556 are not *prima facie* classifiable as a lamp or lighting fitting of heading 9405, HTSUS.

As the subject articles are not classified in heading 9405, HTSUS, the next determination is whether they are described by the heading text to 7013, HTSUS, which provides for “[G]lassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018).” The heading text to 7013 specifically excludes glass articles classifiable in heading 7010, HTSUS.

As heading 7010, HTSUS, provides for containers “of a kind used” for the conveyance or packing of goods, it is a “principal use” provision and a classification analysis utilizing Additional U.S. Rule of Interpretation (ARI) 1(a) is appropriate. ARI 1(a) provides for classification “in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong,” and specifies that “the controlling use is the principal use.” The CIT has provided indicative factors to apply when determining whether particular merchandise falls within a class or kind. They include: general physical characteristics, the expectation of the ultimate purchaser, channels of trade, environment of sale (accompanying accessories, manner of advertisement and display), use in the same manner as merchandise which defines the class, economic practicality of so using the import, and recognition in the trade of this use. See *Kraft, Inc. v. United States*, USITR, 16 CIT 483 (June 24, 1992); *G. Heilman Brewing Co. v. United States*, USITR, 14 CIT 614 (Sept. 6, 1990); and *United States v. Carborundum Company*, 63 CCPA 98, C.A.D. 1172, 536 F.2d 373 (1976), *cert. denied*, 429 U.S. 979.

The EN to 70.10 provides that the heading “covers all glass containers of the kinds commonly used commercially for the conveyance or packing of liquids or of solid products (powders, granules, etc.).” The 2017 online Oxford Dictionary defines the term “conveyance” to mean, in pertinent part, “the action or process of transporting or carrying someone or something from one place to another.” See <https://en.oxforddictionaries.com/definition/conveyance> (site last visited December 1, 2017). The same lexicographic source defines, in pertinent part, the term “packing” as “material used to protect fragile goods in transit” and the term “commercial” as “concerned with or engaged in commerce,” which is the exchange or buying and selling of commodities.

We do not consider the physical forms of the articles at issue in NYs N036984 and N110556 to be indicative of their belonging to a class or kind of merchandise “commonly used commercially for the conveyance or packing of

liquids or of solid products.” See EN to 70.10. Articles for the conveyance or packing of goods typically have a lid or means of closure and are usually intended to be disposed of or recycled after use. See *Latitudes International Fragrance, Inc. v. United States*, 931 F. Supp. 2d 1247 (Ct. Int’l Trade 2013), in which the court determined that the presence of design features that would accommodate a closure was probative of classification in heading 7010, HTSUS. Although the articles at issue do possess lids in their condition as imported, this feature alone is not dispositive of classification as an article of commercial conveyance. In the case of NY N036984, we note that the dome-style glass lid affixes to the glass container by means of a plastic seal. In NY N110556, the flexible PVC lid is flexible, re-useable, and fits snugly to the glass container. Both types of lid allow for repetitive, easy opening and closing and create an air-tight seal which helps to retain the smell of certain items (*i.e.*, candles, potpourri), or serves to keep items fresh (*i.e.*, candy or other food items), or securely contains decorative substances (*i.e.*, sand or other loose items). The fact that a container is affixed with a lid is indicative of its reusability. See Headquarters Ruling Letter 957920, dated December, 20, 1996. The glass article at issue in NY N036984 features a decorative shape with a flared bottom and smooth finished glass (*i.e.*, without molded seams or knurling on the bottom) that appears suitable for display and repeated use, as opposed to disposal or recycling. The articles at issue in NY N110556 are described as being made of thin glass. These factors are not suggestive of the subject glass articles belonging to a class or kind of article that is principally used to commercially convey or pack products. As such, the articles at issue in NYs N036984 and N110556 are not classifiable under heading 7010, HTSUS.

As the subject glass articles are decorative in nature and suitable for household display, and they are not classified in heading 7010, HTSUS, classification is proper in heading 7013, HTSUS.

At the subheading level within heading 7013, HTSUS, we note that as the subject merchandise does not feature a design (*i.e.*, fitted glass lid and plastic seal) indicative of its belonging to a class or kind of article principally used as a drinking glass, classification is not proper in subheading 7013.37, HTSUS. Nor are the subject articles designed in a manner that would render them suitable for classification as “[G]lassware of a kind used for table (other than drinking glasses) or kitchen purposes, other than of glass-ceramics” in subheading 7013.41, HTSUS. We further note that the subject articles, in their condition as imported, do not exhibit any features that distinguish them as being for devotional purposes so as to warrant classification as votive-candle holders in subheading 7013.99.35, HTSUS. See HQ H275806, dated April 24, 2017, and HQ 088742, dated April 22, 1991. In those rulings, additional information was submitted to CBP after entry that stated that the glass vessels were filled with a wick and poured wax after importation, affixed with religious motifs or labels, and sold predominantly to consumers who use them for devotional purposes. CBP held that while this additional information was informative, it was not determinative of how, at the time of importation, the merchandise was distinguishable as being for devotional purposes. Here too, there is no indicia of use at the time of importation as a votive-candle holder for the glass articles at issue. In their condition as imported, they are merely decorative glass vessels.

As the subject articles at issue in NY N036984 and N110556 are decorative glassware, and their unit value is over \$0.30 but less than \$3, they are

classifiable under subheading 7013.99.50, HTSUS, which provides for, in pertinent part, other glassware of a kind used for indoor decoration, valued over \$0.30 but less than \$3 each, pursuant to GRI 1.

HOLDING:

By application of GRI 1, the articles at issue in NYs N036984 and N110556 are classified under subheading 7013.99.50, HTSUS. The 2018 applicable rate of duty is 30 percent *ad valorem*. Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the internet at *www.us-itc.gov*.

EFFECT ON OTHER RULINGS:

NY N036984, dated September 25, 2008, and NY N110556, dated July 7, 2010, are hereby REVOKED in accordance with the above analysis.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

CC: Ms. Melissa Moore
Hanna's Candle Co.
2700 Armstrong Ave.
Fayetteville, AR 72701

**PROPOSED REVOCATION OF A RULING LETTER AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE TARIFF CLASSIFICATION OF A RADIATOR/CHARGE
AIR COOLER ASSEMBLY**

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

ACTION: Notice of proposed revocation of a ruling letter and revocation of treatment relating to the tariff classification of a Radiator/Charge Air Cooler Assembly.

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 a ruling letter concerning tariff classification of a Radiator/Charge Air Cooler Assembly 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 August 11, 2018.

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

FOR FURTHER INFORMATION CONTACT: Anthony L. Shurn, Electronics, Machinery, Automotive and International Nomenclature Branch, Regulations and Rulings, Office of Trade, at (202) 325–0218.

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 a ruling letter concerning tariff classification of a Radiator/Charge Air Cooler Assembly. Although in this notice, CBP is specifically referring to New York Ruling Letter (NY) R04029, dated June 12, 2006 (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 R04029, CBP classified the Radiator/Charge Air Cooler Assembly at issue in heading subheading 8708.99, HTSUS, which provides for "Parts and accessories of the motor vehicles of headings 8701 to 8705: Other parts and accessories: Other..." CBP has reviewed NY R04029, and has determined the ruling letter to be in error. It is now CBP's position that the Radiator/Charge Air Cooler Assembly is properly classified, by operation of General Rules of Interpretation 1 (Note 3 to Section XVII), HTSUS, in subheading 8708.91, HTSUS. Specifically, the Radiator/Charge Air Cooler Assembly is properly classified under subheading 8708.91.50, which provides for "Parts and accessories of the motor vehicles of headings 8701 to 8705: Other parts and accessories: Radiators and parts thereof: Radiators: For other vehicles..."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY R04029, and modify or revoke any other ruling not specifically identified, to reflect the analysis contained in the proposed CBP Headquarters Ruling Letter (“HQ”) H275146, 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: June 15, 2018

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachments

ATTACHMENT A

NY R04029

June 12, 2006

CLA-2-87:RR:NC:N1:101 R04029

CATEGORY: Classification

TARIFF NO.: 8708.99.8080

MR. DENNIS FORHART
PRICEWATERHOUSECOOPERS
1420 5TH AVE.,
SUITE 1900
SEATTLE, WA 98101

RE: The tariff classification of a combination Charge Air Cooler and Radiator Assembly.

DEAR MR. FORHART:

In your letter dated May 25, 2006, on behalf of Freightliner LLC, you requested a tariff classification ruling. You submitted a schematic with your request.

The article in question is a combination charge air cooler and radiator assembly, designated part number A05-19502-009. The unit is designed for turbo-charged diesel applications. The charge air cooler component uses air to cool the charge out of a turbo, and it mounts onto the radiator core assembly. A plastic surge tank is also included in the assembly. The radiator shell is constructed of aluminum.

The applicable subheading for the combination Charge Air Cooler and Radiator Assembly will be 8708.99.8080, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other parts and accessories of the motor vehicles of headings 8701 to 8705: other: other: other...other. The general rate of duty will be 2.5 percent ad valorem.

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

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

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

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity
Specialist Division

ATTACHMENT B

HQ H275146

CLA-2 OT:RR:CTF:TCM H275146 ALS

CATEGORY: Classification

TARIFF NO.: 8708.91.50

MR. DENNIS FORHART
PRICEWATERHOUSECOOPERS
1420 5TH AVE., SUITE 1900
SEATTLE, WASHINGTON 98101

RE: Revocation of CBP Ruling NY R04029 (June 12, 2006); tariff classification of a Radiator/Charge Air Cooler Assembly

DEAR MR. FORHART:

This letter pertains to CBP Ruling NY R04029, issued to you on June 12, 2006, in which the Radiator/Charge Air Cooler Assembly referenced above was classified under subheading 8708.99.8080, HTSUS, which provided for at the time “Parts and accessories of the motor vehicles of headings 8701 to 8705: Other parts and accessories: Other: Other: Other: Other...” As of February 3, 2007, subheading 8708.99.81 replaced subheading 8708.99.80, pursuant to Presidential Proclamation 8067 (December 29, 2006). We have reviewed NY R04029 and find the ruling to be in error. For the reasons set forth below, we hereby revoke NY R04029.

FACTS:

The Radiator/Charge Air Assembly (hereinafter also referred to as “Assembly”) is described as follows:

The article in question is a combination charge air cooler and radiator assembly, designated part number A05–19502–009. The unit is designed for turbo-charged diesel applications. The charge air cooler component uses air to cool the charge out of a turbo, and it mounts onto the radiator core assembly. A plastic surge tank is also included in the assembly. The radiator shell is constructed of aluminum.

ISSUE:

Is the Radiator/Charge Air Assembly, as described above, properly classified under subheading 8708.91, HTSUS, which provides for “Parts and accessories of the motor vehicles of headings 8701 to 8705: Other parts and accessories: Radiators and parts thereof:...”, or under subheading 8708.99, HTSUS, which provides for “Parts and accessories of the motor vehicles of headings 8701 to 8705: Other parts and accessories: Other:...”?

LAW AND ANALYSIS:

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

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

The following heading and subheadings of the HTSUS are under consideration in this case:

8708	Parts and accessories of the motor vehicles of headings 8701 to 8705:
	Other parts and accessories:
8708.91	Radiators and parts thereof:
	Radiators:
8708.91.50	For other vehicles...
	* * *
8708.99	Other:
	Other:
	Other:
8708.99.81	Other...
	* * * * *

Note 2(e) to Section XVII, HTSUS, of which heading 8708 is a part, provides the following:

The expressions “parts” and “parts and accessories” do not apply to the following articles, whether or not they are identifiable as for the goods of this section:

(e) Machines or apparatus of headings 8401 to 8479, or parts thereof, *other than the radiators for the articles of this section*; articles of heading 8481 or 8482 or, provided they constitute integral parts of engines or motors, articles of heading 8483;...

[*Emphasis added.*]

Note 3 to Section XVII provides the following:

References in chapters 86 to 88 to “parts” or “accessories” do not apply to parts or accessories which are not suitable for use solely or principally with the articles of those chapters. A part or accessory which answers to a description in two or more of the headings of those chapters is to be classified under that heading which corresponds to the principal use of that part or accessory.

There is no dispute that the subject Assembly is a part of a vehicle of heading 8704, thereby making it classifiable under heading 8708. Taken as a whole, its function is to cool the air expelled from the turbo of the truck’s engine. While a radiator is specifically provided for under subheading 8708.91, it is not defined therein or in the Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System. The ENs represent the official interpretation of the tariff at the international level.

When a tariff term is not defined by the HTSUS or the legislative history, its correct meaning is its common, or commercial, meaning. *Rocknel Fastener, Inc. v. United States*, 267 F.3d 1354, 1356 (Fed. Cir. 2001). “To ascertain the common meaning of a term, a court may consult ‘dictionaries, scientific authorities, and other reliable information sources’ and ‘lexicographic and other materials.’” *Id.* (quoting *C.J. Tower & Sons of Buffalo, Inc. v. United States*, 673 F.2d 1268, 1271, 69 C.C.P.A. 128 (C.C.P.A. 1982); *Simod Am. Corp. v. United States*, 872 F.2d 1572, 1576 (Fed. Cir. 1989)). “Radiator” is generally defined as a device through which hot air or liquid passes so that it may be cooled. *See, e.g.*, <https://www.collinsdictionary.com/us/dictionary/english/radiator> (2017); <http://www.engineering-dictionary.org/Radiator> (2017). Given the Assembly’s function as noted above, it clearly meets the definition of a radiator.

Conversely, subheading 8708.99 more broadly and generally refers to other parts and accessories of vehicles of headings 8701 to 8705 and as such is a residual provision. *See, e.g., E.M. Industries, Inc. v. United States*, 999 F. Supp. 1473, 1480 (CIT 1998) (“Basket’ or residual provisions of HTSUS headings... are intended as a broad catch-all to encompass the classification of articles for which there is no more specifically applicable subheading”). Furthermore, CBP has classified similar articles under subheading 8708.91.50, HTSUS. *See, e.g., CBP Ruling NY N246617* (October 24, 2013); *CBP Ruling NY N06177* (June 24, 1999).

Thus, given that the Assembly is a radiator, we conclude that it is to be classified under subheading 8708.91, HTSUS. Specifically the Assembly is properly classified under subheading 8708.91.50, which provides for “Parts and accessories of the motor vehicles of headings 8701 to 8705: Other parts and accessories: Radiators and parts thereof: Radiators: For other vehicles...” Given the foregoing, our ruling in NY R04029, referenced above, is hereby revoked.

HOLDING:

By application of GRI 1 (Note 3 to Section XVII), the subject Radiator/Charge Air Assembly is classified under heading 8708, HTSUS. Specifically, by application of GRI 6, the Assembly is properly classified under subheading 8708.91, HTSUS. Specifically the Assembly is properly classified under subheading 8708.91.50, which provides for “Parts and accessories of the motor vehicles of headings 8701 to 8705: Other parts and accessories: Radiators and parts thereof: Radiators: For other vehicles...” The 2018 column one, general rate of duty for merchandise classified in this subheading is 2.5% 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 on the World Wide Web at www.usitc.gov.

EFFECT ON OTHER RULINGS:

CBP Ruling NY R04029 (June 12, 2006) is hereby revoked.

Sixty days from the date of the decision, the Office of Trade, Regulations and Rulings will make the decision available to CBP personnel, and to the public on the Customs Rulings Online Search System (CROSS) at <https://rulings.cbp.gov/>, which can be found on the U.S. Customs and Border Protection website at <http://www.cbp.gov> and other methods of public distribution.

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

19 CFR PART 177**MODIFICATION OF ONE RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF NATAMYCIN 50% WITH
LACTOSE AND NATAMYCIN 50% WITH SODIUM
CHLORIDE**

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

ACTION: Notice of modification of one ruling letter and of revocation of treatment relating to the tariff classification of natamycin 50% with lactose and natamycin 50% with sodium chloride.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is modifying one ruling letter concerning tariff classification of natamycin 50% with lactose and natamycin 50% with sodium chloride 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. 52, No. 16, on April 18, 2018. 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 September 10, 2018.

FOR FURTHER INFORMATION CONTACT: Alben Peters, Chemicals, Petroleum, Metals and Miscellaneous Articles 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. 52, No. 16, on April 18, 2018, proposing to modify one ruling letter pertaining to the tariff classification of natamycin 50% with lactose and natamycin 50% with sodium chloride. 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") NY I82455, dated June 3, 2002, CBP classified the natamycin 50% with lactose and natamycin 50% with sodium chloride in heading 3003, HTSUS, specifically in subheading 3003.20.00, HTSUS, which provides for "Medicaments (excluding goods of heading 3002, 3005 or 3006) consisting of two or more constituents which have been mixed together for therapeutic or prophylactic uses, not put up in measured doses or in forms or packings for retail sale: Other, containing antibiotics." CBP has reviewed NY I82455 and has determined the ruling letter to be in error. It is now CBP's position that the subject natamycin mixtures are properly classified, in heading 3008, HTSUS, specifically in subheading 3808.92.50, HTSUS, which provides for "Insecticides, rodenticides, fungicides, herbicides, antisprouting products and plant-growth regulators, disinfectants and similar products, put up in forms or packings for retail sale or as preparations or articles (for example, sulfur-treated bands, wicks and candles, and flypapers): Other: Fungicides: Other: Other: Other."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is modifying NY I82455 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter ("HQ") H261418, set forth as an attachment to this notice. Addition-

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

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

Dated: May 29, 2018

ALLYSON MATTANAH

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachment

HQ H261418

May 29, 2018

OT:RR:CTF:CPMM H261418 APP

CATEGORY: Classification

TARIFF NO.: 3808.92.50

Ms. KATHY LIN

ProFood International, Inc.

P.O. Box 4378

Lisle, IL 60532-9378

RE: Modification of NY I82455; Tariff classification of natamycin 50% with lactose and natamycin 50% with sodium chloride

DEAR Ms. LIN:

This is to inform you that U.S. Customs and Border Protection (“CBP”) has reconsidered New York Ruling Letter (“NY”) I82455, dated June 3, 2002, regarding the classification, under the Harmonized Tariff Schedule of the United States (“HTSUS”), of natamycin 50% with lactose and natamycin 50% with sodium chloride. In NY I82455, CBP classified the natamycin 50% with lactose and natamycin 50% with sodium chloride mixtures under heading 3003, HTSUS, specifically under subheading 3003.20.00, HTSUS, which provided for “Medicaments (excluding goods of heading 3002, 3005 or 3006) consisting of two or more constituents which have been mixed together for therapeutic or prophylactic uses, not put up in measured doses or in forms or packings for retail sale: Containing other antibiotics.” We have determined that this ruling is in error and for the reasons set forth below we hereby modify it with respect to the natamycin 50% with lactose and natamycin 50% with sodium chloride mixtures.¹

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*, Vol. 52, No. 16, on April 18, 2018, proposing to modify NY I82455 and to revoke any treatment accorded to substantially identical transactions. No comments were received in response to this notice.

FACTS:

The preparations at issue are antifungal mixtures composed of (by weight) 50% natamycin² with 50% lactose (anhydrous) and 50% natamycin with 50% sodium chloride, respectively. These mixtures are prepared from pure nata-

¹ The natamycin in bulk form in NY I82455, used for fungus infections in the eye, remains classified in subheading 2941.90.10, HTSUS, as an antibiotic.

² Natamycin (other names: Pimaricin, Tennenectin, and Natacyn) is an amphoteric macrolide antifungal antibiotic from *Streptomyces natalensis* or *S. chattanoogensis* used for fungal infections, mainly topically. See National Institutes of Health, The National Center for Biotechnology Information, <https://www.ncbi.nlm.nih.gov/mesh/68010866> (last visited Feb. 28, 2018); Natamycin 50% in Lactose, <https://www.foodsweeteners.com/products/natamycin-50-in-lactose/> (last visited Feb. 28, 2018) (natamycin 50% in lactose is used in dairy foods, bread, and baked foods to inhibit the growth of mold, yeast, and fungi); Natamycin 50% in NaCl, <https://www.foodsweeteners.com/products/natamycin-50-in-nacl/> (last visited Feb. 28, 2018) (natamycin 50% in sodium chloride is used in dairy products to prevent mold growth).

mycin by mixing it with lactose or sodium chloride. The products are imported in bulk form from China to serve as antimyotic food additives to protect food, especially cheese, from mold and yeast growth.³

ISSUE:

Whether the natamycin 50% with lactose and natamycin 50% with sodium chloride are classified in heading 3003, HTSUS, as medicament consisting of two or more constituents mixed together for therapeutic or prophylactic uses, or in heading 3808, HTSUS, as fungicides.

LAW AND ANALYSIS:

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

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

3003	Medicaments (excluding goods of heading 3002, 3005 or 3006) consisting of two or more constituents which have been mixed together for therapeutic or prophylactic uses, not put up in measured doses or in forms or packings for retail sale:
3003.20.00	Other, containing antibiotics
3808	Insecticides, rodenticides, fungicides, herbicides, antisprouting products and plant-growth regulators, disinfectants and similar products, put up in forms or packings for retail sale or as preparations or articles (for example, sulfur-treated bands, wicks and candles, and flypapers):
	Other:
3808.92	Fungicides:
	Other:
	Other:
3808.92.50	Other

Note 3(b)(1) to chapter 30, HTSUS, states that mixed products for purposes of this chapter include colloidal solutions and suspensions (other than colloidal sulfur).

Note 1(b) to chapter 38, HTSUS, states that this chapter does not cover, “Mixtures of chemicals with foodstuffs or other substances with nutritive value, of a kind used in the preparation of human foodstuffs (generally, heading 2106).”

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

³ ProFood International, Inc., Applications, <http://www.profoodinternational.com/applications.html> (last visited Feb. 28, 2018).

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. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

EN 30.03 states, in relevant part, that:

This heading covers medicinal preparations for use in the internal or external treatment or prevention of human or animal ailments. These preparations are obtained by mixing together two or more substances. However, if put up in measured doses or in forms or packings for retail sale, they fall in **heading 30.04**.

The heading includes:

- (1) Mixed medicinal preparations such as those listed in an official pharmacopoeia, proprietary medicines, etc., including those in the form of gargles, eye drops, ointments, liniments, injections, counter-irritant and other preparations **not falling in heading 30.02, 30.05 or 30.06**.

However, this should not be taken to mean that preparations listed in an official pharmacopoeia, proprietary medicines, etc. are always classified in **heading 30.03**. For example, anti-acne preparations which are designed primarily to cleanse the skin and which do not contain sufficiently high levels of active ingredients to be regarded as having a primary therapeutic or prophylactic effect against acne are to be classified in **heading 33.04**.

- (2) Preparations containing a single pharmaceutical substance together with an excipient, sweetening agent, agglomerating agent, support, etc....

General EN 38.08 provides, in relevant part, that:

For the purposes of Note 1(b) to the Chapter, the expression “foodstuffs or other substances with nutritive value” principally includes edible products of Sections I to IV.

The expression “foodstuffs or other substances with nutritive value” also includes certain other products, for example, products of Chapter 28 used as mineral supplements in food preparations ... sugars of heading 29.40 ... It should be noted that this list of products is simply illustrative and should not be taken to be exhaustive.

The mere presence of “foodstuffs or other substances with nutritive value” in a mixture would not suffice to exclude the mixture from Chapter 38, by application of Note 1(b). Substances having a nutritive value that is merely incidental to their function as chemical products, e.g., as food additives or processing aids, are not regarded as “foodstuffs or substances with nutritive value” for the purpose of this Note. The mixtures which are excluded from Chapter 38 by virtue of Note 1(b) are those which are of a kind used in the preparation of human foodstuffs and which are valued for their nutritional qualities.

EN 38.08 states, in relevant part, that:

This heading covers a range of products (**other than** those having the character of medicaments, including veterinary medicaments – **heading 30.03 or 30.04**) intended to destroy pathogenic germs, insects (mosquitoes, moths, Colorado beetles, cockroaches, etc.), mosses and moulds,

weeds, rodents, wild birds, etc. Products intended to repel pests or used for disinfecting seeds are also classified here.

These ... fungicides, etc., are applied by spraying, dusting, sprinkling, coating, impregnating, etc., or may necessitate combustion. They achieve their results by nerve-poisoning, by stomach-poisoning, by asphyxiation or by odour, etc ...

The products of heading 38.08 can be divided into the following groups: ...

(II) **Fungicides**

Fungicides are products which protect against the growth of fungi (e.g., preparations based on copper compounds) or which are designed to eradicate the fungi already present (e.g., preparations based on formaldehyde).

Fungicides can be characterised by their mode of action or method of use ... This heading **excludes**: ... (c) Disinfectants, insecticides, etc., having the essential character of medicaments, including veterinary medicaments (**heading 30.03 or 30.04**).

First, we note that heading 3003, HTSUS is a use provision and covers medicaments consisting of two or more constituents mixed together for therapeutic or prophylactic uses that are not put up in measured doses or in forms, or packings for retail sale. Even though the instant mixtures are imported in bulk form, they are not used as medicaments for the treatment or prevention of a disease or ailment. Instead, they are used as antimycotic agents in the food industry. Therefore, they are precluded from classification as medicaments of chapter 30, HTSUS.⁴

We further note that the mere presence of foodstuffs or other substances with nutritive value would not exclude the subject mixtures from chapter 38, HTSUS. *See* EN 38.08. Substances having a nutritive value that is merely incidental to their function as chemical products are not excluded from chapter 38, HTSUS by virtue of Note 1(b) to this chapter. *See id.* The instant mixtures contain 50% natamycin, which is an antifungal substance, mixed with lactose or sodium chloride, and are formulated for use as food additives to prevent growth of mold and yeast particularly in cheese and cured meats. Heading 3808, HTSUS covers a range of products intended to destroy pathogenic germs and molds.

CBP has consistently classified antifungal mixtures in heading 3808, HTSUS. In NY K89236, dated September 13, 2004, CBP classified a formulated microbicide containing nisin used in food processing as a preservative in products such as processed cheese, cooked meat and poultry, and canned fruits and vegetables, in heading 3808, HTSUS, under subheading 3808.90.95, HTSUS (2004) (now subheading 3808.92.50, HTSUS). In NY N231486, dated September 17, 2012, CBP classified preparations containing two different strains of yeasts, *aureobasidium pullulans* strain DSM 14940, and *aureobasidium pullulans* strain DSM 14941, intended for the control of bacterial and fungal diseases in pome fruit, in subheading 3808.92.50, HTSUS. In NY N058539, dated May 8, 2009, CBP classified a formulation

⁴ We also note that the subject mixtures are not classifiable as organic chemicals of chapter 29, HTSUS, since in their imported condition the lactose and sodium chloride are not solvents or stabilizers necessary for preservation or safety of transport, neither are they impurities from the manufacturing process. *See* Notes 1(e) and (f) to chapter 29, HTSUS. In addition, antibiotics are not one of the listed products in Note 1(h) to chapter 29, HTSUS that are allowed to be diluted to standard strengths.

comprised of kasugamycin hydrochloride hydrate with application adjuvants, intended to control bacterial and fungal diseases on pepper and tomato, in subheading 3808.92.50, HTSUS.

In NY N255188, dated August 1, 2014, CBP classified a fungicide preparation containing QST 713 strain of *Bacillus subtilis*, used for the control or suppression of plant diseases, in subheading 3808.92.50, HTSUS. In NY N239545, dated April 1, 2013, CBP classified a mixture of 5-chloro-2-methyl-4-isothiazolin-3-one, 5-chloro-2-methyl-4-isothiazolin-3-one, magnesium chloride, magnesium nitrate, acetic acid and water, and a mixture of benzyl alcohol, dehydroacetic acid, benzoic acid and water, used as preservatives and antimicrobial agents in personal care products, in subheading 3808.92.50, HTSUS. In NY N052863, dated March 10, 2009, CBP classified a broad spectrum fungicide, used to control fungus that attacks turf grass, in subheading 3808.92.50, HTSUS. In NY N027975, dated May 27, 2008, CBP classified a formulated citrus fungicide, creating a protection against various plant diseases, in subheading 3808.92.50, HTSUS.

Similarly, the instant natamycin 50% with lactose and natamycin 50% with sodium chloride mixtures are antifungal mixtures, not aromatic in structure, which are designed for antimycotic use and in their imported condition are not used for therapeutic or prophylactic treatment but rather as food preservatives. As such, the instant natamycin mixtures are classified in heading 3808, HTSUS, specifically under subheading 3808.92.50, HTSUS.

HOLDING:

By application of GRIs 1 and 6, the subject natamycin 50% with lactose and natamycin 50% with sodium chloride mixtures are classified under heading 3808, HTSUS, specifically under subheading 3808.92.50, HTSUS, as “Insecticides, rodenticides, fungicides, herbicides, antisprouting products and plant-growth regulators, disinfectants and similar products, put up in forms or packings for retail sale or as preparations or articles (for example, sulfur-treated bands, wicks and candles, and flypapers): Other: Fungicides: Other: Other: Other.” The 2018 column one, duty rate is 5% *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY I82455, dated June 3, 2002, is hereby MODIFIED with respect to the natamycin 50% with lactose and natamycin 50% with sodium chloride.

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

Sincerely,

ALLYSON MATTANAH

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**PROPOSED REVOCATION OF ONE RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF POLY BD R-20LM**

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 Poly Bd R-20LM.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke one ruling letter concerning tariff classification of Poly Bd R-20LM 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 August 11, 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: Reema Radwan, Chemicals, Petroleum, Metals and Miscellaneous Articles Branch, Regulations and Rulings, Office of Trade, at (202) 325-7703.

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 Poly Bd R-20LM. Although in this notice, CBP is specifically referring to New York Ruling Letter (“NY”) N034669, dated August 29, 2008 (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 N034669, CBP classified Poly Bd R-20LM in heading 4002, HTSUS, specifically in subheading 4002.20.00, HTSUS, which provides for “Synthetic rubber and factice derived from oils, in primary forms or in plates, sheets or strip; mixtures of any product of heading 4001 with any product of this heading, in primary forms or in plates, sheets or strip; Butadiene rubber (BR).” CBP has reviewed NY N034669 and has determined the ruling letter to be in error. It is now CBP’s position that Poly Bd R-20LM is properly classified in heading 3902, HTSUS, specifically in subheading 3902.90.00, HTSUS, which provides for “Polymers of propylene or of other olefins, in primary forms: Other.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY N034669 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H286021, 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: June 18, 2018

ALLYSON MATTANAH

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachments

ATTACHMENT A

N034669

August 29, 2008

CLA-2-40:OT:RR:E:NC:SP:237

CATEGORY: Classification

TARIFF NO.: 4002.20.0000

MR. PAUL C. CONWAY
BDP INTERNATIONAL INC.
147-31 176TH STREET
JAMAICA, NEW YORK 11434

RE: The tariff classification of Poly Bd R-20LM butadiene rubber from Japan.

DEAR MR. CONWAY:

In your letter dated July 31, 2008, on behalf of the Sartomer Company, you requested a tariff classification ruling on Poly Bd R-20LM butadiene rubber. You submitted a Test Report on Poly Bd dumbbell samples and a Report on the Formulation and Sulfur Curing of those samples.

Heading 4002, HTSUS, provides for other synthetic rubber and factice derived from oils, in primary forms or in plates, sheets or strip.

Chapter 40 Note 4(a) is relevant to articles under Heading 4002 and provides: the expression "synthetic rubber" applies to: unsaturated synthetic substances which can be irreversibly transformed by vulcanization with sulfur into non-thermoplastic substances which, at a temperature between 18 degrees centigrade and 29 degrees centigrade, will not break on being extended to three times their original length and will return, after being extended to twice their original length, within a period of 5 minutes, to a length not greater than 1-1/2 times their original length.

Based on ARDL Test Report PN 79334 dated June 4, 2008, dumbbell samples of Poly Bd R-20LM butadiene rubber were tested and met the requirements for synthetic rubber in Note 4(a).

The applicable subheading for Poly Bd R-20LM butadiene rubber will be subheading 4002.20.0000, HTSUS, which provides Butadiene rubber (BR). The rate of duty will be free.

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

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

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

A copy of the ruling or control number shown above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Frank Cantone at 646-733-3038.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

ATTACHMENT B

HQ H286021
OT:RR:CTF:CPMM H286021 RGR
CATEGORY: Classification
TARIFF NO.: 3902.90.0050

MR. PAUL C. CONWAY
BDP INTERNATIONAL INC.
147-31 176TH STREET
JAMAICA, NY 11434

RE: Revocation of NY N034669; Tariff classification of Poly Bd R-20LM butadiene rubber from Japan

DEAR MR. CONWAY:

This is to inform you that U.S. Customs and Border Protection (“CBP”) has reconsidered New York (“NY”) Ruling Letter N034669, dated August 29, 2008, issued to you on behalf of Sartomer Company, regarding the classification under the Harmonized Tariff Schedule of the United States (“HTSUS”) of Poly Bd R-20LM butadiene rubber from Japan. After reviewing this ruling in its entirety, we believe that it is in error. For the reasons set forth below, we hereby revoke NY N034669.

FACTS:

In NY N034669, we described the product as follows:

[Sartomer Company, Inc.] submitted a Test Report on Poly Bd dumbbell samples and a Report on the Formulation and Sulfur Curing of those samples. . .

Based on ARDL Test Report PN 79334 dated June 4, 2008, dumbbell samples of Poly Bd R-20LM butadiene rubber were tested and met the requirements for synthetic rubber in Note 4(a) [of chapter 40].

In a submission dated March 7, 2017, counsel for Total Petrochemicals & Refining USA, Inc. (“TPRI”) provided additional information about the Poly Bd R-20LM (“Poly Bd”) in NY N034669. That ruling was obtained on behalf of Cray Valley USA, LLC (“Cray Valley”), which had previously been operating as Sartomer Company, Inc. In 2014, TPRI acquired Cray Valley and the Poly Bd at issue in NY N034669. Thus, TPRI is now the entity that imports the Poly Bd for sale in the United States.

NY N034669 classified Poly Bd in heading 4002, HTSUS, based on test results by an independent third-party laboratory. However, at the time of issuance of NY N034669, a CBP Laboratories and Scientific Services (“LSSD”) report, dated February 12, 2008, was issued on the same merchandise from the same importer. That report stated that the sample of dumbbell-shaped test specimens submitted by Sartomer Company, Inc. from an entry dated April 15, 2007, did not meet the requirements of note 4(a) to chapter 40 for synthetic rubber.

In 2011, Cray Valley protested the reclassification and rate advance of its Poly Bd from subheading 4002.20.00, HTSUS, to subheading 3902.90.00, HTSUS. This protest was denied based on the conclusions of an LSSD report, dated June 2, 2011, finding that the dumbbell-shaped specimens did not meet the requirements of note 4(a) to chapter 40 for synthetic rubber.

ISSUE:

Whether the Poly Bd is classified under heading 3902, HTSUS, as a polymer of propylene or of other olefins, or under heading 4002, HTSUS, as synthetic rubber.

LAW AND ANALYSIS:

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

The HTSUS provisions under consideration are as follows:

3902:	Polymers of propylene or of other olefins, in primary forms
*	* *
4002:	Synthetic rubber and factice derived from oils, in primary form or in plates, sheets or strip; mixtures of any product of heading 4002 with any product of this heading, in primary form or in plates, sheets or strip
*	* *

Note 2(l) to chapter 39, HTSUS, states, in pertinent part:

2. This chapter does not cover:

(l) Synthetic rubber, as defined for the purposes of chapter 40, or articles thereof. . .

Note 4(a) to chapter 40, HTSUS, states, in pertinent part:

4. In note 1 to this chapter and in heading 4002, the expression "*synthetic rubber*" applies to:

(a) Unsaturated synthetic substances which can be irreversibly transformed by vulcanization with sulfur into non-thermoplastic substances which, at a temperature between 18° and 29° C, will not break on being extended to three times their original length and will return, after being extended to twice their original length, within a period of 5 minutes, to a length not greater than 1-1/2 times their original length. For the purposes of this test, substances necessary for the cross-linking, such as vulcanizing activators or accelerators, may be added; the presence of substances as provided for by note 5(b)(ii) and (iii) is also permitted. However, the presence of any substances not necessary for the cross-linking, such as extenders, plasticizers and fillers, is not permitted.

* * *

In order for the subject merchandise to be considered a synthetic rubber of heading 4002, HTSUS, it must meet the "stretch and return" test of note 4(a) to chapter 40. TPRI explains that it has reviewed and confirmed its methodology that was used to perform the sulfur curing of the Poly Bd, explaining

that Poly Bd is not known to be irreversibly transformed through sulfur vulcanization in order to pass the “stretch and return” test in note 4(a) to chapter 40, HTSUS. Accordingly, TPRI now asserts that given its own acknowledgement that the Poly Bd “is not consistently known to be irreversibly transformed through sulfur vulcanization in order to pass the ‘stretch and return’ test,” the Poly Bd should be classified in subheading 3902.90.00, HTSUS, as “polymers of propylene or of other olefins, in primary forms: other: other.” Thus, TPRI requests revocation of NY N034669, asserting that Poly Bd was incorrectly classified in subheading 4002.20.00, HTSUS.

We agree with TPRI’s assertion that the subject Poly Bd was incorrectly classified in heading 4002, HTSUS. Classification in heading 4002, HTSUS, in NY N034669 was based on an independent test report of dumbbell shaped samples of Poly Bd, concluding that the samples met the requirements of note 4(a) to chapter 40. However, according to two separate LSSD reports on the same merchandise by the same importer, one dated February 12, 2008 (the same year that NY N034669 was issued) and one dated June 2, 2011, dumbbell-shaped samples of Poly Bd did not satisfy the stretch and return test requirements of note 4(a) to chapter 40. Therefore, it cannot be classified in heading 4002, HTSUS. As the LSSD reports contradict NY N034669 on the correct classification of merchandise imported by the same importer, we find that the Poly Bd in NY N034669 was improperly classified in heading 4002, HTSUS.

Based on the Technical Data Sheet provided by TPRI, the subject merchandise is an hydroxyl terminated polybutadiene resin. As noted above, the merchandise is excluded from classification in heading 4002, HTSUS, because it did not satisfy the requirements of note 4(a) to chapter 40. In NY D85949, dated January 4, 1999, and NY M86153, dated September 15, 2006, we classified polymers of butadiene with terminal hydroxyl groups (hydroxyl terminated butadiene) in subheading 3902.90.00, HTSUS, as “Polymers of propylene or of other olefins, in primary forms: Other.” Where the subject Poly Bd is a polymer of butadiene with terminal hydroxyl groups as in NY D85949 and M86153, and where it failed to meet the requirements of the “stretch and return” test of note 4(a) to chapter 40, we find that the Poly Bd is properly classified in heading 3902, HTSUS.

HOLDING:

Pursuant to GRIs 1 and 6, Poly Bd R-20LM is classified in heading 3902, HTSUS, specifically in subheading 3902.90.0050, HTSUS (Annotated), which provides for “Polymers of propylene or of other olefins, in primary forms: Other: Other.” The 2018 column one, general rate of duty is 6.5% *ad valorem*.

EFFECT ON OTHER RULINGS:

NY N034669, dated August 29, 2008, is revoked.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Cc: Lindsey B. Meyer
Venable LLP
600 Massachusetts Avenue NW
Washington, DC 20001