

# U.S. Customs and Border Protection



## 19 CFR PART 177

### **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 modification of one ruling letter and of 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) is modifying 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 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. 28, on July 11, 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**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after January 28, 2018.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. 28, on July 11, 2018, proposing to modify one ruling letter pertaining to the tariff classification of soiled dish tables and undercounter dish tables made of stainless steel. 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") N278687, dated September 28, 2016, CBP classified the 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 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 modifying NY N278687 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter (“HQ”) H281936, 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: October 22, 2018

ALLYSON MATTANAH  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

*Attachment*

HQ H281936

October 22, 2018

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 GRIs 1 and 6. For the reasons set forth below, we hereby modify NY N278687.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), a notice was published in the *Customs Bulletin*, Volume 52, Number 28, on July 11, 2018, proposing to modify NY N278687 and to revoke any treatment accorded to substantially identical transactions. No comments were received in response to this notice.

**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.<sup>1</sup> 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 pictures<sup>2</sup> of the dish tables:



DDT-36-LX



DDT-48-RX



DDT-60-LX



DDT-72-RX



UDT-50-LX



UDT-60-RX



DDT-96-RX

The models pictured<sup>3</sup> 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,

<sup>1</sup> 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).

<sup>2</sup> 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 Tables) (last visited Apr. 16, 2018).

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

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.

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."<sup>4</sup> The Macmillan Dic-

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

tionary defines “sanitary” as “relating to people’s health, especially to the system of supply water and dealing with human waste.”<sup>5</sup> 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.”<sup>6</sup>

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.

Please be advised that the subject merchandise may be subject to anti-dumping duties (“AD”) or countervailing duties (“CVD”). We note that the U.S. International Trade Administration is not necessarily bound by a country of origin or classification determination issued by CBP, with regard to the scope of AD/CVD orders. Written decisions regarding the scope of AD/CVD orders are issued by the Import Administration in the Department of Commerce and are separate from tariff classification and origin rulings issued by CBP. The Import Administration can be contacted at <http://www.trade.gov/ia/> (see Contact Information). A list of current AD/CVD cases at the U.S. International Trade Commission can be viewed on its website at <http://www.usitc.gov> (click on “Import Injury” and then “Antidumping and Countervailing Duty Investigations”). AD/CVD 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.dhs.gov/adcvdweb/>.

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

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

In addition, effective July 6, 2018, the Office of the United States Trade Representative (“USTR”) imposed an additional tariff on certain products of China classified in the subheadings enumerated in Section XXII, Chapter 99, Subchapter III U.S. Note 20(b), HTSUS. The USTR imposed additional tariffs, effective August 23, 2018, on products classified under the subheadings enumerated in Section XXII, Chapter 99, Subchapter III U.S. Note 20(d), HTSUS. Subsequently, the USTR imposed further tariffs, effective September 24, 2018, on products classified under the subheadings enumerated in Section XXII, Chapter 99, Subchapter III U.S. Note 20(f) and U.S. Note 20(g), HTSUS. For additional information, please see the relevant Federal Register notices dated June 20, 2018 (83 F.R. 28710), August 16, 2018 (83 F.R. 40823), and September 21, 2018 (83 F.R. 47974). Products of China that are provided for in subheading 9903.88.01, 9903.88.02, 9903.88.03, or 9903.88.04 and classified in one of the subheadings enumerated in U.S. Note 20(b), U.S. Note 20(d), U.S. Note 20(f) or U.S. Note 20(g) to subchapter III shall continue to be subject to antidumping, countervailing, or other duties, fees and charges that apply to such products, as well as to those imposed by the aforementioned Chapter 99 subheadings.

Products of China classified under subheading 9903.88.03, HTSUS, unless specifically excluded, are currently subject to the additional 10 percent *ad valorem* rate of duty. At the time of importation, you must report the Chapter 99 subheading, *i.e.*, 9903.88.03, in addition to subheading 7324.10.00, HTSUS, listed above.

The tariff is subject to periodic amendment so you should exercise reasonable care in monitoring the status of goods covered by the Notice cited above and the applicable Chapter 99 subheading.

#### **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*.

Products of China classified under subheading 9903.88.03, HTSUS, unless specifically excluded, are currently subject to the additional 10 percent *ad valorem* rate of duty. The merchandise may also be subject to AD/CVD.

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>.

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

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

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

*Sincerely,*

ALLYSON MATTANAH  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

**19 CFR PART 177****REVOCAION OF ONE RULING LETTER AND  
REVOCAION OF TREATMENT RELATING TO THE  
TARIFF CLASSIFICATION OF POLY BD R-20LM**

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

**ACTION:** Notice of revocation of one ruling letters and of 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) is revoking one ruling letter concerning tariff classification of Poly Bd R-20LM 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. 28, on July 11, 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 January 28, 2018.

**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), a notice was published in the *Customs Bulletin*, Vol. 52, No. 28, on July 11, 2018, proposing to revoke one ruling letter pertaining to the tariff classification of Poly Bd R-20LM. 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") N034669, dated August 29, 2008, 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 revoking NY N034669 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter ("HQ") H286021, 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: October 23, 2018

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

*Attachment*

HQ H286021

October 23, 2018

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.

Pursuant to 19 U.S.C. § 1625(c)(1), a notice was published in the *Customs Bulletin*, Volume 52, No. 28 on July 11, 2018, proposing to modify NY N034669, and any treatment accorded to substantially similar transactions. No comments were received in response to this notice.

**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.

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*

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

**PROPOSED REVOCATION OF ONE RULING LETTER AND  
REVOCATION OF TREATMENT RELATING TO THE  
TARIFF CLASSIFICATION OF METASMART DRY**

**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 MetaSmart Dry.

**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 HQ H262551, dated May 9, 2016, concerning the tariff classification of MetaSmart Dry 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 December 28, 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:** Claudia Garver, Chemicals, Petroleum, Metals and Miscellaneous Classification Branch, Regulations and Rulings, Office of Trade, at (202) 325–0024.

**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 responsibil-

ity 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 MetaSmart Dry. Although in this notice, CBP is specifically referring to Headquarters Ruling Letter (“HQ”) H262551, dated May 9, 2016 (Attachment A), this notice also covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the comment period.

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

In HQ H262551, CBP classified MetaSmart Dry in heading 2930, HTSUS, specifically in subheading 2930.90.91, HTSUS, which provides for, “Organo-sulfur compounds: Other: Other: Other.” CBP has reviewed HQ H262551 and has determined the ruling letter to be in error. It is now CBP’s position that MetaSmart Dry is properly classified, in heading 2309, HTSUS, specifically in subheading 2309.90.95, HTSUS, which provides for “Preparations of a kind used in animal feeding: Other: Other: Other: Other: Other.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke HQ H262551 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed HQ H284810, set forth as Attachment B to this notice. Additionally, pur-

suant 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: October 25, 2018

ALLYSON MATTANAH

*for*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

Attachments

## ATTACHMENT A

HQ H262551

May 9, 2016

CLA-1: OT: RR: CTF: TCM H262551 ERB

CATEGORY: Classification

TARIFF NO.: 2930.90.9190

PORT DIRECTOR, PORT OF SAN FRANCISCO

U.S. CUSTOMS AND BORDER PROTECTION

555 BATTERY STREET, SUITE 228

SAN FRANCISCO, CA 94111

ATTN: TOM CHAN, IMPORT SPECIALIST

RE: Application for Further Review of Protest No. 2809-14-100777; Tariff classification of MetaSmart Dry

DEAR PORT DIRECTOR:

The following is our decision regarding the Application for Further Review (AFR) of Protest Number 2809-14-100777, timely filed by counsel on January 26, 2015, on behalf of Adisseo USA, Inc. (Adisseo). The AFR concerns the tariff classification of MetaSmart Dry, under the Harmonized Tariff Schedule of the United States (HTSUS). In arriving at our conclusion, CBP considered extra information provided at its meeting with Adisseo and counsel on March 4, 2016.

**FACTS:**

This AFR regards one entry of the subject merchandise, entered on November 13, 2013, classified under subheading 2930.90.91, HTSUS, which provides for, "Organo-sulfur compounds: Other: Other: Other: Other." CBP liquidated the entry on September 26, 2014, classified under subheading 3824.90.92, HTSUS, which provides for, "Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other: Other: Other." Adisseo argues here that the subject merchandise is provided for in subheading 2930.90.91, HTSUS, as entered, or in the alternative, in subheading 2309.90.95, HTSUS, which provides for, "Preparations of a kind used in animal feeding: Other: Other: Other."

The subject merchandise is described as an isopropyl ester of 2-hydroxy-4-methylthiobutanoic acid. MetaSmart is not itself methionine, rather, it is the isopropyl ester of the acid dl-Hydroxy analogue of dl-methionine. It is referred to as HMBi for short and its CAS number is 57296-04-5. The acid form of the analog is dl-2-hydroxy-4-(methylmercapto) butyric acid, and it is also known as 2-Hydroxy-4-(methylthio) butyric (or butanoic) acid, or HMB or HMBa. The International Non-Proprietary Names (INN) of HMBa is imported and sold by Adieso under the trade name Rhodimet AT88, and the CAS registry number of the product is 583-91-5.

In layman's terms, when HMB (whether acid or ester) is ingested by a ruminant animal, in the instant case, that is a dairy cow, a chemical conversion occurs in the animal's body whereby, in vivo, an amino group is substituted for the hydroxyl group of each form of HMB. Each undergoes a conversion and becomes identical to methionine. This results in an increased production of protein and also milk production of the dairy cow.

MetaSmart is available to customers in two forms; liquid and dry. The liquid form requires special equipment to be injected into the cow and is not at issue in this AFR. The subject merchandise here is only MetaSmart Dry.

To make the instant product, the HMBi is adsorbed onto silicon dioxide (silica). Silica has a CAS number 7631-86-9. Adsorption is a process, whereby the molecules of a gas or liquid adhere to the surface of a solid. This process creates a film of the adsorbate on the surface of the adsorbent. This process differs from absorption, in which a fluid permeates or is dissolved by a liquid or solid.

In its meeting with CBP, Adisseo stated that an adsorption process was chosen to manufacture MetaSmart Dry because the HMBi molecules adhere to the surface of the silica without changing the chemical properties of the HMBi. In other words, the adsorption process does not change the chemical nature of HMBi, or the effect it has in the animal, but it will change the HMBi's physical state from a liquid into a free-flowing powder. In the adsorption process the silica is referred to as a "carrier" or the adsorbent. The HMBi is the adsorbate. Silica is very commonly chosen as a carrier or adsorbent. MetaSmart Dry is 57- 60% HMBi and approximately 40% silica. Adisseo stated that this ratio was chosen to ensure the product remains a free-flowing powder mixture. However, this ratio also ensures that the HMBi is completely adsorbed onto the silica and no extraneous HMBi molecules break free of the carrier and crystallize. HMBi crystallizes at a very high temperature, approximately 54 degrees Fahrenheit (12 degrees Celsius). If more than 60% of the HMBi were present, then the extra HMBi molecules would crystallize and/or solidify and cake and become difficult to use. If much less than 60% of the HMBi were used, then the product would not be as effective in the animal, or, the animal would need higher doses of the product.

MetaSmart Dry is mixed into cattle feed products, and the desired chemical reaction (protein building resulting in increased milk production) occurs in the cow's digestive tract. Adisseo stated that dairy cow farms operating in consistently colder climates (such as the upper-mid-west of the United States) may prefer to use the dry version over the liquid version because the dry powder will not crystallize and become difficult or impossible to use.

Adisseo also stated in its meeting that HMBi has no uses outside of animal feed, specifically feed for dairy cows. It was designed specially to react in a dairy cow's stomach because ruminant animals have multiple chambers. Adisseo also stated that silica was chosen as the carrier because it is an effective adsorbent and while the silica is not promoted as a nutritional component, it has been shown to provide some peripheral nutritional benefit, such as bone growth, in the animal.

#### **ISSUE:**

Whether a product described as an isopropyl ester of 2-hydroxy-4-methylthiobutanoic acid adsorbed onto silicon dioxide (silica), imported in powder form, is classified as a preparation for animal feed of heading 2309, HTSUS, or whether it is classified as an other organo-sulfur compound, of heading 2930, HTSUS, or whether it is a chemical preparation not elsewhere specified or included, in heading 3824, HTSUS.

**LAW AND ANALYSIS:**

Initially, we note that the matter is protestable under 19 U.S.C. § 1514(a) (2) as a decision on classification. The protest was timely filed, within 180 days of liquidation of the first entry. (Miscellaneous Trade and Technical Corrections Act of 2004, Pub. L. 108-429 § 2103(2) (B)(ii), (iii)(codified as amended at 19 U.S.C. § 1514(c)(3)(2006)).

Further Review of Protest Number 2809-14-100777 is properly accorded to the Protestant pursuant to 19 C.F.R. § 174.26(b) because the protested decision involves questions which have not been the subject of a Headquarters, U.S. Customs Service ruling or court decisions and pursuant to § 174.26(c) because the protested decision involves novel legal questions or facts not previously considered by CBP or the Courts.

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

The HTSUs provisions under consideration are as follows:

- 2309                    Preparations of a kind used in animal feeding:
- 2309.90                    Other:
- Other:
- Other:
- Other:
- 2309.90.95                    Other:
- \*\*\*
- 2930                    Organo-sulfur compounds:
- 2930.90                    Other:
- Other:
- Other:
- Other:
- 2930.90.91                    Other:
- \*\*\*
- 3824                    Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included:
- 3824.90                    Other:
- Other:
- Other:
- Other:
- 3824.90.92                    Other:

Note 1(f) to Chapter 29, which covers organic chemicals, provides the following:

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

(f) The products mentioned in (a), (b), (c), (d) or (e) with an added stabilizer (including an anticaking agent) necessary for their preservation or transport.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. While not 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 those headings. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

First and foremost, Note 1(f) specifically states that “stabilizers” are a permissible additive and do not alter the tariff classification, so long as the stabilizer is necessary for the preservation or transport of the product. The tariff does not define the term “stabilizer”. However, Note 1(f) specifically states that stabilizers are understood to include anticaking agents. See Note 1(f) which states: “The products...with an added stabilizer (including an anticaking agent)...” [Emphasis added].

That said, the EN to another heading of Chapter 29, specifically heading 2936, also clarifies the word “stabilizer”. Though 2936 is not a heading at issue for MetaSmart Dry in the instant case, it is helpful to understand the scope of the term as it is used elsewhere in the chapter. Words used repeatedly in a given Chapter are to be read consistently with one another. The relevant part of EN 29.36 states:

The products of this heading may be stabilised for the purposes of preservation or transport:

By adding anti-oxidants,

By adding anti-caking agents (e.g., carbohydrates),

By coating with appropriate substance (e.g. gelatin, waxes or fats), whether or not plasticized, or

By adsorbing on appropriate substance (e.g., silicic acid),

Provided that the quantity added or the processing in no case exceeds that necessary for their preservation or transport and that the addition or processing does not alter the character of the basic product and render it particularly suitable for specific use rather than for general use.

MetaSmart, in its liquid form, crystallizes at a very high temperature. Crystallization renders the product unusable unless the customer has invested in machinery to thaw the product and keep it in its liquid form. However, when the active ingredient, HMBi, is adsorbed onto an appropriate substance, (such as silica or silicon dioxide), it is stabilized in a powder form suitable for easy transportation. Specifically, when the HMBi is adsorbed onto silica at a ratio of approximately 60% HMBi and 40% silica, it maintains a free-flowing powder form that does not cake. This stabilization process is explicitly provided for in two places in the EN 39.26 which describes permissible stabilization processes for the purposes of transport as including (1) the addition of anti-caking agents, and (2) the addition of a carrier or adsorbent. See EN 29.36. Specifically, the adsorption of an adsorbate onto an appropriate substance (carrier or adsorbent). See EN 39.26, fourth dash. Since the adsorption process described by Adiesso is a suitable stabilization process for the purposes of transportation for products of one heading of Chapter 29 (heading 29.36), the process should be understood to be applicable to other headings of Chapter 29, which reference and utilize the same concepts, (i.e. permissible added stabilizers, including an anticaking agent, pursuant to Note 1(f)).

What is also useful and relevant here, is the analysis of stabilizer additives in Chapter 29 products provided by the Court of Appeals for the Federal Circuit in *Roche Vitamins, Inc. v. United States*, 772 F.3d 728 (Fed. Cir. 2014). Relevant to the instant case, the Federal Circuit determined that though the product at issue contained a very high concentration by weight of a stabilizer as compared to the underlying chemical (approximately 80%), this did not alter the character of the good beyond the scope of the heading at issue (there, heading 2936). Further, the addition of the stabilizer ingredient did not render the product particularly suitable for specific use rather than for general use. *Id.* at 732–33.

Applying this analysis to MetaSmart Dry, the silica stabilizer does not alter the character of the product as a source of HMBi for ruminant animals. The HMBi monomer component comprises approximately 60% of the product and the silica stabilizer comprises about 40%. The silica upon which the HMBi is adsorbed, serves no marketable nutritional function for the animal. It is added to ensure that the product stays in a free-flowing powder form. The silica adsorbent does not render the product suitable for a specific use. The silica is a permissible stabilizer necessary to keep MetaSmart Dry in a suitable state, that of a free-flowing powder, for transportation.

CBP has previously found that silica (silicon dioxide) is a permissible stabilizing agent in accordance with Note 1(f) to Chapter 29. See HQ *H065723*, dated December 22, 2009, and see HQ *W968389*, dated February 5, 2009 (where the subject merchandise had 20% silicon dioxide, and was classified in chapter 29). There, the silicon dioxide comprised only 1% of the preparation. However, as was confirmed by the Federal Circuit in *Roche Vitamins, Inc. supra*, there exists no bright line rule regarding the percentage of the permissible stabilizer. So long as the stabilizer does not alter the character of the chemical, the product will remain classified in its respective heading. That is the case here, as the HMBi is adsorbed onto an appropriate substance, here silica, which ensures that the product stays in its form as a free-flowing agent, for transportation, and for easy mix with animal feed. However, the merchandise maintains its character as an HMBi monomer-based product. It is therefore classified as an other than aromatic, other than acid, organo-sulfur compound, of heading 2930, HTSUS. Specifically, subheading 2930.90.91, HTSUS.

As MetaSmart Dry is completely described by the tariff terms of heading 2930, HTSUS, specifically subheading 2930.90, HTSUS, an analysis of the product under heading 2309, HTSUS, which provides for preparations for animal feed is unnecessary. Similarly, as the product is described by the subheading text of 2930.90, HTSUS, it is not classified in the basket provision 3824, HTSUS, which provides for chemical preparations not elsewhere specified.

The Pharmaceutical Appendix was incorporated into the HTSUS by Presidential Proclamation 6763 of December 23, 1994. See 60 Fed. Reg. 1007 (1995). The Proclamation also added General Note 13 to the HTSUS. General Note 13 states:

Whenever a rate of duty of “Free” followed by the symbol “K” in parentheses appears in the “Special” subcolumn for a heading or subheading, any product \*by whatever name known) classifiable in such provision which is the product of a country eligible for tariff treatment under column 1 shall be entered free of duty, provided that such product is included in the pharmaceutical appendix to the tariff schedule. Products in the pharmaceutical

appendix include the salts, esters and hydrates of the International Non-Proprietary Name (INN) products numerated in table 1 of the appendix that contain in their names any of the prefixes or suffices listed in table 2 of the appendix, provided that any such salt, ester or hydrate is classifiable in the same 6-digit tariff provisions as the relevant product enumerated in table 1.

Desmeninol, CAS Number 583-91-5 is 2-hydroxy-4-methylthiobutanoic acid, which is also called HMBa. As above, the active ingredient of MetaSmart Dry is the isopropyl ester of HMBa, which is also called HMBi. The Pharmaceutical Appendix Table 1 lists Desmeninol as classified thereunder. The Pharmaceutical Appendix Table 2 also lists "isopropyl" as an accepted prefix or suffix. Therefore, as the General Note 13 HTSUS makes clear, the ester versions of the INN products enumerated in Table 1 that contain in their names any of the prefixes or suffixes listed in Table 2 are included in the Pharmaceutical Appendix and are eligible for duty-free treatment, provided that the ester is classifiable in the same subheading, at the 6-digit level, as the relevant product listed in Table 1. As that is the case here, the subject MetaSmart Dry is eligible for duty-free treatment.

#### **HOLDING:**

By application of GRI 1, pursuant to Note 1(f) to Chapter 29, the subject MetaSmart Dry is classified in heading 2930, HTSUS. It is specifically provided for in subheading 2930.90.9190, HTSUSA (Annotated), which provides for, "Organo-sulfur compounds: Other: Other: Other: Other: Other." The column one, general rate of duty is 3.7% ad valorem.

By operation of General Note 13, and pursuant to Tables 1 and 2 of the Pharmaceutical Appendix, the subject MetaSmart Dry, also known as HMBi or the isopropyl ester of 2-hydroxy-4-methylthiobutanoic acid adsorbed onto a permissible stabilizer (silica) is eligible for duty-free treatment under subheading 2930.90.9190 (K), HTSUS.

You are instructed to ALLOW the protest.

In accordance with Sections IV and VI of the CBP Protest/Petition Processing Handbook, you are to mail this decision, together with the Customs Form 19, to the Protestant no later than 60 days from the date of this letter. Any reliquidation of the entry in accordance with the decision must be accomplished prior to mailing of the decision. Sixty days from the date of the decision, Regulations and Rulings of the Office of International Trade will make the decision available to CBP personnel, and to the public on the CBP Home Page, available at [www.cbp.gov](http://www.cbp.gov), by means of the Freedom of Information Act and other methods of public distribution.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

## ATTACHMENT B

CLA-2 OT:RR:CTF:TCM H284810 CkG  
 CATEGORY: Classification  
 TARIFF NO: 2309.90.95

PORT DIRECTOR  
 PORT OF SAN FRANCISCO  
 U.S. CUSTOMS AND BORDER PROTECTION  
 555 BATTERY STREET, SUITE 228  
 SAN FRANCISCO, CA 94111  
 ATTN: TOM CHAN, IMPORT SPECIALIST

RE: Revocation of HQ H262551, dated May 9, 2016; classification of  
 MetaSmart Dry

DEAR PORT DIRECTOR:

This letter is to inform you that U.S. Customs and Border Protection (“CBP”) has reconsidered Headquarters Ruling Letter (HQ) H262551, dated May 09, 2016, in which we granted Protest No. 2809-14-100777, filed on behalf of Adisseo USA, Inc., concerning the classification of MetaSmart Dry under the Harmonized Tariff Schedule of the United States (HTSUS).

In HQ H262551, we classified MetaSmart Dry in heading 2930, HTSUS, which provides for “Organo-sulfur compounds.” We have reviewed HQ H262551 and found it to be incorrect with respect to the classification of MetaSmart Dry. For the reasons set forth below, we are revoking this ruling.

As an initial matter, we note that under *San Francisco Newspaper Printing Co. v. United States*, 620 F. Supp. 738 (Ct. Int’l Trade 1985), the decision on the merchandise which was the subject of Protest No. 2809-14-100777 was final and binding on both the protestant and CBP. Therefore, while we may review the law and analysis of HQ H262551, any decision taken herein would not impact the entries subject to that ruling.

**FACTS:**

The subject merchandise was described in HQ H262551 as follows:

The subject merchandise is described as an isopropyl ester of 2-hydroxy-4-methylthiobutanoic acid. MetaSmart is not itself methionine, rather, it is the isopropyl ester of the acid *dl*- Hydroxy analogue of *dl*- methionine. It is referred to as HMBi for short and its CAS number is 57296-04-5. The acid form of the analog is *dl*-2-hydroxy-4-(methylmercapto) butyric acid, and it is also known as 2-Hydroxy-4-(methylthio) butyric (or butanoic) acid, or HMB or HMBa. The International Non-Proprietary Names (INN) of HMBa is imported and sold by Adisseo under the trade name Rhodimet AT88, and the CAS registry number of the product is 583-91-5.

In layman’s terms, when HMB (whether acid or ester) is ingested by a ruminant animal, in the instant case, that is a dairy cow, a chemical conversion occurs in the animal’s body whereby, *in vivo*, an amino group is substituted for the hydroxyl group of each form of HMB. Each undergoes a conversion and becomes identical to methionine. This results in an increased production of protein and also milk production of the dairy cow.

To make the instant product, the HMBi is adsorbed onto silicon dioxide (silica). Silica has a CAS number 7631-86-9. Adsorption is a process,

whereby the molecules of a gas or liquid adhere to the surface of a solid. This process creates a film of the adsorbate on the surface of the adsorbent. This process differs from absorption, in which a fluid permeates or is dissolved by a liquid or solid.

In its meeting with CBP, Adisseo stated that an adsorption process was chosen to manufacture MetaSmart Dry because the HMBi molecules adhere to the surface of the silica without changing the chemical properties of the HMBi. In other words, the adsorption process does not change the chemical nature of HMBi, or the effect it has in the animal, but it will change the HMBi's physical state from a liquid into a free-flowing powder. In the adsorption process the silica is referred to as a "carrier" or the adsorbent. The HMBi is the adsorbate. Silica is very commonly chosen as a carrier or adsorbent<sup>1</sup>. MetaSmart Dry is 57- 60% HMBi and approximately 40% silica. Adisseo stated that this ratio was chosen to ensure the product remains a free-flowing powder mixture. However, this ratio also ensures that the HMBi is completely adsorbed onto the silica and no extraneous HMBi molecules break free of the carrier and crystallize. HMBi crystallizes at a very high temperature, approximately 54 degrees Fahrenheit (12 degrees Celsius). If more than 60% of the HMBi were present, then the extra HMBi molecules would crystallize and/or solidify and cake and become difficult to use. If much less than 60% of the HMBi were used, then the product would not be as effective in the animal, or, the animal would need higher doses of the product.

MetaSmart Dry is mixed into cattle feed products, and the desired chemical reaction (protein building resulting in increased milk production) occurs in the cow's digestive tract. Adisseo stated that dairy cow farms operating in consistently colder climates (such as the upper-mid-west of the United States) may prefer to use the dry version over the liquid version because the dry powder will not crystallize and become difficult or impossible to use.

Adisseo also stated in its meeting that HMBi has no uses outside of animal feed, specifically feed for dairy cows. It was designed specially to react in a dairy cow's stomach because ruminant animals have multiple chambers<sup>2</sup>. Adisseo also stated that silica was chosen as the carrier because it is an effective adsorbent and while the silica is not promoted as a nutritional component, it has been shown to provide some peripheral nutritional benefit, such as bone growth, in the animal.

## ISSUE:

Whether the subject merchandise is classified in heading 2309, HTSUS, as a preparation of a kind used in animal feeding; heading 2930, HTSUS, as an organo-sulfur compound; or in heading 3824, HTSUS, as a chemical preparation not elsewhere specified or included.

<sup>1</sup> See The International Adsorption Society, available at: <http://ias.vub.ac.be/What%20is%20adsorption.html>

<sup>2</sup> See U.S. Patent No. 20150080468A1, (filed September 13, 2013).

**LAW AND ANALYSIS:**

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

The HTSUS provisions at issue are as follows:

- 2309: Preparations of a kind used in animal feeding;
- 2930: Organo-sulfur compounds;
- 3824: Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included:

\* \* \* \* \*

Note 1 to Chapter 23, HTSUS, provides as follows:

Heading 2309 includes products of a kind used in animal feeding, not elsewhere specified or included, obtained by processing vegetable or animal materials to such an extent that they have lost the essential characteristics of the original material, other than vegetable waste, vegetable residues and byproducts of such processing.

Note 1 to Chapter 29 provides:

1. Except where the context otherwise requires, the headings of this Chapter apply only to:
  - (a) Separate chemically defined organic compounds, whether or not containing impurities;
  - ....
  - (f) The products mentioned in (a), (b), (c), (d) or (e) above with an added stabiliser (including an anti-caking agent) necessary for their preservation or transport;

\* \* \* \* \*

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

EN 23.09 provides, in pertinent part, as follows:

This heading covers sweetened forage and prepared animal feeding stuffs consisting of a mixture of several nutrients designed:

- (1) to provide the animal with a rational and balanced daily diet (complete feed);
- (2) to achieve a suitable daily diet by supplementing the basic farmproduced feed with organic or inorganic substances (supplementary feed); or
- (3) for use in making complete or supplementary feeds.

...

(II) OTHER PREPARATIONS

- (A) PREPARATIONS DESIGNED TO PROVIDE THE ANIMAL WITH ALL THE NUTRIENT ELEMENTS REQUIRED TO ENSURE A RATIONAL AND BALANCED DAILY DIET (COMPLETE FEEDS)

...

- (B) PREPARATIONS FOR SUPPLEMENTING (BALANCING) FARM-PRODUCED FEED (FEED SUPPLEMENTS)

...

- (C) PREPARATIONS FOR USE IN MAKING THE COMPLETE FEEDS OR SUPPLEMENTARY FEEDS DESCRIBED IN (A) AND (B) ABOVE

These preparations, known in trade as “premixes”, are, generally speaking, compound compositions consisting of a number of substances (sometimes called additives) the nature and proportions of which vary according to the animal production required. These substances are of three types:

- (1) Those which improve digestion and, more generally, ensure that the animal makes good use of the feeds and safeguard its health: vitamins or provitamins, aminoacids, antibiotics, coccidiostats, trace elements, emulsifiers, flavourings and appetisers, etc.
- (2) Those designed to preserve the feeding stuffs (particularly the fatty components) until consumption by the animal: stabilisers, antioxidants, etc.
- (3) Those which serve as carriers and which may consist either of one or more organic nutritive substances (manioc or soya flour or meal, middlings, yeast, various residues of the food industries, etc.) or of inorganic substances (e.g., magnesite, chalk, kaolin, salt, phosphates).

The concentration of the substances described in (1) above and the nature of the carrier are determined so as to ensure, in particular, homogeneous dispersion and mixing of these substances in the compound feeds to which the preparations are added

Provided they are of a kind used in animal feeding, this group also includes:

- (a) Preparations consisting of several mineral substances.
- (b) Preparations consisting of an active substance of the type described in (1) above with a carrier, for example products of the antibiotics manufacturing process obtained by simply drying the mass, i.e. the entire contents of the fermentation vessel (essentially mycelium, the culture medium and the antibiotic)...

\* \* \* \*

The General EN to Chapter 29 provides, in pertinent part, as follows:  
GENERAL

As a general rule, this Chapter is restricted to separate chemically defined compounds, subject to the provisions of Note 1 to the Chapter.

- (A) Chemically defined compounds

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

Separate chemically defined compounds containing other substances deliberately added during or after their manufacture (including purification) are excluded from this Chapter. Accordingly, a product consisting of saccharin mixed with lactose, for example, to render the product suitable for use as a sweetening agent is excluded (see Explanatory Note to heading 29.25).

The separate chemically defined compounds of this Chapter may contain impurities (Note 1 (a)). An exception to this rule is created by the wording of heading 29.40 which, with regard to sugars, restricts the scope of the heading to chemically pure sugars.

The term “impurities” applies exclusively to substances whose presence in the single chemical compound results solely and directly from the manufacturing process (including purification). These substances may result from any of the factors involved in the process and are principally the following:

- (a) Unconverted starting materials.
- (b) Impurities present in the starting materials.
- (c) Reagents used in the manufacturing process (including purification).
- (d) By-products.

It should be noted, however, that such substances are not in all cases regarded as “impurities” permitted under Note 1 (a). When such substances are deliberately left in the product with a view to rendering it particularly suitable for specific use rather than for general use, they are not regarded as permissible impurities. For example, a product consisting of methyl acetate with methanol deliberately left in with a view to improving its suitability as a solvent is excluded (heading 38.14). For certain compounds (e.g., ethane, benzene, phenol, pyridine), there are specific purity criteria, indicated in Explanatory Notes to headings 29.01, 29.02, 29.07 and 29.33.

\* \* \* \*

The EN to heading 2930 provides, in pertinent part:

**(C) SULPHIDES (OR THIOETHERS)\***

These may be regarded as ethers in which the oxygen atom is replaced by one of sulphur

(ROR <sup>1</sup> ).....	(RSR <sup>1</sup> )
ether	sulphide

(1) **Methionine\***. White platelets or powder. An amino acid. Essential component in human nutrition, not synthesised by the body.

\* \* \* \* \*

In HQ H262551, CBP determined that the subject merchandise was classified in heading 2930, HTSUS, as an organo-sulfur compound. In so holding, CBP concluded that the 40% of silica in the MetaSmart Dry did not alter the character of the product as a source of methionine for ruminant animals, and that it was therefore a permissible stabilizer pursuant to Note 1 to Chapter 29.

Heading 2930, HTSUS, covers the merchandise only if its composition is within the scope of Note 1 to Chapter 29. Like methionine, HMBi is an organo-sulfur compound classifiable in heading 2930. The issue is whether a product which contains only 60 % HMBi, with the remainder consisting of a silica adsorbent, is still a separately defined compound for the purposes of Note 1 to Chapter 29.

As stated in the General EN to Chapter 29, Chapter 29 is restricted to separate chemically defined compounds, subject to the provisions of Note 1 to the Chapter. Note 1(f) to Chapter 29, in turn, states that “stabilizers” are a permissible additive and do not alter the tariff classification, so long as the stabilizer is necessary for the preservation or transport of the product.

Contrary to our conclusion in H262551, the silica encapsulation of the Metasmart Dry is not a stabilizer necessary for the preservation or transport of the HMBi. At cooler temperatures, the HMBi crystallizes into a solid; however, it reverts back to a liquid state when heated, and it is not in any way rendered unusable by crystallization. To the contrary, the MetaSmart User’s Guide specifically indicates that “[t]he physical, chemical and nutritional characteristics of MetaSmart are not affected by crystallization.” The User’s Guide further states that simply reheating the MetaSmart Dry will return it to the liquid phase if it does crystallize. Pursuant to Adisseo’s submissions to CBP in connection with H262551, the encapsulation of the HMBi was simply a more cost-effective option than investing in a heated room to store the HMBi above 52 degrees. We further note that MetaSmart is also sold directly in liquid form, with no apparent drawbacks to the liquid form as regards transport, handling or administration (“there is a savings of 25% when the liquid form of MetaSmart is used, making it the least-cost source of metabolizable methionine for ruminants... Adding MetaSmart Liquid to the mixer is achieved by using an injection system ... Tests have confirmed that liquid and dry forms of MetaSmart mix equally well, delivering similar Coefficient of Variation (CV) with MetaSmart Liquid delivering the added benefit of dust control.”<sup>3</sup> )

Thus, the silica adsorbent allows for ease and convenience in handling and transport, but it is not necessary for either. It also follows that the silica is not acting as an anti-caking or anti-dusting agent in this case; as HMBi is a liquid under normal conditions, it is not subject to caking or creating dust.

In HQ H262551, CBP also relied on *Roche Vitamins, Inc. v. United States*, 772 F.3d 728 (Fed. Cir. 2014), in concluding that the MetaSmart Dry was classified in heading 2930 because the silica adsorbent did not alter the character of the good beyond the scope of the heading at issue and did not render the product particularly suitable for specific use rather than for general use.

However, we find that in the instant case, the silica adsorbent does render the HMBi suitable only for specific use as an animal feed, particularly dry feed. The dry formulation of MetaSmart is designed for incorporation into

<sup>3</sup> [http://www.adisseo.biz/EM/adv/metasmart/da\\_metasmart\\_qa\\_08.htm](http://www.adisseo.biz/EM/adv/metasmart/da_metasmart_qa_08.htm)

animal feeds “where liquid dispersion is not a feasible option.”<sup>4</sup> It is also designed to be metabolized in a specific manner, where 50% of the MetaSmart is absorbed through the rumen wall to be hydrolyzed into methionine by the liver, and 50% remains in the rumen for utilization therein, “which promotes increased numbers of protozoa, increased forage and fiber digestion and promotes rumen bacterial protein synthesis and efficiency.”<sup>5</sup>

Pursuant to the above discussion, MetaSmart Dry is precluded from classification in Chapter 29 by Note 1 to that Chapter, and is therefore not classified in heading 2930, HTSUS.

As an alternative to classification in heading 2930, Protestant requests classification of the MetaSmart Dry in heading 2309, HTSUS, as a preparation of a kind used in animal feeding. In *Group Italglass U.S.A. v. United States*, 17 C.I.T. 226, 228 (1993), the CIT held that “the language in heading 7010 ‘of a kind used for’ explicitly invokes use as a criterion for classification”. Classification under such a provision is controlled by the principal use of goods of that class or kind to which the imported goods belong in the United States at or immediately prior to the date of the importation. A tariff classification controlled by use, other than actual use, is to be determined by the principal use in the United States at, or immediately prior to, the date of importation, of goods of the same class or kind of merchandise. See Additional U.S. Rule of Interpretation 1(a). In other words, the actual use of the specific product at issue is not controlling. In determining the principal use of a product, CBP considers a variety of factors including general physical characteristics, the expectation of the ultimate purchaser, channels of trade, and the environment of sale (accompanying accessories, manner of advertisement and display). See *United States v. Carborundum Company*, 63 C.C.P.A. 98, C.A.D. 1172, 536 F.2d 373 (1976), cert. denied, 429 U.S. 979.

We agree that the principal use of the MetaSmart Dry preparation is as an animal feed. Adisseo itself provides only products and services related to animal feed and nutrition MetaSmart is marketed, advertised, sold and used as an animal feed. The MetaSmart User’s Guide instructs customers on the incorporation of MetaSmart into complete feeds for ruminants, and Adisseo further provided a letter from the Director of the Division of Animal Feeds of the FDA defining HMBi as “a product...for use as a source of methionine activity in cattle diets.”

Preparations of heading 2309, HTSUS, fall into several categories: complete feeds, supplementary feeds and premixes. Supplementary feeds consist of proteins, minerals or vitamins plus additional energy feeds (carbohydrates) which serve as a carrier for the other ingredients. Supplementary feeds have much the same composition as complete feeds, but they are distinguished by a relatively high content of one particular nutrient. Premixes include preparations consisting of an active substance such as vitamins or provitamins, aminoacids, antibiotics, etc., with a carrier. MetaSmart Dry is described as a premix by Adisseo.

Classification in heading 2309, HTSUS, generally requires that products of that heading consist of a mixture of several nutrients. See EN 23.09; HQ 966456, dated October 25, 2004; HQ 966679, dated September 15, 2003; HQ 964944, dated February 08, 2002; HQ 964600, dated June 21, 2001; NY

<sup>4</sup> [http://www.adisseo.biz/EM/adv/metasmart/da\\_metasmart\\_qa\\_03.htm](http://www.adisseo.biz/EM/adv/metasmart/da_metasmart_qa_03.htm)

<sup>5</sup> [http://www.adisseo.biz/EM/adv/metasmart/da\\_metasmart\\_qa\\_12.htm](http://www.adisseo.biz/EM/adv/metasmart/da_metasmart_qa_12.htm)

L89318, dated January 17, 2006; and NY I83322, dated June 19, 2002. However, we note that EN 23.09 specifically covers premixes which consist of “either of one or more organic nutritive substances”, and includes “preparations consisting of an active substance with a carrier”. EN 23.09 further describes merchandise tantamount to Metasmart Dry. EN 23.09 includes in the heading compounds which “ensure that the animal makes good use of the feeds and safeguards its health.” Methionine is an amino acid essential to the health of the cow and the ability to produce milk. It is an active substance, which is combined with one other ingredient, suitable for use only as a premix for animal feed. We consider these to constitute specific exceptions to the general requirement that feed preparations must consist of a mixture of several nutrients.

A nutrient is a food substance that is utilized or consumed by the body to create tissue or energy. *See e.g.*, HQ 966456, dated October 25, 2004. Methionine is an essential amino acid for all animals, but it is not naturally produced in the body; it must be ingested. Among other functions, methionine is necessary for metabolism in the body, and plays a role in the growth of new blood vessels. Methionine is thus unquestionably a nutrient. As the HMBi is converted into methionine in the body, HMBi will play the same nutritional role as methionine. Silicon dioxide itself potentially has nutritional value for animals. In general, silicon plays an important role in skeletal formation and the growth of connective tissue. While silicon dioxide was thought to be an inert substance that could not be used by the body as a bioavailable source of silicon, studies suggest that silicon dioxide may be hydrolyzed in the digestive tract to release orthosilicic acid, the most bioavailable form of silicon.<sup>6</sup>

Pursuant to the above analysis, MetaSmart Dry is classifiable as premixes in heading 2309, HTSUS, as a preparation consisting of one or more nutritive substances for use in animal feed.

### **HOLDING:**

By application of GRIs 1 and 6, the subject MetaSmart Dry is classified in heading 2309, HTSUS, specifically subheading 2309.90.95, HTSUS, which provides for “Preparations of a kind used in animal feeding: Other: Other: Other: Other: Other.” The 2018 column one, general rate of duty is 1.4% 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](http://www.usitc.gov).

<sup>6</sup> *See e.g.*, J.P. Bellia et. al, *Beer, a dietary source of silicon*, The Lancet, Vol. 343 No. 8891 (Jan. 1994), available at <https://www.sciencedirect.com/science/article/pii/S0140673694910197> (“Silicon exists most commonly as the mineral silica, SiO<sub>2</sub>. When exposed to water, silicates liberate orthosilicic acid Si(OH)<sub>4</sub>...It is in this form that silicon is bioavailable...for absorption in the gastrointestinal tract.”). *See also* European Food Safety Authority, *Calcium silicate and silicon dioxide / silicic acid gel added for nutritional purposes to food supplements*, EFSA Journal (2009) 1132, 2–24 (“given the conversion of silicon dioxide/silicic acid to orthosilicic acid upon hydration, and the bioavailability of silicon from orthosilicic acid, the Panel considers that silicon from silicon dioxide/silicic acid gel is bioavailable”).

*See also* S. T. Tran, M. E. Bowman, T. K. Smith; Effects of a silica-based feed supplement on performance, health, and litter quality of growing turkeys, *Poultry Science*, Volume 94, Issue 8, 1 August 2015, Pages 1902–1908, available at <https://academic.oup.com/ps/article/94/8/1902/1533998>.

**EFFECT ON OTHER RULLINGS:**

HQ H262551, dated May 09, 2016, is hereby revoked.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

**TEST TO COLLECT FACIAL IMAGES FROM OCCUPANTS  
IN MOVING VEHICLES AT THE ANZALDUAS PORT OF  
ENTRY (ANZALDUAS BIOMETRIC TEST)**

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

**ACTION:** General notice.

**SUMMARY:** This notice announces that U.S. Customs and Border Protection (CBP) is conducting a voluntary test to collect biometrics, namely facial images, from travelers who choose to participate and who are entering or departing the United States via moving motor vehicles at the Anzalduas, Texas, land border port of entry (Anzalduas Biometric Test). CBP is conducting this test to determine the effectiveness of certain technology. Specifically, the test will: Evaluate the technology's effectiveness to capture a quality facial image for occupants within a vehicle while that vehicle is moving; evaluate biometric matching accuracy of images captured; and, evaluate transaction time for matching images captured. CBP will not use facial images collected during this test to identify threats or determine admissibility. All analysis of the facial images collected during this test will be conducted off-line at a later time, and no information collected during this test will be retained in association with an individual's official border-crossing records. This notice describes the purpose of the test as well as how the facial images collected will be used. It also describes the test procedures, the persons covered, the duration of the test, how CBP will analyze the results, and privacy considerations.

**DATES:** This voluntary test began August 30, 2018, and will run for approximately one year.

**FOR FURTHER INFORMATION CONTACT:** Colleen Manaher, Executive Director, Planning, Program Analysis and Evaluation, U.S. Customs and Border Protection at (202) 344-3003 or [colleen.manaher@cbp.dhs.gov](mailto:colleen.manaher@cbp.dhs.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

The Department of Homeland Security (DHS) has broad authority to control alien travel and to inspect aliens under various provisions of the Immigration and Nationality Act of 1952, as amended (INA).<sup>1</sup>

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<sup>1</sup> DHS may require aliens to provide biometrics and other relevant identifying information upon entry to, or departure from, the United States. Specifically, DHS may control alien entry and departure and inspect aliens under sections 215(a) and 235 of the INA (8 U.S.C.

In addition, numerous federal statutes require DHS to create an integrated, automated biometric entry and exit system that records the arrival and departure of aliens, compares the biometric data of aliens to verify their identity, and authenticates travel documents presented by such aliens through the comparison of biometrics.<sup>2</sup>

The federal statutes requiring DHS to create a biometric entry and exit system to record the arrival and departure of aliens include, but are not limited to:

- Section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104–208, 110 Stat. 3009–546;
- Section 2(a) of the Immigration and Naturalization Service Data Management Improvement Act of 2000 (DMIA), Public Law 106–215, 114 Stat. 337;
- Section 205 of the Visa Waiver Permanent Program Act of 2000, Public Law 106–396, 114 Stat. 1637, 1641;
- Section 414 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), Public Law 107– 56, 115 Stat. 272, 353;
- Section 302 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (Border Security Act), Public Law 107–173, 116 Stat. 543, 552;
- Section 7208 of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), Public Law 108–458, 118 Stat. 3638, 3817;
- Section 711 of the Implementing Recommendations of the 9/11 Commission Act of 2007, Public Law 110–52, 121 Stat. 266;
- Section 802 of the Trade Facilitation and Trade Enforcement Act of 2015, Public Law 114–125, 130 Stat. 122, 199 (6 U.S.C. 211(c)(10)).

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1185, 1225). Aliens may be required to provide fingerprints, photographs, or other biometrics upon arrival in, or departure from, the United States, and select classes of aliens may be required to provide information at any time. *See, e.g.*, INA 214, 215(a), 235, 262(a), 263(a), 264(c), (8 U.S.C. 1184, 1185(a), 1225, 1302(a), 1303(a), 1304(c)); 8 U.S.C. 1365b.

<sup>2</sup> As used in this notice, “biometrics” means a physical characteristic or other physical attribute unique to a person that can be collected, stored, and used to verify the identity of a person who chooses to participate in the test by using the testing lanes, as defined in the “Test Procedures” section below. To verify a person’s identity, a similar physical characteristic or attribute is collected and compared against the previously collected identifier.

Additionally, on March 6, 2017, the President signed Executive Order 13780, Protecting the Nation from Foreign Terrorist Entry into the United States (published in the **Federal Register** on March 9, 2017; 82 FR 13209). Section 8 of this Order requires the Secretary of Homeland Security to expedite the completion and implementation of a biometric entry-exit tracking system for “in-scope travelers”<sup>3</sup> to the United States.

Pursuant to various authorities under Titles 8 and 19 of the U.S. Code, and other authorities CBP enforces on behalf of third party agencies at the border, CBP routinely collects biographic data from travelers entering and departing the United States. *See, e.g.*, 8 U.S.C. 1181, 1185, 1221; and 19 U.S.C. 1433. Additionally, DHS regulations authorize DHS to collect biometric data from certain aliens seeking admission to the United States and to collect biometrics from aliens upon departure from the United States under pilot programs at land ports and up to 15 air and seaports. *See* Sections 215.8 and 235.1(f)(1)(ii) of Title 8 of the Code of Federal Regulations (CFR) (8 CFR 215.8 and 235.1(f)(1)(ii)).<sup>4</sup>

Since 2004, DHS, through CBP, has been collecting biometric data from aliens arriving in the United States. However, there is no comprehensive system in place to collect biometrics from aliens departing the country. Collecting biometrics at both arrival and departure will enable CBP and DHS to know with better accuracy whether aliens are departing the country when they are required to depart, reduce visa or travel document fraud, and improve CBP’s ability to identify criminals and known or suspected terrorists before they depart the United States.

CBP has been testing various options to collect biometrics at departure in the land and air environments. For example, from February to May 2016, CBP conducted a pilot program to test facial and iris scanning technology for pedestrian travelers departing through the Otay Mesa, California, land border port of entry.<sup>5</sup> CBP is also conducting pilots at some airports to evaluate the effectiveness of biometric facial recognition matching of a real-time photograph of an individual to a photograph gallery stored in a database.

CBP is now conducting a test that involves the collection of facial images from occupants in moving vehicles as they enter and exit the United States at the Anzalduas land border port of entry (Anzalduas

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<sup>3</sup> Although the term “in-scope travelers” is not defined in the Executive Order, DHS interprets this to mean those travelers who are currently required to provide biometric information upon entry to the United States.

<sup>4</sup> Certain categories of aliens are exempt from the collection of biometrics upon entering or departing the United States. *See* 8 CFR 235.1(f)(1)(ii), (iv); 8 CFR 215.8(a)(1)–(2).

<sup>5</sup> *See* 80 FR 70241 (Nov. 31, 2015).

Biometric Test). This notice describes the purpose of the test as well as how the facial images collected will be used. It also describes the test procedures, the persons covered, the duration of the test, how CBP will analyze the results, and privacy considerations.

## **Anzalduas Biometric Test**

### *Overview and Purpose*

The Anzalduas Biometric Test is a voluntary test to collect biometrics, namely facial images, from travelers who choose to participate and who are entering or departing the United States via moving motor vehicles at the Anzalduas, Texas, land border port of entry. This test will help CBP determine the effectiveness of certain technology used to capture a quality facial image for occupants within a vehicle while that vehicle is moving, evaluate biometric matching accuracy of images captured, and evaluate transaction time to conduct a match of images captured to determine whether a real-time match could be provided to the CBP Officer. This test is one of CBP's key efforts in developing the capability to fulfill DHS's mandate to collect biometric information from arriving and departing aliens. The test procedures will operate in conjunction with CBP's normal entry-exit processes but facial images collected during this test will not be used to identify threats or to determine admissibility.

### *Normal Entry/Exit Procedures Remain In Place*

During this test, the normal entry/exit procedures will apply. This means that all persons seeking admission at the Anzalduas land border port of entry must show a valid passport or other acceptable travel document when entering the United States. Some aliens may also be required to provide fingerprint biometric data for CBP to verify their identity upon entry.<sup>6</sup> All persons exiting the United States at the Anzalduas land border port of entry may be subject to additional screening. Some aliens may also be required to provide fingerprint biometric data for CBP to verify their identity upon exit.

The facial images collected during this test will not be analyzed by CBP officers at the time the traveler enters or exits. Rather, the facial matching technology will perform matching analysis, which will be reviewed and analyzed by CBP analysts on the back end for accuracy, as described below. Therefore, the entry and exit procedures for both travelers and CBP officers at the Anzalduas port of entry will not change as a result of this test.

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<sup>6</sup> Certain aliens, including individuals traveling on A or G visas and others as specified in 8 CFR 215.8 and 235.1, are exempt from this requirement.

### *Test Procedures*

For this test, cameras have been installed at both entry and exit lanes which will attempt to capture facial images of all occupants in vehicles traveling in designated arrival and departure lanes (“testing lanes”) as the vehicles move through the lane. The cameras are located prior to the inspection booths where travelers present their travel documentation to CBP officers. This process is completely passive for the vehicle occupants and does not require the travelers to engage in any additional action outside of the normal CBP processing on entry or exit. All travelers are subject to inspection upon entry to and exit from the United States, but U.S. citizens and certain categories of aliens are not specifically required to provide biometrics pursuant to 8 CFR 235.1(f)(1)(ii) and 215.8. For purposes of this pilot, CBP has provided an optional lane, both inbound and outbound, where no facial images will be captured for biometric matching purposes (“non-testing lane”). Due to the difficulty of sorting vehicle occupants by citizenship or category while they are in a moving vehicle, the non-testing lane is available for use by any vehicle, regardless of the occupants’ citizenship or status. CBP has posted signs sufficiently in advance of lane divisions to allow drivers to select their desired lane. Other than signs indicating non-testing lanes or a flash of light in the testing lanes when a photo is taken, the travelers should not notice any differences in the wait times or experience of crossing at the Anzalduas port of entry.

### *Use of Facial Images Collected During the Test*

CBP will create a photograph gallery of border crossers, which will include the photographs captured by the cameras at both entry and exit operations during this test. This gallery will also include photos and biographical information from travelers’ document(s)<sup>7</sup> that were previously captured by CBP or another government agency and which are associated with travelers whose facial images were captured during this test. CBP will not store or use facial images captured from out-of-scope aliens or U.S. citizens for the purposes of this test. If an out-of-scope alien or U.S. citizen chooses to travel through the testing lanes and his or her facial image is captured, the image will be deleted as soon as it is identified as an out-of-scope alien or U.S. citizen by the analysts comparing the matching results of the technology as described below.

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<sup>7</sup> Traveler documents include but are not limited to: passports, visas, and trusted traveler radio-frequency identification (RFID) cards such as Border Crossing Cards, Enhanced Driver’s Licenses, passport cards, and tribal cards. See 8 CFR 235.1 for complete travel document requirements.

The facial recognition technology will compare live images captured during the vehicle crossings with the photos and biographic information on file and will attempt to match the captured images with identified facial images in the photograph gallery. All facial images captured during this test, and previously collected traveler photos and associated document data will be stored in a secure, standalone database and analyzed off-line to test the biometric matching capabilities of the technology. No biometric data will be distributed from the standalone database, except for analysis and reporting purposes on the results of the test.<sup>8</sup>

In order to determine the accuracy of the biometric matching system, CBP analysts will compare the matching results produced by the facial recognition technology with stored traveler data (*e.g.*, RFID card scans, traveler biographical information collected by an officer from travel documents, and license plate data). By reviewing traveler data that are matched to test images by the system, CBP analysts can confirm that the traveler associated with a given individual record with which the technology matched a given facial image did in fact cross the Anzalduas port of entry on a particular day. For example, if the technology matches a captured facial image to the photograph on a certain individual's travel document, an analyst could review the border crossing biographical records from that day to confirm that the individual identified by the technology did cross that day. Alternatively, if the analyst finds no record of that individual crossing on the particular day, CBP may need to do further analysis on the match provided by the technology to determine if there is a "false match" or some other issue. The biographical information provides an additional level of verification to determine the accuracy of the facial matching technology.

#### *Persons Covered*

Participation in the test is voluntary. All individuals entering or exiting the United States at the Anzalduas port of entry in a vehicle may participate by entering and/or exiting through the testing lanes. Individuals who choose not to participate may use the non-testing lanes. No person or group of people will be required to use the testing lanes and there will be no penalty for using the non-testing lanes.

#### *Duration of Test*

This voluntary test began August 30, 2018, and will run for approximately one year.

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<sup>8</sup> As noted above, facial images collected from exempt aliens or U.S. citizens will be deleted as soon as they are identified as an exempt alien or U.S. citizen.

### *Analysis of Results*

CBP will generally retain facial images collected during this test until December 2020 for the sole purpose of testing facial recognition technology against a photograph gallery that most closely simulates CBP's operational land environment.<sup>9</sup> All analysis will be performed on the back end using the standalone database created for this test. CBP will use the results of this test to assess the operational feasibility of collecting biometric information from occupants in moving vehicles entering and exiting at all U.S. land border ports of entry. CBP will evaluate the test based on a number of criteria, including:

- The ability of the technology to capture high-quality facial images in vehicles traveling at various speeds, and in various lighting and weather conditions;
- the ability of the technology to correctly match the facial images captured to the correct individuals' facial image(s) on file; and,
- the transaction time to match the facial images captured to the photograph gallery to determine whether a real-time match could be provided to the CBP Officer performing traveler screening at the entry or exit lanes of the port.

### **Privacy**

CBP will ensure that all Privacy Act requirements and applicable DHS privacy policies are adhered to during the implementation of this test. Additionally, as noted previously, CBP will be issuing a PIA for TVS, which will outline how CBP will ensure compliance with Privacy Act protections and DHS privacy policies, including DHS's Fair Information Practice Principles (FIPPs). The FIPPs account for the nature and purpose of the information being collected in relation to DHS's mission to preserve, protect and secure the United States. The PIA will address issues such as the security, integrity, and sharing of data, use limitation and transparency. The PIA will be made publicly available at: <http://www.dhs.gov/privacy-documents-us-customs-and-border-protection>.

CBP has also issued an update to the DHS/CBP-007 Border Crossing Information (BCI) System of Records, which fully encompasses all the data that is being collected at the Anzalduas land border port of entry for the purposes of this test. The system of records notice

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<sup>9</sup> As noted above, facial images collected from exempt aliens or U.S. citizens will be deleted as soon as they are identified as an exempt alien or U.S. citizen. Further information about the retention of facial images will be provided in CBP's Privacy Impact Assessment (PIA) for Traveler Verification Services (TVS). It will be available at <http://www.dhs.gov/privacy-documents-us-customs-and-border-protection>.

(SORN) was published in the **Federal Register** on December 13, 2016 (81 FR 89957).

### **Paperwork Reduction Act**

The Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3507(d)) requires that CBP consider the impact of paperwork and other information collection burdens imposed on the public. This information collection is covered by OMB control number 1651–0138. This information collection has been updated to include information being collected pursuant to this notice.

Dated: November 7, 2018.

KEVIN K. McALEENAN,  
*Commissioner*

[Published in the Federal Register, November 14, 2018 (83 FR 56862)]

## **AGENCY INFORMATION COLLECTION ACTIVITIES:**

### **Passenger List/Crew List**

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

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

**SUMMARY:** The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted (no later than December 14, 2018 to be assured of consideration).

**ADDRESSES:** Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to [dhsdeskofficer@omb.eop.gov](mailto:dhsdeskofficer@omb.eop.gov).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE,

10th Floor, Washington, DC 20229–1177, telephone number (202) 325–0056 or via email [CBP\\_PRA@cbp.dhs.gov](mailto:CBP_PRA@cbp.dhs.gov). Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at <https://www.cbp.gov/>.

**SUPPLEMENTARY INFORMATION:** CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (Volume 83 FR Page 34856) on July 23, 2018, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

*Overview of this Information Collection:*

**Title:** Passenger List/Crew List.

**OMB Number:** 1651–0103.

**Form Number:** Form I–418.

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

**Type of Review:** Extension (without change).

**Abstract:** CBP Form I–418 is prescribed by CBP, for use by masters, owners, or agents of vessels in complying with Sections 231 and 251 of the Immigration and Nationality Act (INA). This form is filled out upon arrival of any person by commercial vessel

at any port within the United States from any place outside the United States. The master or commanding officer of the vessel is responsible for providing CBP officers at the port of arrival with lists or manifests of the persons on board such conveyances. CBP is in the process of amending its regulations to allow for the electronic submission of the data elements required on CBP Form I-418. This form is provided for in 8 CFR 251.1 and 251.3. A copy of CBP Form I-418 can be found at <https://www.cbp.gov/newsroom/publications/forms?title=i-418&=Apply>.

**Affected Public:** Businesses.

**Estimated Number of Respondents:** 77,935.

**Estimated Time per Respondent:** 1 hour.

**Estimated Total Annual Hours:** 77,935.

Dated: November 8, 2018.

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

[Published in the Federal Register, November 14, 2018 (83 FR 56861)]

## AGENCY INFORMATION COLLECTION ACTIVITIES:

### Transfer of Cargo to a Container Station

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

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

**SUMMARY:** The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted (no later than December 10, 2018) to be assured of consideration.

**ADDRESSES:** Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to [dhsdeskofficer@omb.eop.gov](mailto:dhsdeskofficer@omb.eop.gov).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229-1177, Telephone number (202) 325-0056 or via email [CBP\\_PRA@cbp.dhs.gov](mailto:CBP_PRA@cbp.dhs.gov). Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877-227-5511, (TTY) 1-800-877-8339, or CBP website at <https://www.cbp.gov/>.

**SUPPLEMENTARY INFORMATION:** CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (Volume 83 FR Page 33233) on July 17, 2018, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

### **Overview of This Information Collection**

**Title:** Transfer of Cargo to a Container Station.

**OMB Number:** 1651-0096.

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

**Type of Review:** Extension (without change).

**Affected Public:** Businesses.

**Abstract:** Before the filing of an entry of merchandise for the purpose of breaking bulk and redelivering cargo, containerized cargo may be moved from the place of unloading to a designated container station or may be received directly at the container station from a bonded carrier after transportation in-bond in accordance with 19 CFR 19.41. This also applies to loose cargo as part of containerized cargo. In accordance with 19 CFR 19.42, the container station operator may make a request for the transfer of a container to the station by submitting to CBP an abstract of the manifest for the transferred containers including the bill of lading number, marks, numbers, description of the contents and consignee.

**Estimated Number of Respondents:** 14,327.

**Estimated Number of Annual Responses per Respondent:** 25.

**Estimated Total Annual Responses:** 358,175.

**Estimated Time per Response:** 7 minutes.

**Estimated Total Annual Burden Hours:** 41,548.

Dated: November 6, 2018.

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

[Published in the Federal Register, November 09, 2018 (83 FR 56089)]



## AGENCY INFORMATION COLLECTION ACTIVITIES:

### Visa Waiver Program Carrier Agreement

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

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

**SUMMARY:** The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted (no later than December 14, 2018) to be assured of consideration.

**ADDRESSES:** Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to [dhsdeskofficer@omb.eop.gov](mailto:dhsdeskofficer@omb.eop.gov).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229-1177, Telephone number (202) 325-0056 or via email [CBP\\_PRA@cbp.dhs.gov](mailto:CBP_PRA@cbp.dhs.gov). Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877-227-5511, (TTY) 1-800-877-8339, or CBP website at <https://www.cbp.gov/>.

**SUPPLEMENTARY INFORMATION:** CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (Volume 83 FR Page 35674) on July 27, 2018, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

### **Overview of This Information Collection**

**Title:** Visa Waiver Program Carrier Agreement.

**OMB Number:** 1651–0110.

**Form Number:** CBP Form I–775.

**Current Actions:** This submission is being made to extend the expiration date with a decrease in burden hours due to updated agency estimates on respondents. There is no change to information collected or to CBP Form I–775.

**Type of Review:** Extension (without change).

**Abstract:** Section 223 of the Immigration and Nationality Act (INA) (8 U.S.C. 1223(a)) provides for the necessity of a transportation contract. The statute provides that the Attorney General may enter into contracts with transportation lines for the inspection and administration of aliens coming into the United States from a foreign territory or from adjacent islands. No such transportation line shall be allowed to land any such alien in the United States until and unless it has entered into any such contracts which may be required by the Attorney General. Pursuant to the Homeland Security Act of 2002, this authority was transferred to the Secretary of Homeland Security.

The Visa Waiver Program Carrier Agreement (CBP Form I–775) is used by carriers to request acceptance by CBP into the Visa Waiver Program (VWP). This form is an agreement whereby carriers agree to the terms of the VWP as delineated in Section 217(e) of the INA (8 U.S.C. 1187(e)). Once participation is granted, CBP Form I– 775 serves to hold carriers liable for the transportation costs, to ensure the completion of required forms, and to share passenger data. Regulations are promulgated at 8 CFR part 217.6, Carrier Agreements. A copy of CBP Form I–775 is accessible at: <http://www.cbp.gov/newsroom/publications/forms?title=775>.

**Affected Public:** Businesses.

**Estimated Number of Respondents:** 98.

**Estimated Number of Total Annual Responses:** 98.

**Estimated Time per Response:** 30 minutes.

**Estimated Total Annual Burden Hours:** 49.

Dated: November 8, 2018.

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

