U.S. Customs and Border Protection

19 CFR PART 177

MODIFICATION OF THREE RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE COUNTRY OF ORIGIN OF DECORATIVE PILLOWS, HEATABLE SAKS, AND STUFFED MATTRESS COVERS

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

ACTION: Notice of modification of three ruling letters and of revocation of treatment relating to the country of origin of decorative pillows, heatable saks, and stuffed mattress covers for marking purposes.

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 three ruling letters concerning the country of origin of decorative pillows, heatable saks, and stuffed mattress covers for marking purposes. 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. 12, No. 19, on May 9, 2018. No comments were received in response to that notice.

DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after November 26, 2018.

FOR FURTHER INFORMATION CONTACT: Elif Eroglu, Valuation and Special Programs Branch, Regulations and Rulings, Office of Trade, at (202) 325–0277.

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. 19, on May 9, 2018, proposing to modify three ruling letters concerning the country of origin of decorative pillows, heatable saks, and stuffed mattress covers for marking purposes. 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 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 this notice.

In NY N287930, dated August 3, 2017; HQ H265611, dated October 21, 2015; and HQ 963233, dated December 13, 2000, CBP determined that the merchandise classified under subheading 9404.90.20, HTSUS, was subject to 19 C.F.R. § 102.11 rules of origin. CBP has reviewed NY N287930, HQ H265611, and HQ 963233 and has determined the ruling letters to be partially in error. It is now CBP's position that merchandise classified under subheading 9404.90.20, HTSUS, which is a "textile or apparel product" is subject to 19 C.F.R. § 102.21 rules of origin.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is modifying NY N287930, HQ H265611, and HQ 963233 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in

HQ H290258, HQ H293880, and HQ H293881, set forth as Attachments A, B, and C 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: June 19, 2018

MONIKA R. BRENNER
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachments

ATTACHMENT A

HQ H290258

June 19, 2018
OT:RR:CTF:VS H290258 EE
CATEGORY: Classification

ELISE SHIBLES
SANDLER, TRAVIS & ROSENBERG, P.A.
505 SANSOME STREET, SUITE 1475
SAN FRANCISCO, CA 94111

RE: Modification of NY N287930; NAFTA country of origin marking; pillows

DEAR MS. SHIBLES:

This is in response to your letter dated September 13, 2017, in which you request, on behalf of your client Spencer N Enterprises, Inc. ("Spencer N Enterprises"), reconsideration of New York Ruling Letter ("NY") N287930, dated August 3, 2017. NY N287930, issued to you by U.S. Customs and Border Protection ("CBP") concerns the tariff classification of certain decorative pillows and eligibility for preferential tariff treatment under the North American Free Trade Agreement ("NAFTA"). We have reviewed NY N287930 and determined that it is partially incorrect with respect to the country of origin marking.

On May 9, 2018, pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1), as amended by section 623 of Title VI, notice of the proposed action was published in the Customs Bulletin Vol. 12, No. 19. No comments were received in response to that notice.

FACTS:

Spencer N Enterprises is an importer and distributor of soft décor products. The subject merchandise consists of decorative pillows. In NY N287930, the importer presented the following eight scenarios to CBP where pillow components were processed in Mexico and subsequently imported into the United States as finished decorative pillows.

Scenario 1 – decorative pillows constructed from polyester shells (containing a zipper closure) of Chinese origin sent to Mexico for stuffing with inserts of feathers of Chinese origin. The only processing in Mexico is the stuffing of the feathers in the polyester shells and closing the zipper. Both the polyester shells (China) and inserts of feathers (China) are sent in-bond into Mexico.

Scenario 2 – decorative pillows (no attached closure) constructed from polyester shells of Chinese origin sent to Mexico for stuffing with polyester fiber of Chinese origin. In Mexico, the polyester fiber is blown into the polyester shells and the shells are finished by sewing the opening closed. Both the polyester shells (China) and polyester fiber (China) are sent in-bond into Mexico.

Scenario 3 – decorative pillows constructed from polyester shells (containing a zipper closure) of Chinese origin sent to Mexico for stuffing with inserts of feathers of Chinese origin. The only processing in Mexico is the stuffing of the feathers in the polyester shells and closing the zipper. We note that the only difference between Scenario 1 and Scenario 3 is that the polyester shells (China) in Scenario 3 entered the United States before being sent to Mexico,

versus in Scenario 1 both the polyester shells (China) and inserts of feathers (China) were sent together in-bond into Mexico.

Scenario 4 – decorative pillows (no attached closure) constructed from a polyester shells of Chinese origin sent to Mexico for stuffing with polyester fiber of Chinese origin. In Mexico, the polyester fiber is blown into the polyester shells and the shells are finished by sewing the opening closed. We note that the only difference between Scenario 2 and Scenario 4 is that the polyester shells (China) in Scenario 4 entered the United States before being sent to Mexico, versus in Scenario 2 both the polyester shells (China) and polyester fiber (China) were sent together in-bond into Mexico.

Scenario 5 – decorative pillows constructed from cotton shells (containing a zipper closure) from India are sent to Mexico for stuffing with inserts of feathers of Chinese origin. The only processing in Mexico is the stuffing of the feathers in the cotton shells and closing the zipper. Both the cotton shells (India) and feathers (China) are sent in-bond to Mexico.

Scenario 6 – decorative pillows (no attached closure) constructed from cotton shells of Indian origin sent to Mexico for stuffing with polyester fiber of Chinese origin. In Mexico, the polyester fiber is blown into the cotton shells and the shells are finished by sewing the opening closed. Both the cotton shells (India) and polyester fiber (China) are sent in-bond to Mexico.

Scenario 7 – decorative pillows constructed from cotton shells (containing a zipper closure) from India are sent to Mexico for stuffing with inserts of feathers of Chinese origin. The only processing in Mexico is the stuffing of the feathers in the cotton shells and closing the zipper. We note that the only difference between Scenario 5 and Scenario 7 is that the cotton shells (India) in Scenario 7 entered the United States before being sent to Mexico, versus in Scenario 5 both the cotton shells (India) and feathers (China) were sent together in-bond into Mexico.

Scenario 8 – decorative pillows constructed from cotton shells (no attached closure) from India are sent to Mexico for stuffing with polyester fiber of Chinese origin. In Mexico, the polyester fiber is blown into the cotton shells and the shells are finished by sewing the opening closed. We note that the only difference between Scenario 6 and Scenario 8 is that the cotton shells (India) in Scenario 8 entered the United States before being sent to Mexico, versus in Scenario 6 both the cotton shells (India) and polyester fiber (China) were sent together in-bond into Mexico.

In its submission, the importer provided that the polyester shells from China are classified under heading 6304, Harmonized Tariff Schedule of the United States ("HTSUS"); polyester fiber from China is classified under heading 5503, HTSUS; feather insert from China is classified under heading 5503, HTSUS; and the cotton shell from India is classified under heading 6304, HTSUS.

CBP noted that illustrative literature or photographs of the decorative pillows were not presented. Additionally, for purposes of the ruling, "feathers" were not considered of down, either from goose or duck. CBP determined that the applicable subheading for the decorative pillows having cotton shells stuffed with feathers or polyester fiber, in scenarios 5 through 8, was 9404.90.1000, HTSUS, which provides for "[m]attress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns,

cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered: [o]ther: [p]illows, [c]ushions and similar furnishings: [o]f cotton." The applicable subheading for the decorative pillows having polyester shells stuffed with feathers or stuffed with polyester fiber, in scenarios 1 through 4, was 9404.90.2000, HTSUS, which provides for "[m]attress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered: [o]ther: [p]illows, cushions and similar furnishings: [o]ther." Additionally, CBP determined that the decorative pillows classified under subheadings 9404.90.1000 and 9404.90.2000, HTSUS, were not eligible for preferential tariff treatment under NAFTA.

ISSUES:

Whether the decorative pillows classified under subheadings 9404.90.1000 and 9404.90.2000, HTSUS, imported into the United States are eligible for preferential tariff treatment under the NAFTA.

What is the country of origin of the decorative pillows for purposes of country of origin marking?

LAW AND ANALYSIS:

General Note ("GN") 12, HTSUS, incorporates Article 401 of the NAFTA into the HTSUS. GN 12(a)(ii), HTSUS, provides that goods are eligible for the NAFTA rate of duty if they originate in the territory of a NAFTA party and qualify to be marked as goods of Mexico. GN 12(b), HTSUS, sets forth the various methods for determining whether a good originates in the territory of a NAFTA party. Specifically, these provisions provide, in relevant part, as follows:

> (a) Goods originating in the territory of a party to the North American Free Trade Agreement (NAFTA) are subject to duty as provided herein. For the purposes of this note—
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> * * * *
>
> (ii) Goods that originate in the territory of a NAFTA party under the terms of subdivision (b) of this note and that qualify to be marked as goods of Mexico under the terms of the marking rules set forth in regulations issued by the Secretary of the Treasury (without regard to whether the goods are marked), and goods enumerated in subdivision (u) of this note, when such goods are imported into the customs territory of the United States and are entered under a subheading for which a rate of duty appears in the "Special" subcolumn followed by the symbol "MX" in parentheses, are eligible for such duty rate, in accordance with section 201 of the North American Free Trade Agreement Implementation Act.
>
> (b) For the purposes of this note, goods imported into the customs territory of the United States are eligible for the tariff treatment and quantitative limitations set forth in the tariff schedule as "goods originating in the territory of a NAFTA party" only if—
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> (i) they are goods wholly obtained or produced entirely in the territory of Canada, Mexico and/or the United States; or

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

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

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

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

Counsel for the importer provided us with an additional submission for the reconsideration request, elaborating on the production processes of the decorative pillows. Counsel for the importer also provided us with photos and samples of the merchandise.

Counsel for the importer states that in scenarios 1 & 3, pillow components include: chief weight polyester woven pillow covers of Chinese origin with a zipper closure on one edge (heading 6304, HTSUS); chief weight polyester woven internal pillow shells of Chinese origin with one edge partially unfinished (heading 6307, HTSUS); feathers of Chinese origin (heading 0505, HTSUS); and sewing thread of unknown origin (headings 5204, 5401, 5402, 5508, HTSUS). Counsel states that in Mexico, the feathers are stuffed into the unfinished pillow shells and the edge is sewn closed forming a feather insert. The feather inserts are inserted into the pillow covers and the zippers are closed.

Counsel for the importer states that in scenarios 2 & 4, pillow components include: chief weight polyester woven pillow shells of Chinese origin with one edge partially unfinished (heading 6307, HTSUS); polyester staple fiber of Chinese origin (heading 5503, HTSUS); and sewing thread of unknown origin (headings 5204, 5401, 5402, 5508, HTSUS). Counsel claims that in Mexico, the polyester fiber is blown into the pillow shells and the shells are finished by sewing the unfinished portion of the edge closed.

Counsel for the importer states that in scenarios 5 & 7, pillow components include: chief weight cotton woven pillow covers of Indian origin with a zipper closure on one edge (heading 6304, HTSUS); chief weight cotton woven internal pillow shells of Indian origin with one edge partially unfinished (heading 6307, HTSUS); feathers of Chinese origin (heading 0505, HTSUS); and sewing thread of unknown origin (headings 5204, 5401, 5402, 5508, HTSUS). Counsel claims that in Mexico, the feathers are stuffed into the unfinished pillow shells and the edge is sewn closed forming a feather insert. The feather inserts are inserted into the pillow covers and the zippers are closed.

Counsel for the importer states that in scenarios 6 & 8, pillow components include: chief weight cotton woven pillow shells of Indian origin with one edge partially unfinished (heading 6307, HTSUS); polyester staple fiber of Chinese origin (heading 5503, HTSUS); and sewing thread of unknown origin (headings 5204, 5401, 5402, 5508, HTSUS). Counsel claims that in Mexico, the polyester fiber is blown into the pillow shells and the shells are finished by sewing the unfinished portion of the edge closed.

Since the decorative pillows contain non-originating materials, they are not considered goods wholly obtained or produced entirely in a NAFTA party under GN 12(b)(i). We must next determine whether the decorative pillows qualify under GN 12(b)(ii). There is no dispute as to the classification of the pillows in subheadings 9404.90.1000 and 9404.90.2000, HTSUS. The applicable rule of origin for the decorative pillows classified under subheadings 9404.90.1000 and 9404.90.2000, HTSUS, is in GN 12(t)/94.7, HTSUS. Chapter rule 1 provides: "[f]or the purposes of the subdivisions pertaining to this chapter, whenever the subdivision designation is underscored, the provisions of subdivision (d) of this note may apply to goods for use in a motor vehicle of chapter 87." Chapter rule 1 does not apply since the applicable tariff shift rule, GN 12(t)/94.7, HTSUS, is not underscored. Similarly, the subheading rule which provides that "[t]he underscoring of the designations in subdivision 1 pertains to goods provided for in subheading 9401.20 for use in a motor vehicle of chapter 87" does not apply since the applicable tariff shift rule is not underscored. GN 12(t)/94.7, HTSUS, provides: "[a] change to subheading 9404.90 from any other chapter, except from headings 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408 or 5512 through 5516." In its submission for the reconsideration of NY N287930, the counsel for the importer states that the pillow covers are classified under heading 6304, HTSUS; the pillow shells are classified under heading 6307, HTSUS; the polyester stable fiber is classified under heading 5503, HTSUS; the feathers are classified under heading 0505, HTSUS; and the sewing thread is classified under headings 5204, 5401, 5402, 5508, HTSUS. Since these non-originating materials are classified in a chapter other than chapter 94 and in headings which are not excepted, the tariff shift rule is met. Accordingly, we agree with NY N287930 that the decorative pillows classified under subheadings 9404.90.1000 and 9404.90.2000, HTSUS, qualify as NAFTA originating goods.

GN 12(a)(ii), HTSUS, provides that NAFTA-originating goods must also qualify to be marked as products of Mexico under the NAFTA Marking Rules to be eligible for preferential treatment. In this regard, 19 C.F.R. § 134.1(j) provides that "[t]he 'NAFTA Marking Rules' are the rules promulgated for purposes of determining whether a good is a good of a NAFTA country." 19 C.F.R. § 134.1(j) defines a "good of a NAFTA country" as "an article for which the country of origin is Canada, Mexico or the United States as determined under the NAFTA Marking Rules."

Chapter 94 Note to 19 C.F.R. § 102.20 (NAFTA Marking Regulations) explicitly provides that the country of origin of goods classified in subheading 9404.90.10, HTSUS, will be determined under the provisions of 19 C.F.R. § 102.21. However, the Chapter Note does not address merchandise classified in subheading 9404.90.20, HTSUS, and a rule for subheading 9404.90.20, HTSUS, is provided for in 19 C.F.R. § 102.20. NY N287930 applied 19 C.F.R. § 102.20 to the decorative pillows classified under subheading 9404.90.2000, HTSUS, to determine their country of origin for marking purposes. However, we find that Section 102.21, Customs Regulations (19 C.F.R. § 102.21) which pertains to textile and apparel products, should have been applied.

Section 334, of the Uruguay Round Agreements Act, codified at 19 U.S.C. § 3592, provides rules of origin for textiles and apparel entered, or withdrawn from warehouse, for consumption, on and after July 1, 1996. 19 C.F.R. § 102.21 implements section 334, and 19 C.F.R. § 102.0 refers to 19 C.F.R. § 102.21 for determining the country of origin of textile and apparel products.

A "textile or apparel product" for purposes of these rules of origin is defined in 19 C.F.R. § 102.21(b)(5), in part, as any good classifiable in a number of headings including subheading 9404.90, HTSUS. As such, a good classifiable in subheading 9404.90, HTSUS, should be analyzed to determine if it is a "textile or apparel product" of 19 C.F.R. § 102.21 or other product of 19 C.F.R. § 102.20.

In Headquarters Ruling Letter ("HQ") 962122, dated October 1, 1998, the importer claimed that because cushions were classified under subheading 9404.90.20, HTSUS, they were not "textile products" as that term was defined in 19 C.F.R. § 102.21(b)(5), and thus were subject to different rules of origin. CBP stated that the statute pertaining to the rules of origin, 19 U.S.C. § 3592, explicitly includes subheading 9404.90, HTSUS, and that the statute takes precedence over the regulation. Accordingly, in determining the country of origin of cushions classified under subheading 9404.90.20, HTSUS, the 19 C.F.R. § 102.21 rules of origin were applicable. As HQ 962122 provides, a pillow classified under subheading 9404.90.20, HTSUS, with a polyester outershell would be considered a textile product which would require the application of 19 C.F.R. § 102.21 rules of origin; however, a pillow classified under subheading 9404.90.20, HTSUS, with a leather or plastic outershell would not be considered a textile product and therefore 19 C.F.R. § 102.20 rules of origin would apply. In the instant case, since the merchandise at issue are decorative pillows with a polyester outershell, they are considered textile products and the 19 C.F.R. § 102.21 rules of origin are applicable.

The country of origin of a textile or apparel product is determined by hierarchical application of the general rules set forth in 19 C.F.R. § 102.21(c)(1) through (c)(5). 19 C.F.R. § 102.21(c)(1) provides: "[t]he country of origin of a textile or apparel product is the single country, territory, or insular possession in which the good was wholly obtained or produced." As the decorative pillows at issue are not wholly obtained or produced in a single country, territory, or insular possession, 19 C.F.R. § 102.21(c)(1) is not applicable.

19 C.F.R. § 102.21(c)(2) provides: "[w]here the country of origin of a textile or apparel product cannot be determined under paragraph (c)(1) of this section, the country of origin of the good is the single country, territory, or insular possession in which each foreign material incorporated in that good underwent an applicable change in tariff classification, and/or met any other requirement, specified for the good in paragraph (e) of this section."

As previously noted, the decorative pillows are classified under subheadings 9404.90.1000 and 9404.90.2000, HTSUS. The applicable tariff shift rule in 19 C.F.R. § 102.21(e) for merchandise classified under subheading 9404.90, HTSUS, is as follows:

9404.90 Except for goods of subheading 9404.90 provided for in paragraph (e)(2) of this section, the country of origin of a good classifiable under subheading 9404.90 is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric-making process.

19 C.F.R. § 102.21(e)(2) is not applicable since it does not cover subheadings 9404.90.1000 and 9404.90.2000, HTSUS. In the instant case, the fabric making process occurs where the polyester and cotton fabric is formed. *See* 19 C.F.R. 102.21(b)(2). Therefore, according to 19 C.F.R. § 102.21(c)(2) and (e)(1),

the country of origin for the decorative pillows is the same as the origin of the polyester and cotton fabric, which is China and India, respectively.

However, 19 C.F.R. § 102.19(a) contains a "NAFTA preference override".

> Except in the case of goods covered by paragraph (b) of this section, if a good which is originating within the meaning of § 181.1(q) of this chapter is not determined under § 102.11(a) or (b) or § 102.21 to be a good of a single NAFTA country, the country of origin of such good is the last NAFTA country in which that good underwent production other than minor processing, provided that a Certificate of Origin . . . has been completed and signed for the good.

19 C.F.R. § 102.19(a).

In HQ 960854, dated April 22, 1998, which involves similar facts as this case, CBP considered four scenarios to determine whether a certain buckwheat hull filled neck pillow, classified under subheading 9404.90.1000, HTSUS, was eligible for preferential tariff treatment under NAFTA and the country of origin of the pillow. Under the first scenario, the buckwheat hulls were sourced in China, and the fabric for the pillow shell and the pillow case were woven, cut and assembled in China. In Mexico, the pillow was filled and packed. CBP found that the pillow shell and cover from China, classified under headings 6307 and 6304, HTSUS, underwent the requisite change in tariff classification and that the pillow was eligible for preferential tariff treatment under NAFTA. The country of origin analysis under 19 C.F.R. § 102.21(e) indicated that since the fabric comprising the merchandise was formed in a single country, China, the country of origin of the pillow would be China. However, in accordance with the NAFTA override (19 C.F.R. § 102.19), CBP determined that the country of origin of the buckwheat hull filled neck pillow was Mexico. *See also* HQ H019439, dated September 5, 2008 (by virtue of the NAFTA override, the bed-in-bag set, classified under subheading 9404.90, HTSUS, must be marked country of origin Mexico in order to receive preferential tariff treatment under NAFTA as claimed).

In the instant case, as determined in NY N287930, the decorative pillows are originating goods under 19 C.F.R. 181.1(q). Additionally, the decorative pillows are not goods of a single NAFTA country under 19 C.F.R. 102.21. As such, the decorative pillows are a product of Mexico under the "NAFTA preference override" since they undergo more than "minor processing."[1] Pursuant to 19 C.F.R. § 102.19(a), the decorative pillows are products of Mexico.

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[1] The phrase "minor processing" is defined at 19 C.F.R. §102.1(m) as the following:
(1) Mere dilution with water or another substance that does not materially alter the characteristics of the good;
(2) Cleaning, including removal of rust, grease, paint, or other coatings;
(3) Application of preservative or decorative coatings, including lubricants, protective encapsulation, preservative or decorative paint, or metallic coatings;
(4) Trimming, filing or cutting off small amounts of excess materials;
(5) Unloading, reloading or any other operation necessary to maintain the good in good condition;
(6) Putting up in measured doses, packing, repacking, packaging, repackaging;
(7) Testing, marking, sorting, or grading;
(8) Ornamental or finishing operations incidental to textile good production designed to enhance the marketing appeal or the ease of care of the product, such as dyeing and printing, embroidery and appliques, pleating, hemstitching, stone or acid washing, permanent pressing, or the attachment of accessories notions, findings and trimmings; or
(9) Repairs and alterations, washing, laundering, or sterilizing.

HOLDING:

The decorative pillows having cotton shells stuffed with feathers or polyester fiber in scenarios 5 through 8, are classified under subheading 9404.90.1000, HTSUS, which provides for "[m]attress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered: [o]ther: [p]illows, [c]ushions and similar furnishings: [o]f cotton." The applicable subheading for the decorative pillows having polyester shells stuffed with feathers or stuffed with polyester fiber in scenarios 1 through 4 is 9404.90.2000, HTSUS, which provides for "[m]attress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered: [o]ther: [p]illows, cushions and similar furnishings: [o]ther."

Decorative pillows classified under subheadings 9404.90.1000 and 9404.90.2000, HTSUS, are eligible for preferential tariff treatment under NAFTA. The country of origin of the decorative pillows is Mexico for purposes of the marking requirements.

EFFECT ON OTHER RULINGS:

NY N287930, dated August 3, 2017, is hereby MODIFIED with respect to the country of origin of the decorative pillows classified under 9404.90.2000, HTSUS, for marking purposes.

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

Sincerely,

MONIKA R. BRENNER
for

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

ATTACHMENT B

HQ H293880

June 19, 2018
OT:RR:CTF:VS H293880 EE
CATEGORY: Classification

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

RE: Modification of HQ H265611; NAFTA country of origin marking; stuffed mattress covers

DEAR MS. DIAZ:

This letter is to inform you of the reconsideration of Headquarters Ruling Letter ("HQ") H265611 which was issued to you by U.S. Customs and Border Protection ("CBP") on October 21, 2015. HQ H265611 concerns the tariff classification of certain stuffed mattress covers and eligibility for preferential tariff treatment under the North American Free Trade Agreement ("NAFTA"). We have reviewed HQ H265611 and determined that it is partially incorrect with respect to the country of origin marking analysis.

On May 9, 2018, pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1), as amended by section 623 of Title VI, notice of the proposed action was published in the Customs Bulletin Vol. 12, No. 19. No comments were received in response to that notice.

FACTS:

The subject merchandise consists of two styles of mattress covers. Each style comes in numerous sizes, (i.e. twin, long twin, double, queen, king, California king, and split c-king); however, the characteristics of both styles and all sizes are the same. The mattress covers have two separate compartments. The top, upper-most layer has polyester stuffing, permanently sewn into it akin to quilting. This layer is zippered on all sides and attaches to or detaches from the lower compartment and the remainder of the mattress cover. A separate removable pad (not included) could be inserted between the top, upper-most quilted layer, and the lower mattress cover. The lower compartment of the mattress cover is comprised of a polyester and spandex interlock, and a polyester sandman. It is completely sewn together, and has dual zippers that allow the insertion of the mattress (not included). Essentially, there are two zippered compartments: one for an optional pad and one for the mattress.

Upon importation into the United States, the mattress cover fully encloses a mattress in its lower compartment via the double zipper closure. The mattress is not imported with the subject mattress cover. Rather, the fabric and other materials or components are imported into Mexico where they are cut and sewn into the final finished good, that is, the padded mattress cover. Upon importation into the United States, the importer sells the mattress cover to certain mattress and bed manufacturers, which in turn, cover their own mattresses and sell the combined unit to consumers.

CBP determined the stuffed mattress covers were classified under subheading 9404.90.20, HTSUS, which provides for "[m]attress supports; articles of bedding and similar furnishing (for example, mattresses, quilts,

eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered: [o]ther: [p]illows, cushions and similar furnishings: [o]ther." Additionally, CBP determined that the stuffed mattress covers were eligible for preferential tariff treatment under NAFTA.

ISSUES:

Whether the stuffed mattress covers classified under subheading 9404.90.20, HTSUS, imported into the United States are eligible for preferential tariff treatment under the NAFTA.

What is the country of origin of the stuffed mattress covers for purposes of country of origin marking?

LAW AND ANALYSIS:

General Note ("GN") 12, HTSUS, incorporates Article 401 of the NAFTA into the HTSUS. GN 12(a)(ii), HTSUS, provides that goods are eligible for the NAFTA rate of duty if they originate in the territory of a NAFTA party and qualify to be marked as goods of Mexico. GN 12(b), HTSUS, sets forth the various methods for determining whether a good originates in the territory of a NAFTA party. Specifically, these provisions provide, in relevant part, as follows:

> (a) Goods originating in the territory of a party to the North American Free Trade Agreement (NAFTA) are subject to duty as provided herein. For the purposes of this note—
>
> * * * *
>
> (ii) Goods that originate in the territory of a NAFTA party under the terms of subdivision (b) of this note and that qualify to be marked as goods of Mexico under the terms of the marking rules set forth in regulations issued by the Secretary of the Treasury (without regard to whether the goods are marked), and goods enumerated in subdivision (u) of this note, when such goods are imported into the customs territory of the United States and are entered under a subheading for which a rate of duty appears in the "Special" subcolumn followed by the symbol "MX" in parentheses, are eligible for such duty rate, in accordance with section 201 of the North American Free Trade Agreement Implementation Act.
>
> (b) For the purposes of this note, goods imported into the customs territory of the United States are eligible for the tariff treatment and quantitative limitations set forth in the tariff schedule as "goods originating in the territory of a NAFTA party" only if—
>
> (i) they are goods wholly obtained or produced entirely in the territory of Canada, Mexico and/or the United States; or
>
> (ii) they have been transformed in the territory of Canada, Mexico and/or the United States so that—
>
> (A) except as provided in subdivision (f) of this note, each of the non-originating materials used in the production of such goods undergoes a change in tariff classification described in subdivisions (r), (s) and (t) of this note or the rules set forth therein, or

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

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

Since the stuffed mattress covers contain non-originating materials, they are not considered goods wholly obtained or produced entirely in a NAFTA party under GN 12(b)(i). We must next determine whether the stuffed mattress covers qualify under GN 12(b)(ii). There is no dispute as to the classification of the stuffed mattress covers in subheading 9404.90.20, HTSUS. The applicable rule of origin for the mattress covers classified under subheading 9404.90.20, HTSUS, is in GN 12(t)/94.7, HTSUS. Chapter rule 1 provides: "[f]or the purposes of the subdivisions pertaining to this chapter, whenever the subdivision designation is underscored, the provisions of subdivision (d) of this note may apply to goods for use in a motor vehicle of chapter 87." Chapter rule 1 does not apply since the applicable tariff shift rule, GN 12(t)/94.7, HTSUS, is not underscored. Similarly, the subheading rule which provides that "[t]he underscoring of the designations in subdivision 1 pertains to goods provided for in subheading 9401.20 for use in a motor vehicle of chapter 87" does not apply since the applicable tariff shift rule is not underscored. GN 12(t)/94.7, HTSUS, provides: "[a] change to subheading 9404.90 from any other chapter, except from headings 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408 or 5512 through 5516." You state that the non-originating components of the mattress covers, which are shipped into Mexico where they are cut and sewn into the finished good, are the stuffed knit fabric classified under subheading 6006.33.0040, HTSUS, the interlock material classified under subheading 6004.10.0085, HTSUS, the "sandman" classified under subheading 5801.36.0010, HTSUS, and zippers are slide fasteners classified under chapter 69, HTSUS. Since these non-originating materials are classified in a chapter other than chapter 94 and in headings which are not excepted, the tariff shift rule is met. Accordingly, we agree with HQ H265611 that the stuffed mattress covers classified under subheading 9404.90.20, HTSUS, qualify as NAFTA originating goods.

GN 12(a)(ii), HTSUS, provides that NAFTA-originating goods must also qualify to be marked as products of Mexico under the NAFTA Marking Rules to be eligible for preferential treatment. In this regard, 19 C.F.R. § 134.1(j) provides that "[t]he 'NAFTA Marking Rules' are the rules promulgated for purposes of determining whether a good is a good of a NAFTA country." 19 C.F.R. § 134.1(j) defines a "good of a NAFTA country" as "an article for which the country of origin is Canada, Mexico or the United States as determined under the NAFTA Marking Rules."

Chapter 94 Note to 19 C.F.R. § 102.20 (NAFTA Marking Regulations) explicitly provides that the country of origin of goods classified in subheading 9404.90.10, HTSUS, will be determined under the provisions of 19 C.F.R. § 102.21. However, the Chapter Note does not address merchandise classified in subheading 9404.90.20, HTSUS, and a rule for subheading 9404.90.20, HTSUS, is provided for in 19 C.F.R. § 102.20. HQ H265611 applied 19 C.F.R. § 102.20 to the stuffed mattress covers classified under subheading 9404.90.20, HTSUS, to determine their country of origin for marking

purposes. However, we find that Section 102.21, Customs Regulations (19 C.F.R. § 102.21) which pertains to textile and apparel products, should have been applied.

Section 334, of the Uruguay Round Agreements Act, codified at 19 U.S.C. § 3592, provides rules of origin for textiles and apparel entered, or withdrawn from warehouse, for consumption, on and after July 1, 1996. 19 C.F.R. § 102.21 implements section 334, and 19 C.F.R. § 102.0 refers to 19 C.F.R. § 102.21 for determining the country of origin of textile and apparel products. A "textile or apparel product" for purposes of these rules of origin is defined in 19 C.F.R. § 102.21(b)(5), in part, as any good classifiable in a number of headings including subheading 9404.90, HTSUS. As such, a good classifiable in subheading 9404.90, HTSUS, should be analyzed to determine if it is a "textile or apparel product" of 19 C.F.R. § 102.21 or other product of 19 C.F.R. § 102.20.

In Headquarters Ruling Letter ("HQ") 962122, dated October 1, 1998, the importer claimed that because cushions were classified under subheading 9404.90.20, HTSUS, they were not "textile products" as that term was defined in 19 C.F.R. § 102.21(b)(5), and thus were subject to different rules of origin. CBP stated that the statute pertaining to the rules of origin, 19 U.S.C. § 3592, explicitly includes subheading 9404.90, HTSUS, and that the statute takes precedence over the regulation. Accordingly, in determining the country of origin of cushions classified under subheading 9404.90.20, HTSUS, the 19 C.F.R. § 102.21 rules of origin were applicable. As HQ 962122 provides, a pillow classified under subheading 9404.90.20, HTSUS, with a polyester outershell would be considered a textile product which would require the application of 19 C.F.R. § 102.21 rules of origin; however, a pillow classified under subheading 9404.90.20, HTSUS, with a leather or plastic outershell would not be considered a textile product and therefore 19 C.F.R. § 102.20 rules of origin would apply. In the instant case, since the merchandise at issue are mattress covers comprised of textiles (of polyester or of polyester and spandex), the 19 C.F.R. § 102.21 rules of origin are applicable.

The country of origin of a textile or apparel product is determined by hierarchical application of the general rules set forth in 19 C.F.R. § 102.21(c)(1) through (c)(5). 19 C.F.R. § 102.21(c)(1) provides: "[t]he country of origin of a textile or apparel product is the single country, territory, or insular possession in which the good was wholly obtained or produced." As the stuffed mattress covers at issue are not wholly obtained or produced in a single country, territory, or insular possession, 19 C.F.R. § 102.21(c)(1) is not applicable.

19 C.F.R. § 102.21(c)(2) provides: "[w]here the country of origin of a textile or apparel product cannot be determined under paragraph (c)(1) of this section, the country of origin of the good is the single country, territory, or insular possession in which each foreign material incorporated in that good underwent an applicable change in tariff classification, and/or met any other requirement, specified for the good in paragraph (e) of this section."

As previously noted, the stuffed mattress covers are classified under subheading 9404.90.20, HTSUS. The applicable tariff shift rule in 19 C.F.R. § 102.21(e) for merchandise classified under subheading 9404.90, HTSUS, is as follows:

9404.90 Except for goods of subheading 9404.90 provided for in paragraph (e)(2) of this section, the country of origin of a good classifiable

> under subheading 9404.90 is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric-making process.

19 C.F.R. § 102.21(e)(2) is not applicable since it does not cover subheading 9404.90.20, HTSUS. In the instant case, since the fabric comprising the stuffed mattress covers was formed by a fabric-making process in China, in accordance with 19 C.F.R. § 102.21(c)(2) and (e)(1), the country of origin for the stuffed mattress covers is China.

However, 19 C.F.R. § 102.19(a) contains a "NAFTA preference override".

> Except in the case of goods covered by paragraph (b) of this section, if a good which is originating within the meaning of § 181.1(q) of this chapter is not determined under § 102.11(a) or (b) or § 102.21 to be a good of a single NAFTA country, the country of origin of such good is the last NAFTA country in which that good underwent production other than minor processing, provided that a Certificate of Origin . . . has been completed and signed for the good.

19 C.F.R. § 102.19(a).

In HQ 960854, dated April 22, 1998, which involves similar facts as this case, CBP considered four scenarios to determine whether a certain buckwheat hull filled neck pillow, classified under subheading 9404.90.1000, HTSUS, was eligible for preferential tariff treatment under NAFTA and the country of origin of the pillow. Under the first scenario, the buckwheat hulls were sourced in China, and the fabric for the pillow shell and the pillow case were woven, cut and assembled in China. In Mexico, the pillow was filled and packed. CBP found that the pillow shell and cover from China, classified under headings 6307 and 6304, HTSUS, underwent the requisite change in tariff classification and that the pillow was eligible for preferential tariff treatment under NAFTA. The country of origin analysis under 19 C.F.R. § 102.21(e), indicated that since the fabric comprising the merchandise was formed in a single country, China, the country of origin of the pillow would be China. However, in accordance with the NAFTA override (19 C.F.R. § 102.19), CBP determined that the country of origin of the buckwheat hull filled neck pillow was Mexico. *See also* HQ H019439, dated September 5, 2008 (by virtue of the NAFTA override, the bed-in-bag set, classified under subheading 9404.90, HTSUS, must be marked country of origin Mexico in order to receive preferential tariff treatment under NAFTA as claimed).

In the instant case, the stuffed mattress covers are originating goods under 19 C.F.R. § 181.1(q). Additionally, the mattress covers are not goods of a single NAFTA country under 19 C.F.R. § 102.21. As such, the stuffed mattress covers are a product of Mexico under the "NAFTA preference override" since they undergo more than "minor processing."[2] Pursuant to 19 C.F.R. § 102.19(a), the stuffed mattress covers are products of Mexico.

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[2] The phrase "minor processing" is defined at 19 C.F.R. §102.1(m) as the following:
(1) Mere dilution with water or another substance that does not materially alter the characteristics of the good;
(2) Cleaning, including removal of rust, grease, paint, or other coatings;
(3) Application of preservative or decorative coatings, including lubricants, protective encapsulation, preservative or decorative paint, or metallic coatings;
(4) Trimming, filing or cutting off small amounts of excess materials;
(5) Unloading, reloading or any other operation necessary to maintain the good in good condition;
(6) Putting up in measured doses, packing, repacking, packaging, repackaging;

HOLDING:

The stuffed mattress covers are classified under subheading 9404.90.20, HTSUS, which provides for "[m]attress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered: [o]ther: [p]illows, cushions and similar furnishings: [o]ther."

The stuffed mattress covers classified under subheading 9404.90.20, HTSUS, are eligible for preferential tariff treatment under NAFTA. The country of origin of the mattress covers is Mexico for purposes of the marking requirements.

EFFECT ON OTHER RULINGS:

HQ H265611, dated October 21, 2015, is hereby MODIFIED with respect to the country of origin of the stuffed mattress covers classified under 9404.90.20, HTSUS, for marking purposes.

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

Sincerely,

MONIKA R. BRENNER
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

(7) Testing, marking, sorting, or grading;
(8) Ornamental or finishing operations incidental to textile good production designed to enhance the marketing appeal or the ease of care of the product, such as dyeing and printing, embroidery and appliques, pleating, hemstitching, stone or acid washing, permanent pressing, or the attachment of accessories notions, findings and trimmings; or
(9) Repairs and alterations, washing, laundering, or sterilizing.

ATTACHMENT C

HQ H293881

June 19, 2018
OT:RR:CTF:VS H293881 EE
CATEGORY: Classification

MR. SAMUEL I. HAYES
NATURE'S WAY THERAPEUTIC PRODUCTS, INC.
91021–1427 BELLEVUE AVENUE
WEST VANCOUVER, BC
CANADA V7V 3N3

RE: Modification of HQ 963233; NAFTA country of origin marking; heatable saks

DEAR MR. HAYES:

This letter is to inform you of the reconsideration of Headquarters Ruling Letter ("HQ") 963233 which was issued to you by U.S. Customs and Border Protection ("CBP") on December 13, 2000. HQ 963233 concerns the tariff classification of certain heatable saks and eligibility for preferential tariff treatment under the North American Free Trade Agreement ("NAFTA"). We have reviewed HQ 963233 and determined that it is partially incorrect with respect to the country of origin marking analysis.

On May 9, 2018, pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1), as amended by section 623 of Title VI, notice of the proposed action was published in the Customs Bulletin Vol. 12, No. 19. No comments were received in response to that notice.

FACTS:

The "Heatable Sak" is a sealed fabric pouch, measuring approximately 8.5 x 13 inches, loosely filled with flax seeds (3.5 lbs). The pouch of the sample that was provided in HQ 963233 was made of knitted velour fabric. In the original classification request, the following description of the article was provided: "this heatable sak provides fully adjustable cervical support, conforming to and supporting the head and neck, while the aroma therapy facilitates a complete relaxation of the body." The article's primary use is claimed to be as a heating pad and aromatherapy adjunct; however, it also functions as a pillow. The heatable sak can be "used when traveling as cervical or lumbar support." The article's flax seed filling is claimed to allow the article to retain both heat (from a microwave) and cold (from freezing). The article is said to retain heat for approximately a half-hour.

The knitted velour fabric forming the shell of the heatable saks is a product of Korea. The fabric is imported in bulk into Canada where it is cut, formed, sewn and filled with Canadian produced flax seed.

CBP determined the heatable saks having an outershell of cotton were classified under subheading 9404.90.10, HTSUS, which provides for "[m]attress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered: [o]ther: [p]illows, [c]ushions and similar furnishings: [o]f cotton." The heatable saks having an outershell of a fabric other than cotton were classified under subheading 9404.90.20, HTSUS, which provides for "[m]attress supports; articles of bedding and similar

furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered: [o]ther: [p]illows, cushions and similar furnishings: [o]ther." Additionally, CBP determined that the heatable saks classified under subheadings 9404.90.10 and 9404.90.20, HTSUS, were eligible for preferential tariff treatment under NAFTA.

ISSUES:

Whether the heatable saks classified under subheadings 9404.90.10 and 9404.90.20, HTSUS, imported into the United States are eligible for preferential tariff treatment under the NAFTA.

What is the country of origin of the heatable saks for purposes of country of origin marking?

LAW AND ANALYSIS:

General Note ("GN") 12, HTSUS, incorporates Article 401 of the NAFTA into the HTSUS. GN 12(a)(i), HTSUS, provides that goods are eligible for the NAFTA rate of duty if they originate in the territory of a NAFTA party and qualify to be marked as goods of Canada. GN 12(b), HTSUS, sets forth the various methods for determining whether a good originates in the territory of a NAFTA party. Specifically, these provisions provide, in relevant part, as follows:

> (a) Goods originating in the territory of a party to the North American Free Trade Agreement (NAFTA) are subject to duty as provided herein. For the purposes of this note—
>
> * * * *
>
> (i) Goods that originate in the territory of a NAFTA party under the terms of subdivision (b) of this note and that qualify to be marked as goods of Canada under the terms of the marking rules set forth in regulations issued by the Secretary of the Treasury (without regard to whether the goods are marked), and goods enumerated in subdivision (u) of this note, when such goods are imported into the customs territory of the United States and are entered under a subheading for which a rate of duty appears in the "Special" subcolumn followed by the symbol "CA" in parentheses, are eligible for such duty rate, in accordance with section 201 of the North American Free Trade Agreement Implementation Act.
>
> (b) For the purposes of this note, goods imported into the customs territory of the United States are eligible for the tariff treatment and quantitative limitations set forth in the tariff schedule as "goods originating in the territory of a NAFTA party" only if—
>
> (i) they are goods wholly obtained or produced entirely in the territory of Canada, Mexico and/or the United States; or
>
> (ii) they have been transformed in the territory of Canada, Mexico and/or the United States so that—
>
> (A) except as provided in subdivision (f) of this note, each of the non-originating materials used in the production of such goods undergoes a

change in tariff classification described in subdivisions (r), (s) and (t) of this note or the rules set forth therein, or

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

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

Since the heatable saks contain non-originating materials, they are not considered goods wholly obtained or produced entirely in a NAFTA party under GN 12(b)(i). We must next determine whether the heatable saks qualify under GN 12(b)(ii). There is no dispute as to the classification of the heatable saks in subheadings 9404.90.10 and 9404.90.20, HTSUS. The applicable rule of origin for the heatable saks classified under subheadings 9404.90.10 and 9404.90.20, HTSUS, is in GN 12(t)/94.7, HTSUS. Chapter rule 1 provides: "[f]or the purposes of the subdivisions pertaining to this chapter, whenever the subdivision designation is underscored, the provisions of subdivision (d) of this note may apply to goods for use in a motor vehicle of chapter 87." Chapter rule 1 does not apply since the applicable tariff shift rule, GN 12(t)/94.7, HTSUS, is not underscored. Similarly, the subheading rule which provides that "[t]he underscoring of the designations in subdivision 1 pertains to goods provided for in subheading 9401.20 for use in a motor vehicle of chapter 87" does not apply since the applicable tariff shift rule is not underscored. GN 12(t)/94.7, HTSUS, provides: "[a] change to subheading 9404.90 from any other chapter, except from headings 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408 or 5512 through 5516." You state that the components of the heatable saks are the outershell knit fabric and the flax seed filler. Since the flax seed is grown in Canada, it qualifies as an originating material. However, the knit shell is milled in Korea and therefore is a non-originating material. The tariff shift rule for subheading 9404.90 excludes woven fabrics, but does not exclude knit fiber fabrics. Therefore, since the non-originating materials are classified in Chapter 60 which is a chapter other than chapter 94 and in headings which are not excepted, the tariff shift rule is met. Accordingly, we agree with HQ 963233 that the heatable saks classified under subheadings 9404.90.10 and 9404.90.20, HTSUS, qualify as NAFTA originating goods.

GN 12(a)(i), HTSUS, provides that NAFTA-originating goods must also qualify to be marked as products of Canada under the NAFTA Marking Rules to be eligible for preferential treatment. In this regard, 19 C.F.R. § 134.1(j) provides that "[t]he 'NAFTA Marking Rules' are the rules promulgated for purposes of determining whether a good is a good of a NAFTA country." 19 C.F.R. § 134.1(j) defines a "good of a NAFTA country" as "an article for which the country of origin is Canada, Mexico or the United States as determined under the NAFTA Marking Rules."

Chapter 94 Note to 19 C.F.R. § 102.20 (NAFTA Marking Regulations) explicitly provides that the country of origin of goods classified in subheading 9404.90.10, HTSUS, will be determined under the provisions of 19 C.F.R. § 102.21. However, the Chapter Note does not address merchandise classified in subheading 9404.90.20, HTSUS, and a rule for subheading 9404.90.20, HTSUS, is provided for in 19 C.F.R. § 102.20. HQ 963233 applied 19 C.F.R. § 102.11 to the heatable saks classified under subheading 9404.90.20, HTSUS, to determine their country of origin for marking purposes. However, we find

that Section 102.21, Customs Regulations (19 C.F.R. § 102.21) which pertains to textile and apparel products, should have been applied.

Section 334, of the Uruguay Round Agreements Act, codified at 19 U.S.C. § 3592, provides rules of origin for textiles and apparel entered, or withdrawn from warehouse, for consumption, on and after July 1, 1996. 19 C.F.R. § 102.21 implements section 334, and 19 C.F.R. § 102.0 refers to 19 C.F.R. § 102.21 for determining the country of origin of textile and apparel products. A "textile or apparel product" for purposes of these rules of origin is defined in 19 C.F.R. § 102.21(b)(5), in part, as any good classifiable in a number of headings including subheading 9404.90, HTSUS. As such, a good classifiable in subheading 9404.90, HTSUS, should be analyzed to determine if it is a "textile or apparel product" of 19 C.F.R. § 102.21 or other product of 19 C.F.R. § 102.20.

In Headquarters Ruling Letter ("HQ") 962122, dated October 1, 1998, the importer claimed that because cushions were classified under subheading 9404.90.20, HTSUS, they were not "textile products" as that term was defined in 19 C.F.R. § 102.21(b)(5), and thus were subject to different rules of origin. CBP stated that the statute pertaining to the rules of origin, 19 U.S.C. § 3592, explicitly includes subheading 9404.90, HTSUS, and that the statute takes precedence over the regulation. Accordingly, in determining the country of origin of cushions classified under subheading 9404.90.20, HTSUS, the 19 C.F.R. § 102.21 rules of origin were applicable. As HQ 962122 provides, a pillow classified under subheading 9404.90.20, HTSUS, with a polyester outershell would be considered a textile product which would require the application of 19 C.F.R. § 102.21 rules of origin; however, a pillow classified under subheading 9404.90.20, HTSUS, with a leather or plastic outershell would not be considered a textile product and therefore 19 C.F.R. § 102.20 rules of origin would apply. In the instant case, since the merchandise at issue are heatable saks with outershell of velour knit fabric, they are considered textile products and the 19 C.F.R. § 102.21 rules of origin are applicable.

The country of origin of a textile or apparel product is determined by hierarchical application of the general rules set forth in 19 C.F.R. § 102.21(c)(1) through (c)(5). 19 C.F.R. § 102.21(c)(1) provides: "[t]he country of origin of a textile or apparel product is the single country, territory, or insular possession in which the good was wholly obtained or produced." As the heatable saks at issue are not wholly obtained or produced in a single country, territory, or insular possession, 19 C.F.R. § 102.21(c)(1) is not applicable.

19 C.F.R. § 102.21(c)(2) provides: "[w]here the country of origin of a textile or apparel product cannot be determined under paragraph (c)(1) of this section, the country of origin of the good is the single country, territory, or insular possession in which each foreign material incorporated in that good underwent an applicable change in tariff classification, and/or met any other requirement, specified for the good in paragraph (e) of this section."

As previously noted, the heatable saks are classified under subheadings 9404.90.10 and 9404.90.20, HTSUS. The applicable tariff shift rule in 19 C.F.R. § 102.21(e) for merchandise classified under subheading 9404.90, HTSUS, is as follows:

9404.90 Except for goods of subheading 9404.90 provided for in paragraph (e)(2) of this section, the country of origin of a good classifiable

> under subheading 9404.90 is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric-making process.

19 C.F.R. § 102.21(e)(2) is not applicable since it does not cover subheadings 9404.90.10 and 9404.90.20, HTSUS. In the instant case, the fabric making process occurs where knitted velour fabric is formed. *See* 19 C.F.R. 102.21(b)(2). Therefore, according to 19 C.F.R. § 102.21(c)(2) and (e)(1), the country of origin for the heatable saks is the same as the origin of the knitted velour fabric, which is Korea.

However, 19 C.F.R. § 102.19(a) contains a "NAFTA preference override".

> Except in the case of goods covered by paragraph (b) of this section, if a good which is originating within the meaning of § 181.1(q) of this chapter is not determined under § 102.11(a) or (b) or § 102.21 to be a good of a single NAFTA country, the country of origin of such good is the last NAFTA country in which that good underwent production other than minor processing, provided that a Certificate of Origin . . . has been completed and signed for the good.

19 C.F.R. § 102.19(a).

In HQ 960854, dated April 22, 1998, which involves similar facts as this case, CBP considered four scenarios to determine whether a certain buckwheat hull filled neck pillow, classified under subheading 9404.90.1000, HTSUS, was eligible for preferential tariff treatment under NAFTA and the country of origin of the pillow. Under the first scenario, the buckwheat hulls were sourced in China, and the fabric for the pillow shell and the pillow case were woven, cut and assembled in China. In Mexico, the pillow was filled and packed. CBP found that the pillow shell and cover from China, classified under headings 6307 and 6304, HTSUS, underwent the requisite change in tariff classification and that the pillow was eligible for preferential tariff treatment under NAFTA. The country of origin analysis under 19 C.F.R. § 102.21(e), indicated that since the fabric comprising the merchandise was formed in a single country, China, the country of origin of the pillow would be China. However, in accordance with the NAFTA override (19 C.F.R. § 102.19), CBP determined that the country of origin of the buckwheat hull filled neck pillow was Mexico. *See also* HQ H019439, dated September 5, 2008 (by virtue of the NAFTA override, the bed-in-bag set, classified under subheading 9404.90, HTSUS, must be marked country of origin Mexico in order to receive preferential tariff treatment under NAFTA as claimed).

In the instant case, the heatable saks are originating goods under 19 C.F.R. § 181.1(q). Additionally, the heatable saks are not goods of a single NAFTA country under 19 C.F.R. § 102.21. As such, the heatable saks are a product of Canada under the "NAFTA preference override" since they undergo more than "minor processing."[3] Pursuant to 19 C.F.R. § 102.19(a), the heatable saks are products of Canada.

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[3] The phrase "minor processing" is defined at 19 C.F.R. §102.1(m) as the following:
(1) Mere dilution with water or another substance that does not materially alter the characteristics of the good;
(2) Cleaning, including removal of rust, grease, paint, or other coatings;
(3) Application of preservative or decorative coatings, including lubricants, protective encapsulation, preservative or decorative paint, or metallic coatings;
(4) Trimming, filing or cutting off small amounts of excess materials;
(5) Unloading, reloading or any other operation necessary to maintain the good in good condition;

HOLDING:

The heatable saks having an outershell of cotton are classified under subheading 9404.90.10, HTSUS, which provides for "[m]attress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered: [o]ther: [p]illows, [c]ushions and similar furnishings: [o]f cotton." The applicable subheading for the heatable saks having an outershell of a fabric other than cotton is 9404.90.20, HTSUS, which provides for "[m]attress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered: [o]ther: [p]illows, cushions and similar furnishings: [o]ther."

The heatable saks classified under subheadings 9404.90.10 and 9404.90.20, HTSUS, are eligible for preferential tariff treatment under NAFTA. The country of origin of the heatable saks is Canada for purposes of the marking requirements.

EFFECT ON OTHER RULINGS:

HQ 963233, dated December 13, 2000, is hereby MODIFIED with respect to the country of origin of the heatable saks classified under 9404.90.20, HTSUS, for marking purposes.

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

Sincerely,

MONIKA R. BRENNER
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

(6) Putting up in measured doses, packing, repacking, packaging, repackaging;
(7) Testing, marking, sorting, or grading;
(8) Ornamental or finishing operations incidental to textile good production designed to enhance the marketing appeal or the ease of care of the product, such as dyeing and printing, embroidery and appliques, pleating, hemstitching, stone or acid washing, permanent pressing, or the attachment of accessories notions, findings and trimmings; or
(9) Repairs and alterations, washing, laundering, or sterilizing.

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

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

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

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), Customs and Border Protection (CBP) proposed to modify one ruling letter relating to the tariff classification of guayabera style shirt-blouses under the Harmonized Tariff Schedule of the United States (HTSUS). Notice of the proposed action was published in the *Customs Bulletin*, Vol. 51, No. 33, on August 16, 2017. One comment was received in opposition to the proposed modification. After further review, we have determined that a modification of the subject ruling is not appropriate.

EFFECTIVE DATE: This action is effective immediately.

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, a notice was

published in the *Customs Bulletin*, Vol. 51, No. 33, on August 16, 2017, proposing to modify New York Ruling Letter (NY) N252750, dated May 23, 2014, which classified guayabera style shirt-blouses in subheading 6211.49.90, HTSUS, which provides for "Track suits, ski-suits and swimwear; other garments: Other garments, women's or girls': Of cotton: Other" and denied tariff preference treatment under the United States-Panama Trade Promotion Agreement. In the notice of August 16, 2017, we proposed to modify the tariff classification of the guayabera style shirt-blouses and classify them under heading 6206, HTSUS by reading the EN 62.06 to mirror the EN to 62.05 with respect to the pockets below the waist. One comment was received in opposition to the proposed modification. The comment stated that reading the ENs 62.05 and 62.06 to mirror one another is erroneous because men's and boys' shirts are an entirely different article of commerce than women's and girls' shirts and blouses, and entire industries are based on the difference. We recognize the distinction and find that the guayabera style shirt-blouses are properly classified in subheading 6211.49.90, HTSUS. As such, the classification of the guayabera style shirt-blouses set forth in N252750 is correct. An affirmation was issued in Headquarters Ruling Letter H293112 on April 26, 2018.

Pursuant to 19 U.S.C. §1625(c), and 19 C.F.R. §177.7(a), which states, in pertinent part, that "[n]o ruling letter will be issued... in any instance in which it appears contrary to the sound administration of the Customs and related laws to do so", CBP is withdrawing its proposed modification of NY N252750.

Dated: July 19, 2018

IEVA K. O'ROURKE
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

PROPOSED REVOCATION OF TWO RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF RAFFIA HANDBAGS

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

ACTION: Notice of proposed revocation of two ruling letters, and revocation of treatment relating to the tariff classification of raffia handbags.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke two ruling letters concerning tariff classification of raffia handbags 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 October 26, 2018.

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

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to 19 U.S.C. § 1625(c)(1), this notice advises interested parties that CBP is proposing to revoke two ruling letters pertaining to the tariff classification of raffia handbags. Although in this notice, CBP is specifically referring to New York Ruling Letter ("NY") N261630, dated March 10, 2015 (Attachment A) and NY N261223,

dated February 23, 2015 (Attachment B), this notice also covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the two identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the comment period.

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

In NY N261630 and NY N261223, CBP classified raffia handbags in heading 4602, HTSUS, specifically in subheading 4602.19.2920, HTSUSA (Annotated), which provides for "Basketwork, wickerwork and other articles, made directly to shape from plaiting materials or made up from articles of heading 4601; articles of loofah: Of vegetable materials: Other: Luggage, handbags and flatgoods, whether or not lined: Other: Handbags." CBP has reviewed NY N261630 and NY N261223 and has determined the ruling letters to be in error. It is now CBP's position that raffia handbags are properly classified, in heading 4602, HTSUS, specifically in subheading 4602.19.2500, HTSUSA (Annotated), which provides for "Basketwork, wickerwork and other articles, made directly to shape from plaiting materials or made up from articles of heading 4601; articles of loofah: Of vegetable materials: Other: Luggage, handbags and flatgoods, whether or not lined: Of palm leaf: Other."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY N261630 and NY N261223 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter ("HQ") H284742, set forth as Attachment C to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: July 19, 2018

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

Attachments

ATTACHMENT A

N261630
March 10, 2015
CLA-2–46:OT:RR:NC:N4: 234
CATEGORY: Classification
TARIFF NO.: *4602.19.2920*

MS. JUDY L. SUCHARITAKUL
PERRYMAN, MOJONIER COMPANY
9710 S. LA CIENEGA BLVD.
INGLEWOOD, CA 90301

RE: The tariff classification of a Handbag from China.

DEAR MS. SUCHARITAKUL:

In your letter dated February 5, 2015, on behalf of Brighton Collectables dba Leegin Creative Leather, you requested a tariff classification ruling. As requested, the submitted sample will be returned to you.

Style H7273X is described as "Ara Beaded Raffia Tote". It is constructed with an outer surface of raffia with an imitation gemstone and bead design on the front. It is designed to provide storage, protection, portability, and organization to personal effects during travel. It has a textile-lined storage compartment with a zippered pocket and two open pockets on one side of the interior wall. The bag has a top opening with a magnetic closure and two carrying handles. The bag measures approximately 17½" (W) x 11" (H) x 6" (D).

The applicable subheading for the handbags will be *4602.19.2920*, Harmonized Tariff Schedule of the United States (HTSUS), which provides for: Basketwork, wickerwork and other articles, made directly to shape from plaiting materials or made up from articles of heading 4601: Of vegetable materials: Other (than of bamboo or rattan): Luggage, handbags and flatgoods, whether or not lined: Other (than of willow or of palm leaf): Handbags. The rate of duty will be 5.3 percent ad valorem.

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

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

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

Sincerely,

GWENN KLEIN KIRSCHNER
Director
National Commodity Specialist Division

ATTACHMENT B

N261223
February 23, 2015
CLA-2–46:OT:RR:NC:N4: 234
CATEGORY: Classification
TARIFF NO.: *4602.19.2920*

JUDY L. SUCHARITAKUL
PERRYMAN, MOJONIER COMPANY
9710 S. LA CIENEGA BLVD.
INGLEWOOD, CA 90301

RE: The tariff classification of Handbags from China.

DEAR MS. SUCHARITAKUL:

In your letter dated January 22, 2015, on behalf of Brighton Collectables, dba Leegin Creative Leather, you requested a tariff classification ruling. As requested, the submitted samples will be returned to you.

The samples are as follows:

Style H7264X is described as "Bali Straw Shoulder Bag". It is a handbag constructed with an outer surface of raffia. The bag is designed and sized to contain the small personal effects that would normally be carried on a daily basis. It has a textile-lined storage compartment with a zippered pocket on one side of the interior wall and two open pockets on the other side. The bag has a top opening with a snap closure and one carrying handle. There is a 3 ½" tassel hanging on the front of the bag. The bag measures approximately 11½" (W) x 8¼" (H) x ½" (D). There is a cloth bag to store the Bali Straw Shoulder Bag.

Style H7269X is described as "Lyric Raffia Bucket". It is constructed with an outer surface of raffia. It is designed to provide storage, protection, portability, and organization to personal effects during travel. It has a textile-lined storage compartment with a zippered pocket and two open pockets on one side of the interior wall and one zippered pocket on the other. The bag has a top opening with a magnetic closure and one carrying handle. The bag measures approximately 13½" (W) x 13" (H) x 3" (D). There is a cloth bag to store the Lyric Raffia Bucket.

Style H7270X is described as "Joplin Raffia Zip Tote". It is constructed with an outer surface of raffia. It is designed to provide storage, protection, portability, and organization to personal effects during travel. It has a textile-lined storage compartment with a zippered pocket and two open pockets on one side of the interior wall and one zippered pocket on the other. The bag has a top opening with one zipper closure and two carrying handles. The bag measures approximately 13½" (W) x 9¼" (H) x 4" (D). There is a cloth bag to store the Joplin Raffia Zip Tote.

Style H7276X is described as "Floriabunda Raffia Tote". It is constructed with an outer surface of raffia. It is designed to provide storage, protection, portability, and organization to personal effects during travel. It has a textile-lined storage compartment with a zippered pocket and two open pockets on one side of the interior wall and one zippered pocket on the other. The bag has a top opening with a magnetic closure and two carrying handles. The bag measures approximately 14½" (W) x 10½" (H) x 7½" (D). There is a cloth bag to store the Floriabunda Raffia Tote.

Style H7274X is described as "Solana Raffia Tote". It is constructed with an outer surface of raffia. It is designed to provide storage, protection, portability, and organization to personal effects during travel. It has a textile-lined storage compartment with a zippered pocket and two open pockets on one side of the interior wall and one zippered pocket on the other. The bag has a top opening with a magnetic closure and two carrying handles. The bag measures approximately 15½" (W) x 12" (H) x 5½" (D). There is a cloth bag to store the Solana Raffia Tote.

The applicable subheading for the handbags will be *4602.19.2920*, Harmonized Tariff Schedule of the United States (HTSUS), which provides for: Basketwork, wickerwork and other articles, made directly to shape from plaiting materials or made up from articles of heading 4601: Of vegetable materials: Other (than of bamboo or rattan): Luggage, handbags and flat-goods, whether or not lined: Other (than of willow or of palm leaf): Handbags. The rate of duty will be 5.3 percent ad valorem.

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

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

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

Sincerely,

GWENN KLEIN KIRSCHNER
Director
National Commodity Specialist Division

ATTACHMENT C

HQ H284742
OT:RR:CTF:CPMM H284742 RGR
CATEGORY: Classification
TARIFF NO.: 4602.19.2500

MS. JUDY L. SUCHARITAKUL PERRYMAN
MOJOINER COMPANY
9710 S. LA CIENEGA BLVD.
INGLEWOOD, CA 90301

RE: Revocation of NY N261630 and NY N261223; Tariff classification of handbags from China

DEAR MS. SUCHARITAKUL PERRYMAN:

This letter is in reference to two rulings issued by U.S. Customs and Border Protection ("CBP") concerning the classification under the Harmonized Tariff Schedule of the United States ("HTSUS") of handbags from China. Specifically, in New York Ruling Letter ("NY") N261630, dated March 10, 2015, and NY N261223, dated February 23, 2015, CBP classified raffia handbags in subheading 4602.19.2920, HTSUSA (Annotated). We have reviewed NY N261630 and NY N261223 and found them to be in error. For the reasons set forth below, we are revoking NY N261630 and NY N261223.

FACTS:

In NY N261630, CBP described the merchandise as follows:

> Style H7273X is described as "Ara Beaded Raffia Tote". It is constructed with an outer surface of raffia with an imitation gemstone and bead design on the front. It is designed to provide storage, protection, portability, and organization to personal effects during travel. It has a textile-lined storage compartment with a zippered pocket and two open pockets on one side of the interior wall. The bag has a top opening with a magnetic closure and two carrying handles. The bag measures approximately 17½ (W)" x 11 (H) " x 6 " (D).

In NY N261223, CBP described the merchandise as follows:

> Style H7264X is described as "Bali Straw Shoulder Bag". It is a handbag constructed with an outer surface of raffia. The bag is designed and sized to contain the small personal effects that would normally be carried on a daily basis. It has a textile-lined storage compartment with a zippered pocket on one side of the interior wall and two open pockets on the other side. The bag has a top opening with a snap closure and one carrying handle. There is a 3½" tassel hanging on the front of the bag. The bag measures approximately 11½" (W) x 8½" (H) x ½" (D).
>
> Style H2769X is described as "Lyric Raffia Bucket." It is constructed with an outer surface of raffia. It is designed to provide, storage, protection, portability, and organization to personal effects during travel. It has a textile-lined storage compartment with a zippered pocket and two open pockets on one side of the interior wall and one zippered pocket on the other. The bag has a top opening with a magnetic closure and one carrying handle. The bag measures approximately 13½" (W) x 13" (H) x 3" (D).

Style H2720X is described as "Joplin Raffia Zip Tote". It is constructed with an outer surface of raffia. It is designed to provide storage, protection, portability, and organization to personal effects during travel. It has a textile-lined storage compartment with a zippered pocket and two open pockets on one side of the interior wall and one zippered pocket on the other. The bag has a top opening with one zipper closure and two carrying handles. The bag measures approximately 13½" (W) x 9 ¼" (H) x 4" (D).

Style H7276X is described as "Floridabunda Raffia Tote". It is constructed with an outer surface of raffia. It is designed to provide storage, protection, portability, and organization to personal effects during travel. It has a textile-lined storage compartment with zippered pocket and two open pockets on one side of the interior wall and one zippered pocket on the other. The bag has a top opening with a magnetic closure and two carrying handles. The bag measures approximately 14½" (W) x 10½" (H) x 7½" (D).

Style H7274X is described as "Solana Raffia Tote". It is constructed with an outer surface of raffia. It is designed to provide storage, protection, portability, and organization to personal effects during travel. It has a textile-lined storage compartment with a zippered pocket and two open pockets on one side of the interior wall and one zippered pocket on the other. The bag has a top opening with a magnetic closure and two carrying handles. The bag measure approximately 15½" (W) x 12" (H) x 5½" (D).

ISSUE:

Whether the subject handbags are classified in subheading 4602.19.2920, HTSUSA, as luggage, handbags or flatgoods not of willow or palm leaf, or in subheading 4602.19.2500, HTSUSA, as luggage, handbags or flatgoods of palm leaf

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 following provisions of the HTSUS are under consideration:

4602	Basketwork, wickerwork and other articles, made directly to shape from plaiting materials or made up from articles of heading 4601; articles of loofah:
	Of vegetable materials:
4602.19	Other:
	Luggage, handbags and flatgoods, whether or not lined:
4602.19.2200	Of willow:
	Of palm leaf:

4602.19.2300		Articles of a kind normally carried in the pocket or in the handbag:
4602.19.2500		Other.
4602.19.29	Other	
4602.19.2920		Handbags.

* * * *

Heading 4602 provides for "Basketwork, wickerwork and other articles, made directly to shape from plaiting materials or made up from articles of heading 4601; articles of loofah." There is no dispute that the handbags in NY N261630 and NY N261223 are classified therein. The issue arises at the eight-digit subheading level.

As described in NY N261630 and NY N261223, the subject handbags are made of raffia. According to the Merriam-Webster Online Dictionary, raffia is "the fiber of the raffia palm used especially as cord for tying and weaving." *See https://www.merriam-webster.com/dictionary/raffia* (last visited April 23, 2018). The Oxford English Dictionary defines raffia as "a palm of the large-leaved tropical genus *Rapha, esp.* one of those whose young leaves yield the fibre known as raffia." *See www.oed.com* (last visited Apr. 23, 2018). Thus, raffia is, in fact, a palm. As the subject raffia handbags (of palm leaf) were classified in subheading 4602.19.2920, HTSUSA, which covers handbags of vegetable materials that are not palm leaf or willow, we find that they were improperly classified.

Because the subject handbags are made of raffia, a type of palm leaf, they are properly classified in subheading 4602.19.2500, HTSUSA, as "luggage, handbags and flatgoods, whether or not lined: of palm leaf." This classification is in line with many of our previous rulings where we classified raffia handbags as handbags of palm leaf. *See, e.g.*, NY N092447, dated February 10, 2010; NY N090788, dated February 8, 2010; NY N019188, dated November 29, 2007; NY L86037, dated July 18, 2005; NY K80823, dated December 29, 2003; NY G85714, dated January 24, 2001; NY G83517, dated November 9, 2000; NY F80776, dated January 6, 2000; NY D86063, dated January 13, 1999; and NY C80557, dated November 6, 1997.[1]

Based on the foregoing, we find that the subject raffia handbags in NY N261630 and NY N261223 are properly classified in subheading 4602.19.2500, HTSUSA, as "Basketwork, wickerwork and other articles, made directly to shape from plaiting materials or made up from articles of heading 4601; articles of loofah: Of vegetable materials: Other: Luggage, handbags and flatgoods, whether or not lined: Of palm leaf: Other."

HOLDING:

By application of GRI 1, the subject handbags are classified in heading 4602, HTSUS, specifically under subheading 4602.19.2500, HTSUSA, which provides for "Basketwork, wickerwork and other articles, made directly to

[1] Prior to 2007, handbags of raffia were classified in subheading 4602.10.2500, HTSUSA, as "Basketwork, wickerwork and other articles, made directly to shape from plaiting materials or made up from articles of heading 4601; articles of loofah: Of vegetable materials: Luggage, handbags and flatgoods, whether or not lined: of rattan or of palm leaf: Other." For purposes of classifying handbags of raffia, the language in the older tariff provision corresponds with the language in the present subheading at 4602.19.2500, HTSUSA, except for the deletion of rattan from the present version of the subheading.

shape from plaiting materials or made up from articles of heading 4601; articles of loofah: Of vegetable materials: Other: Luggage, handbags and flatgoods, whether or not lined: Of palm leaf: Other." The 2018 column one, general rate of duty is 18% *ad valorem*.

EFFECT ON OTHER RULINGS:

NY N261630, dated March 10, 2015, and NY N261223, dated February 23, 2015, are revoked.

Sincerely,

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

PROPOSED REVOCATION OF ONE RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF DIAMOND WIRE

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 diamond wire.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke one ruling letter concerning tariff classification of diamond wire 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 October 26, 2018.

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

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the public and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter,

classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether any other applicable legal requirement is met.

Pursuant to 19 U.S.C. § 1625(c)(1), this notice advises interested parties that CBP is proposing to revoke one ruling letter pertaining to the tariff classification of diamond wire. Although in this notice, CBP is specifically referring to New York Ruling Letter ("NY") 876359, dated July 27, 1992 (Attachment A), this notice also covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the comment period.

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

In NY 876359, CBP classified diamond wire in heading 8202, HTSUS, specifically in subheading 8202.99.00, HTSUS, which provides for "Handsaws, and metal parts thereof; blades for saws of all kinds (including slitting, slotting or toothless saw blades), and base metal parts thereof." CBP has reviewed NY 876359 and has determined the ruling letter to be in error. It is now CBP's position that diamond wire is properly classified, in heading 6804, HTSUS, specifically in subheading 6804.21.00, HTSUS, which provides for "Millstones, grindstones, grinding wheels and the like, without frameworks, for grinding, sharpening, polishing, trueing or cutting, hand sharpening or polishing stones, and parts thereof, of natural stone, of agglomerated natural or artificial abrasives, or of ceramics, with or without parts of other materials: Other millstones, grindstones, grinding wheels and the like: Of agglomerated synthetic or natural diamond."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY 876359 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquar-

ters Ruling Letter ("HQ") H277235, set forth as Attachment B to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: July 19, 2018

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

Attachments

ATTACHMENT A

NY 876359

July 27, 1992
CLA-2–82:S:N:N1:115 876359
CATEGORY: Classification
TARIFF NO.: *8202.99.0000*

MR. MASSOUD BESHARAT
IMEX INTERNATIONAL INC.
BOWMAN HWY.
P.O. BOX 7
ELBERTON, GA 30635

RE: The tariff classification of "diamond wire" from Italy.

DEAR MR. BESHARAT:

In your letter dated July 8, 1992, you requested a tariff classification ruling.

Diamond wires are used with diamond wire saws. They are inserted into them and cut through stone. These saw blades are made of a stainless steel wire interior, rings of synthetic diamond mixed with metallic powder and a plastic coating.

The applicable subheading for the diamond wire saw blades will be *8202.99.0000*, Harmonized Tariff Schedule of the United States (HTS), which provides for blades for saws of all kinds (including slitting, slotting or toothless saw blades), and base metal parts thereof: other saw blades, and parts thereof: other (including parts)... The duty rate will be free.

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

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

JEAN F. MAGUIRE
Area Director
New York Seaport

ATTACHMENT B

HQ H277235
OT:RR:CTF:CPMM H277235 RGR
CATEGORY: Classification
TARIFF NO.: 6804.21.0080

MR. MASSOUD BESHARAT
IMEX INTERNATIONAL INC.
BOWMAN HWY.
P.O. BOX 7
ELBERTON, GA 30635

RE: Revocation of NY 876359; Tariff classification of diamond wire from Italy

DEAR MR. BESHARAT:

This letter is in reference to a ruling issued to you, by U.S. Customs and Border Protection ("CBP"), concerning the classification under the Harmonized Tariff Schedule of the United States ("HTSUS"), of diamond wire. Specifically, in New York Ruling Letter ("NY") 876359, dated July 27, 1992, CBP classified diamond wire in subheading 8202.99.00, HTSUS. We have reviewed NY 876359 and found it to be in error. For the reasons set forth below, we are revoking NY 876359.

FACTS:

In NY 876359, CBP described the merchandise as follows:

> Diamond wires are used with diamond wire saws. They are inserted into them and cut through stone. These saw blades are made of a stainless steel wire interior, rings of synthetic diamond mixed with metallic powder and a plastic coating.

Diamond wires like those in NY 876359 are generally used within an electrically powered wire saw machine, which, by means of the diamond wire, is capable of cutting through construction materials ranging from heavily reinforced concrete to meter-thick masonry.[1] Diamond wire consists of a flexible steel wire that acts as a base upon which other components are permanently affixed. These components include steel spring, rubber or plastic, and multiple "beads." Each bead is made up of diamond powder mixed with metallic powders. The hardness of the diamond abrasive on the beads ensures that this method of cutting is effective on any material that is softer than diamond. When a diamond wire saw machine is operated with the fitted diamond wire, the diamond wire is passed around a work-piece such as a slab of concrete in a continuous loop and then reeved through the various pulleys within the machine. The wire saw machine then provides the power that pulls the diamond wire along the path to be cut. Through friction and abrasion, the beads on the wire cut through the work-piece.[2]

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[1] *See, e.g.*, GENERAL TOOL , *http://www.gtdiamond.com/wp-content/themes/general-tool/GT_catalog.pdf* (last visited May 31, 2018).

[2] *See, e.g.*, GENERAL TOOL, *http://gtdiamond.com/wp-content/themes/general-tool/GT_catalog.pdf* (last visited May 31, 2018); MIRAGE PORTABLE PERFORMANCE, *https://blog.miragemachines.com/how-diamond-wire-saws-work* (last visited May 31, 2018); HUSQVARNA, *https://www.husqvarnacp.com/us/machines/wire-saws/* (last visited May 31, 2018).

ISSUE:

Whether the subject diamond wire is classified in heading 6804, HTSUS, as "millstones, grindstones, grinding wheels and the like...for grinding, sharpening, polishing, trueing or cutting, hand sharpening or polishing stones, and parts thereof...of agglomerated natural or artificial abrasives," or in heading 8202, HTSUS as "blades for saws of all kinds (including slitting, slotting or toothless saw blades), and base metal parts thereof."

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 following provisions of the HTSUS are under consideration:

6804 Millstones, grindstones, grinding wheels and the like, without frameworks, for grinding, sharpening, polishing, trueing or cutting, hand sharpening or polishing stones, and parts thereof, of natural stone, of agglomerated natural or artificial abrasives, or of ceramics, with or without parts of other materials:

* * * *

8202 Handsaws, and metal parts thereof; blades for saws of all kinds (including slitting, slotting or toothless saw blades), and base metal parts thereof:

* * * *

Note 1(d) to Chapter 82 provides as follows:

1. Apart from blow torches and similar self-contained torches, portable forges, grinding wheels with frameworks, manicure or pedicure sets and goods of heading 8209, this chapter covers only articles with a blade, working edge, working surface or other working part of:
   ***
   (d) Abrasive materials on a support of base metal, provided that the articles have cutting teeth, flutes, grooves or the like, of base metal, which retain their identity and function after the application of the abrasive.

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

* * * *

EN 68.04 provides as follows:

(3) **Grinding wheels, heads, discs, points, etc.**, as used on machine-tools, electro-mechanical or pneumatic hand tools, for the trimming, pol-

ishing, sharpening, trueing or sometimes for the cutting of metals, stone, glass, plastics, ceramics, rubber, leather, mother of pearl, ivory, etc.

Except for some cutting discs, which may be of considerable diameter, these goods are usually much smaller than those described above, and they may be of any shape, (e.g., flat, conical, spherical, dished, ring-shaped, recessed or stepped); they may also be planed or profiled at the edges.

The heading covers such tools not only when they are predominantly of abrasive materials, but also when they consist of only a very small abrasive head on a metal shank, or of a centre or core of rigid material (metal, wood, plastics, cork, etc.) on to which compact layers of agglomerated abrasive have been permanently bonded (e.g., cutting discs of metal, etc., fitted with rims or with a series of peripheral inserts of abrasive material). The heading also covers abrasive elements for hones, whether or not they are mounted in the carriers required for their fixation in the body of the hone.

It should, however, be noted that certain abrasive tools are **excluded** and fall in **Chapter 82**. The latter Chapter, however, covers **only** those tools with cutting teeth, flutes, grooves, etc., which retain their identity and function even after the application of the abrasive materials (i.e., tools which, unlike those of this heading, could be put to use even if the abrasive had not been applied). Saws with cutting teeth covered with abrasive therefore remain in heading 82.02. Similarly crown drills as used for cutting discs from sheets of glass, quartz, etc., are classified in this heading if the working edge is smooth apart from the abrasive coating, but in heading 82.07 if toothed (whether or not coated with abrasive).

* * * *

EN 82.02 provides as follows:

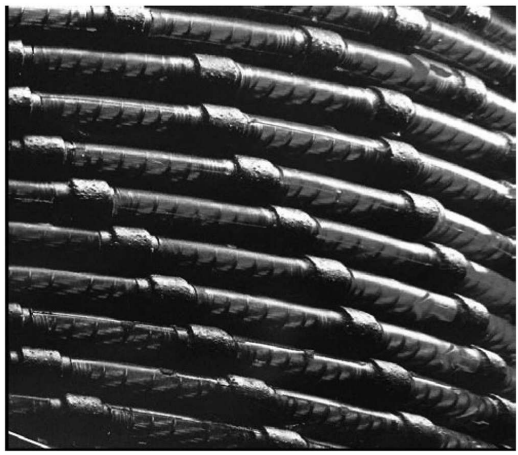
Saw blades may have integral teeth, or be fitted with inserted teeth or segments (such as some circular saws). The teeth may be wholly of base metal, or of base metal fitted or covered with metal carbides, diamond (black diamonds in particular) or, in some cases, with abrasive powders. In some saws the teeth may be replaced by diamonds or by elements of metal carbides set around the periphery of the disc.

Toothless discs fitted with abrasive rims (e.g., for cutting marble, quartz or glass) or with a series of peripheral inserts are, however, excluded, (see the Explanatory Note to heading 68.04).

* * * *

Heading 8202, HTSUS, provides for "blades for saws of all kinds." However, the term "blade" is not defined in the HTSUS or the ENs. It is well-established that when a tariff term is not defined by the HTSUS or its legislative history, its correct meaning is its common or commercial meaning, which can be ascertained by reference to "dictionaries, scientific authorities, and other reliable information sources" and "lexicographic and other materials." *Rocknel Fastener, Inc. v. United States*, 267 F.3d 1354, 1356–57 (Fed. Cir. 2001). The term "blade" connotes the flat cutting edge of a knife, saw or

other tool or weapon; or the thin cutting part of an edged tool or weapon.[3] Pursuant to note 1(d) to chapter 82, the diamond wire must have cutting teeth in order to be classified in that chapter. The description of the diamond wire in NY 876359 does not include any reference to flat cutting edges or cutting parts, but instead describes merchandise consisting of a stainless steel wire interior and rings of synthetic diamond mixed with metallic powder and a plastic coating. Pictures of similar diamond wire currently sold by the requester in NY 876359 match the description of the diamond wire in that ruling (see below):[4]



Based on pictures of diamond wire currently sold by the requester in NY 876359, the description of the product in that ruling, and online research into similar diamond wire products sold by other manufacturers[5], the subject merchandise appears to be a round-shaped instrument, which is not sharp to the touch and has no cutting teeth. Accordingly, the merchandise in NY 876359 is not within the common or commercial meaning of the term "blade" and does not have cutting or inserted teeth as described in note 1(d) of chapter 82 and in the ENs to 82.02. Therefore, the subject diamond wire is not a product of heading, 8202, HTSUS.[6]

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[3] *See* MERRIAM-WEBSTER, *https://www.merriam-webster.com/dictionary/blade* (last visited Mar. 28, 2018) and OXFORD ENGLISH DICTIONARY, *http://www.oed.com* (last visited Mar. 28, 2018).

[4] IMEX INDUSTRIES, *http://www.imexindustries.com/technowire* (last visited Mar. 28, 2018).

[5] *See, e.g.,* HUSQVARNA, *https://www.husqvarnacp.com/us/diamond-tools/wire-saws/* (last visited Mar. 28, 2018); DIXIE DIAMOND MANUFACTURING, https://dixiediamond.com/diamond-wire.php (last visited Mar. 28, 2018); PLATTNER GMBH, *http://www.plattnergesmbh.com/en/products/#bearbeitungSaegeblaetter* (last visited Mar. 28, 2018); DIABU DIAMANTWERKZEUGE DIAMOND TOOLS, *http://www.diabue.com/download/diabue_catalogue_2013_en_k1.pdf* (last visited Mar. 28, 2018).

[6] Although the diamond wire saw machine in which the diamond wire is used is classified in heading 8479, HTSUS, the diamond wire is not a "part" of that machine or machines of any other heading. The courts have consistently held that "an imported article is to be classified according to its condition as imported. . ." *XTC Products, Inc. v. United States*, 771 F.Supp.401, 405 (1991); *Simod Am. Corp. v. United States*, 872 F.2d 1572, 1577 (Fed. Cir. 1989); *Carrington Co. v. United States*, 61 C.C.P.A. 77, (C.C.P.A. 1974). The courts also

Rather than operating as a "blade" or saw with cutting teeth of heading 8202, HTSUS, the diamond wire is comprised of beads that are permanently affixed to a flexible steel cable. The beads are made up of diamond abrasive mixed with metallic powder. The beads containing the diamond abrasive perform the cutting function while the steel cable does not contain any abrasive materials. The diamond wire is imported in rolls of various lengths. After importation, the diamond wire is cut to size and installed in a diamond wire saw machine.[7]

In past rulings, we have classified tools consisting of a center or core of rigid material onto which layers of agglomerated abrasive have been permanently bonded for cutting or grinding construction materials in heading 6804, HTSUS. For example, in HQ 952587, dated January 26, 1993, we classified in heading 6804, HTSUS, sawing wire beads made of synthetic diamond fragments and agglomerated in a metallic matrix that was wrapped around an internally threaded metal tubular bearing section that contained no diamonds. In holding as such, we explained that the ENs to 68.04 state that such goods may be of any shape, including spherical or ring-shaped. The ENs to 68.04 further provide that the heading includes not only articles predominantly of abrasive materials, but also those that consist of a small abrasive head on a center or core of rigid material, such as metal, onto which compact layers of agglomerated abrasive have been permanently bonded. Based on the description in the ENs of merchandise of heading 6804, we concluded that the sawing wire beads in HQ 952587 were properly classified in subheading 6804.21.00, HTSUS. In addition, in HQ H284143, dated December 28, 2017, we classified diamond circular saw blades without cutting teeth in subheading 6804.21.00, HTSUS. In concluding as such, we noted that the steel cores upon which the diamond abrasive was bonded had no ability to cut before the addition of the abrasive material.

The subject diamond wire incorporates wire beads identical to those in HQ 952587. The ENs to 68.04 provide that the heading covers tools consisting of only a very small abrasive head on a metal shank, or of a center or core of rigid material, such as metal, onto which layers of agglomerated abrasive have been permanently bonded. As described in the EN to 68.04, the beads that are part of the diamond wire are small, ring-shaped goods that are permanently bonded to a center flexible metal wire. As such, the beads, an agglomerated abrasive, fused to wire, are analogous to a series of inserts of abrasive material on a metal substrate. Furthermore, the beads, together with the wire, are analogous to the circular saw blades in HQ H284143. Both

addressed the issue of parts vs. materials for classification purposes in *Baxter Healthcare Corporation of Puerto Rico v. United States*, 182 F.3d 1333 (Fed. Cir. 1999), where the Court of Appeals for the Federal Circuit found that certain polypropylene filaments imported on spools were properly classified as synthetic monofilaments rather than as parts of an oxygenator because individual parts were not identifiable or fixed at the time of import.

Here, the subject diamond wire is imported separately from the diamond wire machine, and is cut to the proper length to be rigged with a drive motor in a diamond wire saw machine. These lengths are not pre-determined or indicated on the imported rolls of diamond wire and the diamond wire is not imported directly for use with the machine. Where the diamond wire bears no markings to indicate where it is to be cut to fit a customer's specifications within a diamond wire machine, it is not considered a "part" of that machine. Accordingly, the diamond wire is not classifiable as a part of a machine of heading 8479, HTSUS, or a part of any other machine.

[7] As the merchandise is imported in material lengths, it cannot be considered a part of the machine or apparatus into which it is ultimately reeved. *See Baxter*, 182 F. 3d 1333.

contain agglomerated, cutting diamond material on a metal base. Here, the beads are not teeth, and hence, do not meet the terms of note 1(d) to chapter 82. Accordingly, pursuant to the legal text as explained in EN 68.04, the subject diamond wire is classified in heading 6804, HTSUS.

Based on the foregoing, we find that the subject diamond wire is classified in heading 6804, HTSUS, as "Millstones, grindstones, grinding wheels and the like, without frameworks, for grinding, sharpening, polishing, trueing or cutting, hand sharpening or polishing stones, and parts thereof, of natural stone, of agglomerated natural or artificial abrasives, or of ceramics, with or without parts of other materials."

HOLDING:

By application of GRIs 1 and 6, the instant diamond wire is classified in heading 6804, HTSUS, specifically under subheading 6804.21.0080, HTSUSA (Annotated), which provides for "Millstones, grindstones, grinding wheels and the like, without frameworks, for grinding, sharpening, polishing, trueing or cutting, hand sharpening or polishing stones, and parts thereof, of natural stone, of agglomerated natural or artificial abrasives, or of ceramics, with or without parts of other materials: Other millstones, grindstones, grinding wheels and the like: Of agglomerated synthetic or natural diamond: Other." The 2018 column one, general rate of duty is Free.

EFFECT ON OTHER RULINGS:

NY 876359, dated July 27, 1992, is revoked.

Sincerely,

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

REVOCATION OF TWO RULING LETTERS AND MODIFICATION OF TWO RULING LETTERS, AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF BOTTLE BAGS

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

ACTION: Notice of revocation of two ruling letters and modification of two ruling letters, and revocation of treatment relating to the tariff classification of bottle bags.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking two ruling letters and modifying two ruling letters concerning tariff classification of bottle bags 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. 23, on June 6, 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 November 26, 2018.

FOR FURTHER INFORMATION CONTACT: Albena 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. 23, on June 6, 2018, proposing to revoke two ruling letters and modify two ruling letters pertaining to the tariff classification of bottle bags. 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 Headquarters Ruling Letter ("HQ") H235569, dated May 17, 2013; New York Ruling Letter ("NY") N179138, dated August 24, 2011; NY N230128, dated September 5, 2012; and NY N204304, dated March 9, 2012, CBP classified the bottle bags in heading 4202, HTSUS, specifically in subheading 4202.92.90, HTSUS (now subheadings 4202.92.91, HTSUS and 4202.92.97, HTSUS), which provides for "... traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper: Other: With outer surface of sheeting of plastic or of textile materials: Other: Other."

CBP has reviewed HQ H235569, NY N179138, NY N230128 and NY N204304, and has determined the ruling letters to be in error. It is now CBP's position that the bottle bags in HQ H235569 are properly classified in heading 4202, HTSUS, specifically in subheading 4202.92.39, HTSUS, which provides for " ... traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of

vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper: Other: With outer surface of sheeting of plastics or of textile materials: Travel, sports and similar bags: With outer surface of textile materials: Other."

It is now CBP's position that the bottle bags in NY N179138, NY N230128, and NY N204304 are properly classified in heading 4202, HTSUS, specifically in subheading 4202.92.45, HTSUS, which provides for " ... traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper: Other: With outer surface of sheeting of plastics or of textile materials: Travel, sports and similar bags: Other."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking HQ H235569 and NY N179138, and modifying NY N230128 and NY N204304, and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in HQ H273867, set forth as an attachment to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: July 24, 2018

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

Attachment

HQ H273867

July 24, 2018
OT:RR:CTF:CPMM H273867 APP
CATEGORY: Classification
TARIFF NO.: 4202.92.3900; 4202.92.4500

BRUCE SHULMAN, ESQ.
STEIN, SHOSTAK, SHOSTAK, POLLACK & O'HARA, L.L.P.
1776 K STREET, N.W., SUITE 2213
WASHINGTON, D.C. 20006

RE: Revocation of HQ H235569 and NY N179138, and modification of NY N230128 and NY N204304; Classification of Bottle Bags

DEAR MR. SHULMAN:

This is to inform you that U.S. Customs and Border Protection ("CBP") has reconsidered Headquarters Ruling Letter ("HQ") H235569, dated May 17, 2013 (issued to Earthwise Bag Company, Inc.); New York Ruling Letter ("NY") N179138, dated August 24, 2011 (issued to Bella Vita); NY N230128, dated September 5, 2012 (issued to Ghedi International, Inc.); and NY N204304, dated March 9, 2012 (issued to Fiberlinks Textiles, Inc.), regarding the classification, under the Harmonized Tariff Schedule of the United States ("HTSUS"), of bottle bags with outer surface of sheeting of plastic or of textile materials.

CBP classified the non-woven polypropylene bottle bags in HQ H235569 under subheading 4202.92.90, HTSUS (now subheading 4202.92.91, HTSUS), which provided for " ... traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper: Other: With outer surface of sheeting of plastic or of textile materials: Other: Other."

CBP classified the bottle bags constructed of plastic sheeting material in NY N179138 and the bottle bags constructed of non-woven polypropylene textile material laminated on the outer surface with plastic sheeting in NY N230128 and NY N204304 under subheading 4202.92.90, HTSUS (now subheading 4202.92.97, HTSUS), which provided for " ... traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper: Other: With outer surface of sheeting of plastic or of textile materials: Other: Other."

For the reasons set forth below, we hereby revoke HQ H235569 and NY N179138, and modify NY N230128 and NY N204304 with respect to the bottle bags.

Pursuant to section 625(c)(l), Tariff Act of 1930 (19 U.S.C. § 1625(c)(l)), 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, No. 23, on June 6, 2018, proposing to revoke HQ H235569 and NY N179138, and modify NY N230128 and NY N204304, and to revoke any treatment accorded to substantially identical transactions. No comments were received in response to this notice.

FACTS:

The non-woven polypropylene bags in HQ H235569 contain two handles and have open tops. These bags measure approximately 9 1/2" (W) x 10" (H) x 7" (D). The bag's handles are composed of polypropylene and contain a fastener of polypropylene with hook and loop fastener to keep the handles together. The bottom of the bags is composed of two layers of polypropylene fabric with padding inserted in between. The top contains a small loop of polypropylene. The inside of the bottle bags is divided into six equally sized compartments by polypropylene dividers. Each compartment measures approximately 5" (W) x 9" (L) when closed and can expand to fit the bottles inserted therein. The exterior of the bags contains a tri-colored printed design containing grapes and grape leaves. The logos of 13 grocery stores appear below the design. The bags are sold or distributed free of charge at stores that sell food and beverages.

The two bottle bags in NY N179138 are constructed of plastic sheeting material. They are identified as "Chill It 1C" and "Chill It 6". Both types of bags are of a durable construction and suitable for repetitive use, and have an open top without a means of closure and two carrying handles. The "Chill It 1C" is cylindrical in shape and measures approximately 4" (W) x 12" (H). It is designed to provide storage, protection, portability, and organization to a single bottle. The "Chill It 6" measures approximately 7.5" (W) x 7" (H) x 5" (D) and is designed to provide storage, protection, portability, and organization to six bottles. The interior is divided into two sections, each capable of accommodating three bottles.

The bottle bags (styles 15618 and 15622) in NY N230128[1] are constructed of non-woven polypropylene textile material that has been laminated on the outer surface with plastic sheeting. The constituent outer surface material is the plastic sheeting. Style 15618 measures 5" (W) x 13.5" (H) x 5.25" (D) and is designed to provide storage, protection, portability, and organization to one bottle. The interior has an unlined storage compartment with no additional features as well as an open top with a carrying handle and a reinforced bottom. It is of a durable construction and suitable for repetitive use. Style 15622 measures approximately 9" (W) x 13.5" (H) x 7" (D) and is designed to provide storage, protection, portability, and organization to four bottles. The interior has four fitted pockets attached to each sidewall for each individual bottle as well as an open top with two carrying handles and a reinforced bottom. It is of a durable construction and suitable for repetitive use.

[1] NY N230128 also includes three styles of shopping-style tote bags (styles 15607, 15613 and 15616) constructed of non-woven polypropylene textile material laminated on the outer surface with plastic sheeting, which were correctly classified in subheading 4202.92.45, HTSUS, as shopping bags with outer surface of sheeting of plastics, as well as a circular handbag (style 15611) constructed of non-woven polypropylene textile material laminated on the outer surface with plastic sheeting, which was correctly classified under subheading 4202.22.15, HTSUS, as a handbag with outer surface of sheeting of plastics.

The six bottle wine bag (style GEB11117/PLB) in NY N204304[2] measures approximately 11" (W) x 11" (H) x 7" (D). It is constructed of non-woven polypropylene textile material laminated on the outer surface with plastic sheeting. The bag is designed to provide storage, protection, portability, and organization to wine bottles. The interior has three fitted pockets for individual wine bottles attached to each sidewall. The bag has an open top with two carrying handles. It is of a durable construction and suitable for repetitive use.

ISSUE:

Whether the subject bottle bags are classified as shopping bags of subheadings 4202.92.39, HTSUS (with outer surface of textile materials) and 4202.92.45, HTSUS (with outer surface of sheeting of plastics), or as other bags of subheadings 4202.92.91, HTSUS (with outer surface of textile materials) and 4202.92.97, HTSUS (with outer surface of sheeting of plastics).

LAW AND ANALYSIS:

Merchandise imported into the United States is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation ("GRIs") and, in the absence of special language or context which requires otherwise, by the Additional U.S. Rules of Interpretation ("AUSR"). The GRIs and the AUSR are part of the HTSUS and are to be considered statutory provision of law for all purposes. GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in their appropriate order. Pursuant to GRI 6, classification at the subheading level uses the same rules, *mutatis mutandis*, as classification at the heading level.

The HTSUS (2018) provisions under consideration are:

4202	Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper:
	Other:
4202.92	With outer surface of sheeting of plastic or of textile materials:
	Travel, sports and similar bags:
	With outer surface of textile materials:
4202.92.39	Other

[2] NY N204304 also includes a shopping-style tote bag, style number GEB12138, constructed of woven polypropylene textile material laminated on the outer surface with plastic sheeting, which was correctly classified in subheading 4202.92.45, HTSUS, as a shopping bag with outer surface of sheeting of plastic.

4202.92.45	Other
	Other:
	Other:
	With outer surface of textile materials:
4202.92.91	Of man-made fibers (except jewelry boxes of a kind normally sold at retail with their contents)
	Other:
4202.92.97	Other

Additional U.S. Note 1 to chapter 42, HTSUS, states, in relevant part, the following:

> For the purposes of heading 4202, the expression "*travel, sports and similar bags*" means goods, other than those falling in subheadings 4202.11 through 4202.39, of a kind designed for carrying clothing and other personal effects during travel, including backpacks and shopping bags of this heading, but does not include binocular cases, camera cases, musical instrument cases, bottle cases and similar containers.

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

EN 42.02 states, in pertinent part, the following:

> This heading covers only the articles specifically named therein and similar containers.

There is no dispute that the subject bottle bags are classified in heading 4202, HTSUS. At issue is the proper subheading. As a result, GRI 6 applies.

Additional U.S. Note 1 to chapter 42, HTSUS, defines "travel, sports and similar bags" of heading 4202, HTSUS, as being "of a kind designed for carrying clothing and other personal effects during travel, including backpacks and shopping bags of this heading." Shopping bags have been characterized by their open tops and long handles that can be used over a person's shoulder, and reinforced side and bottom panels. Furthermore, these bags are designed for repetitive use in carrying heavier items such as groceries.

CBP has previously classified shopping-style tote bags constructed of nonwoven polypropylene textile material or of plastic sheeting with an open top and two carrying handles designed to provide storage, protection, portability, and organization to groceries or other personal effects during travel in subheadings 4202.92.39, HTSUS (outer surface of textile material) and 4202.92.45, HTSUS (outer surface of sheeting of plastics).[3] Similar to the

[3] *See* NY N281516, dated December 19, 2016 (classifying a tote bag, constructed with an outer surface polyvinyl chloride strips featuring an open top with a snap closure, two carrying handles, and a textile lined interior, designed to provide storage, protection, portability, and organization to personal effects during travel under subheading 4202.92.39, HTSUS); NY N290446, dated October 17, 2017 (classifying a tote bag constructed with an outer surface of a textile material, featuring one main compartment with a snap closure,

bags in these rulings, the instant bottle bags have an open top and two carrying handles, are of a durable construction, are suitable for repetitive use, and are designed to provide storage, protection, portability, and organization to bottles. Unlike bottle cases of subheadings 4202.92.91, HTSUS and 4202.92.97, HTSUS,[4] which have plastic foam for padding and insulation to provide protection against breakage of the bottles, the instant bags do not provide breakage protection and are similar to shopping bags with two carrying handles and a reinforced bottom, designed for repetitive use in carrying bottles. Therefore, the instant bottle bags are shopping bags as named in Additional U.S. Note 1, and are classified as a type of "travel, sports or similar bag," in subheadings 4202.92.39, HTSUS and 4202.92.45, HTSUS.

Because the instant bags are *prima facie* classifiable in subheadings 4202.92.39, HTSUS and 4202.92.45, HTSUS, as shopping bags, they are not classifiable in subheadings 4202.92.91, HTSUS and 4202.92.97, HTSUS, the basket provisions for other bags.[5]

HOLDING:

Under the authority of GRIs 1 and 6, the subject bottle bags in HQ H235569 are classified in heading 4202, HTSUS, specifically under subheading 4202.92.3900, HTSUSA (Annotated), which provides for " ... traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper: Other: With outer surface of sheeting of plastics or of textile materials: Travel, sports and similar bags: With outer surface of textile materials: Other." The current duty rate is 17.6% *ad valorem*.

two carrying handles, one open wall pocket, and an unlined interior, designed to provide storage, protection, portability, and organization to personal effects during travel under subheading 4202.92.39, HTSUS); NY N288407, dated August 4, 2017 (classifying reusable shopping-style tote bags constructed of two layers of plastic sheeting, featuring an open top without a closure and two carrying handles, designed to provide storage, protection, portability, and organization to groceries or other personal effects during travel under subheading 4202.92.45, HTSUS); NY N292662, dated December 22, 2017 (classifying a tote bag of a durable construction and suitable for repetitive use, constructed of woven strips coated with plastic sheeting, designed to provide storage, protection, portability, and organization to personal effects during travel under subheading 4202.92.45, HTSUS).

[4] *See* HQ 963222, dated August 19, 1999 (classifying wine bottle bags constructed of plastic foam for padding or insulation, and an exterior of woven polyester velvet fabric, designed to provide protection against bottle breakage as bottle cases under subheading 4202.92.90, HTSUS); HQ 966496, dated August 8, 2003 (classifying insulated bottle cases, covered on the exterior with a sheeting of plastics with a layer of foam plastic between the base and the exterior plastic sheeting, designed to provide storage, protection, organization and portability for the bottle(s) they contain, and claimed to be chiefly used to maintain the beverages' chilled temperatures under subheading 4202.92.90, HTSUS).

[5] Bags provided for in subheadings 4202.92.30, HTSUS (superseded by subheadings 4202.92.31, HTSUS, 4202.92.33, HTSUS, and 4202.92.39, HTSUS) and 4202.92.45, HTSUS, no longer meet the prerequisites of subheadings 9902.40.01, HTSUS and 9902.01.78, HTSUS, respectively. Subheadings 9902.40.01, HTSUS and 9902.01.78, HTSUS, provided for a temporary reduction in the rate of duty on or before December 31, 2012, and have expired.

Under the authority of GRIs 1 and 6, the subject bottle bags in NY N179138, NY N230128 (styles 15618 and 15622) and NY N204304 (style GEB11117/PLB) are classified in heading 4202, HTSUS, specifically under subheading 4202.92.4500, HTSUSA (Annotated), which provides for " ... traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper: Other: With outer surface of sheeting of plastics or of textile materials: Travel, sports and similar bags: Other." The current duty rate is 20% *ad valorem*.

This revocation of HQ H235569 and NY N179138, and modification of NY N230128 and NY N204304 only affects the tariff classification of the specific bottle bags discussed herein.

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

EFFECT ON OTHER RULINGS:

HQ H235569, dated May 17, 2013, is hereby REVOKED.

NY N179138, dated August 24, 2011, is hereby REVOKED.

NY N230128, dated September 5, 2012, is hereby MODIFIED with respect to bottle bags styles 15618 and 15622.

NY N204304, dated March 9, 2012, is hereby MODIFIED with respect to bottle bag style GEB11117/PLB.

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: Mr. Gunnar Hammerbeck
Bella Vita
1000 South Park Lane, Suite 1
Tempe, AZ 85281

Mr. Jim Ghedi
Ghedi International, Inc.
8002 Burleson Road
Austin, TX 78744

Ms. Maria Celis
Neville Peterson, L.L.P.
17 State Street, 19th Floor
New York, NY 10004

PROPOSED REVOCATION OF NINE RULING LETTERS, MODIFICATION OF ONE RULING LETTER, AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF FILLABLE PLASTIC CONTAINERS

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

ACTION: Notice of proposed revocation of nine ruling letters, modification of one ruling letter, and revocation of treatment relating to the tariff classification of fillable plastic containers.

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 nine ruling letters and modify one ruling letter concerning tariff classification of fillable plastic containers 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 October 26, 2018.

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

FOR FURTHER INFORMATION CONTACT: Albena Peters, Chemicals, Petroleum, Metals and Miscellaneous 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 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 nine ruling letters and modify one ruling letter pertaining to the tariff classification of fillable plastic containers. Although in this notice, CBP is specifically referring to New York Ruling Letter ("NY") N018731, dated November 8, 2007 (Attachment A), NY N013622, dated July 25, 2007 (Attachment B), NY N012286, dated July 5, 2007 (Attachment C), NY N007698, dated March 30, 2007 (Attachment D), NY N021076, dated January 16, 2008 (Attachment E), NY H86212, dated January 14, 2002 (Attachment F), NY N025433, dated April 25, 2008 (Attachment G), NY D81320, dated September 8, 1998 (Attachment H), NY C83630, dated February 4, 1998 (Attachment I), and Headquarters Ruling Letter ("HQ") 961700, dated February 19, 1999 (Attachment J), 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 ten identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the comment period.

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

In NY N018731, NY N013622, NY N012286, NY N007698, NY N021076, NY H86212, NY N025433, NY D81320, NY C83630, and HQ 961700, CBP classified the subject fillable plastic containers in heading 3924, HTSUS, specifically in subheading 3924.90.55/56, HTSUS, which provides for "Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics: Other: Other"

or in subheading 3924.10.40, HTSUS, which provides for "Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics: Tableware and kitchenware: Other," or in heading 9505, HTSUS, specifically in subheading 9505.90.60, HTSUS, which provides for "Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: Other: Other." CBP has reviewed NY N018731, NY N013622, NY N012286, NY N007698, NY N021076, NY H86212, NY N025433, NY D81320, NY C83630 and HQ 961700, and has determined the ruling letters to be in error. It is now CBP's position that the subject fillable plastic containers are properly classified, in heading 3926, HTSUS, specifically in subheading 3926.40.00, HTSUS, which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Statuettes and other ornamental articles."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY N018731, NY N013622, NY N012286, NY N021076, NY H86212, NY N025433, NY D81320, NY C83630 and HQ 961700, to modify NY N007698, and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed HQ H043742, set forth as Attachment K to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: July 31, 2018

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

Attachments

ATTACHMENT A

N018731
November 8, 2007
CLA-2:39:RR:N2:222
CATEGORY: Classification
TARIFF NO.: 3924.90.5600

MS. LEAH CANTERO
WILLIAMS-SONOMA, INC.
151 UNION STREET
ICE HOUSE 1 – 7TH FLOOR
SAN FRANCISCO, CA 94111

RE: The tariff classification of plastic egg-shaped containers from China.

DEAR MS. CANTERO:

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

The submitted illustration depicts an item identified as The Pottery Barn Kids Easter Transparent Eggs, SKU# 5064852. This item consists of ten pastel-colored egg-shaped containers packaged together for retail sale. Each container is made of acrylic and is approximately four inches long and three inches in diameter. The egg-shaped container can be opened by snapping in half at the middle and can be filled with small novelty items or confectionary. When closed after filling, the inner contents are visible from the outside of the egg, due to its transparency.

You have suggested that this item should be classified under subheading 9505.90.6000. However, we do not agree that this item is correctly classified in the provision that you suggest. Colored eggs marketed and sold for Easter are an accepted symbol of the holiday. However, these items are functional since they are intended to hold candy, gifts or other small items. Utilitarian articles are excluded from classification as festive in Chapter 95, according to Chapter Note 95(v).

The applicable subheading for SKU# 5064852 will be 3924.90.5600, Harmonized Tariff Schedule of the United States (HTSUS), which provides for... other household articles...of plastics: other: other. The duty rate will be 3.4 percent ad valorem.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Gary Kalus at 646–733–3055.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity
Specialist Division

ATTACHMENT B

N013622

July 25, 2007
CLA-2–39:RR:NC:N2:222
CATEGORY: Classification
TARIFF NO.: 3924.90.5600; 4202.92.9060

MR. KEN AUGUST
EASTER UNLIMITED, INC.
80 VOICE ROAD
CARLE PLACE, NY 11514

RE: The tariff classification of plastic egg shaped containers and a plastic carry bag from China

DEAR MR. AUGUST:

In your letter dated June 27, 2007 you requested a tariff classification ruling.

The submitted samples are identified as follows:

Item number 3051 – Funny Farm Eggs. This item consists of colored plastic Easter egg shaped containers. Each container measures approximately 2–1/2 inches in height and is composed of two parts that open by snapping in half at the middle to fill with treats. These containers are packaged eight pieces to a polybag for retail sale and each container in the package has a depiction of the face of a different animal printed on the surface of one side.

Item number 3058 – Crazy Eggs. This item consists of colored plastic Easter egg shaped containers. Each container measures approximately 2–1/2 inches in height and is composed of two parts that open by snapping in half vertically to fill with treats. These containers are packaged ten pieces to a polybag for retail sale and each container in the package has a depiction of a different humorous facial expression printed on the surface of one side.

Item number 3088 – Easter Egg Hunt. This item consists of fifty plastic Easter egg shaped containers, packaged in a reusable carry bag. Each container measures approximately 2–1/2 inches in height and is composed of two parts that open by snapping in half at the middle to fill with treats. The carry bag is composed primarily of vinyl with a zippered closure.

The Explanatory Notes to the Harmonized Tariff System provide guidance in the interpretation of the Harmonized Commodity Description and Coding System at the international level. Explanatory Note X to GRI 3(b) provides that the term "goods put up in sets for retail sale" means goods that: (a) consist of at least two 2 different articles which are, prima facie, classifiable in different headings; (b) consist of articles put up together to meet a particular need or carry out a specific activity; and (c) are put up in a manner suitable for sale directly to users without repacking.

Item number 3088 is not considered to be a set for tariff classification purposes, since the carry bag and the egg shaped containers that comprise the contents are not put up together to meet a particular need or carry out a specific activity. The carry bag may be reused to hold any of a wide variety of items. The egg shaped containers have no relationship with the carry bag. Therefore, the carry bag and the egg shaped containers must be classified separately.

The applicable subheading for the plastic egg shaped containers identified as item numbers 3051 and 3058 and for the plastic egg shaped containers

that are included in the merchandise identified as item number 3088 will be 3924.90.5600, Harmonized Tariff Schedule of the United States (HTSUS), which provides for...other household articles...of plastics: other: other. The rate of duty will be 3.4 percent ad valorem.

The applicable subheading for the plastic carry bag that is included in the merchandise identified as item number 3088 will be 4202.92.9060, HTSUS, which provides for...similar containers...of sheeting of plastics...or wholly or mainly covered with such materials or with paper: other: with outer surface of sheeting of plastic or textile materials: other: other: other: other. The rate of duty will be 17.6 percent ad valorem.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Gary Kalus at 646–733–3055.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity
Specialist Division

ATTACHMENT C

N012286

July 5, 2007
CLA-2–39:RR:NC:N2:222
CATEGORY: Classification
TARIFF NO.: 3924.90.5600

MR. KEN AUGUST
EASTER UNLIMITED, INC.
80 VOICE ROAD
CARLE PLACE, NY 11514

RE: The tariff classification of plastic egg shaped and carrot shaped candy containers from China.

DEAR MR. AUGUST:

In your letter dated May 30, 2007, you requested a tariff classification ruling.

The submitted samples are identified as follows:

Item number 3019Q – 12 Large Eggs. This item consists of colored plastic Easter egg shaped candy containers. Each three-dimensional container measures approximately 2–1/2 inches in height and is composed of two parts that open by snapping in half at the middle to fill with treats. The candy containers are packaged 12 pieces to a polybag for retail sale.

Item number 3002 – 48 Count Eggs. This item consists of colored plastic Easter egg shaped candy containers. Each three-dimensional container measures approximately 2–1/2 inches in height and is composed of two parts that open by snapping in half in the middle to fill with treats. The candy containers are packaged 48 pieces to a polybag for retail sale.

Item number 3001 – Easter Egg Hunt. This item consists of colored plastic Easter egg shaped candy containers. This item includes 48 candy containers that measure 2–1/2 inches in height and one gold colored and one silver colored candy container that each measure 3–1/2 inches in height, for a total of 50 three-dimensional containers. The candy containers are composed of two parts that open by snapping in half in the middle to fill with treats.

Item number 3041 – Vibrant Colors Chrome Eggs. This item consists of colored plastic Easter egg shaped candy containers. Each three-dimensional container measures approximately 2–1/2 inches in height and is composed of two parts that open by snapping in half at the middle to fill with treats. The candy containers are packaged 8 pieces to a polybag for retail sale.

Item number 3056 – Carrot Containers. This item consists of plastic carrot shaped candy containers, that are orange in color with a green colored top. Each three dimensional container measures approximately 3–1/4 inches in height and is composed of two parts that open by snapping in half lengthwise to fill with treats. The candy containers are packaged 8 pieces to a polybag for retail sale.

The applicable subheading for the plastic candy containers identified as items number 3019Q, 3002, 3001, 3041 and 3056 will be 3924.90.5600, Harmonized Tariff Schedule of the United States (HTSUS), which provides for tableware, kitchenware, other household articles...of plastics: other: other. The rate of duty will be 3.4 percent ad valorem.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Gary Kalus at 646–733–3055.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity
Specialist Division

ATTACHMENT D

N007698

March 30, 2007
CLA-2–39:RR:NC:N2:222
CATEGORY: Classification
TARIFF NO.: 3924.10.4000; 3924.90.5600;
9817.95.05

MS. IRENE TSIAVOS
EASTER UNLIMITED, INC.
80 VOICE ROAD
CARLE PLACE, NY 11514

RE: The tariff classification of plastic Halloween skeleton tongs, Halloween skull mugs, Halloween and Christmas drinking containers and Easter candy containers from China.

DEAR MS. TSIAVOS:

In your letter dated February 26, 2007, you requested a tariff classification ruling.

The submitted samples, all claimed to be made of Food Grade General plastic, are identified as follows:

Item number 8908 – Halloween Skeleton Tongs measure approximately 11–1/4 inches long. This is a set of tongs made with a fork side and a spoon side. The tongs are shaped as three dimensional skeleton hands that grab food.

Item number 8327 – Halloween Skull Mugs. Two different colors were submitted; one grey and one tan. The mug is shaped like a three dimensional skull with a gold tooth. This mug measures 5–1/2 inches high and it has a 3–1/2 inch diameter opening.

Item number 7249 – Christmas Drinking Cups. These drinking containers are designed with a screw on lid. There is a round aperture in the middle of the top surface of the lid, through which a flexible plastic straw is inserted. The straw has multiple accordion-like ridges throughout its' length and has a plastic cap at the top. There are three different styles; Santa, Snowman with a blue hat and Snowman with a black hat. (Sample with the black hat not submitted.) The Santa Drinking Cup is in the shape of a three dimensional Santa head. Each of the Snowman Drinking Cups is in the shape of a three dimensional snowman head wearing a hat that is adorned with a holly leaf on the brim. All of the drinking containers measure approximately 4 inches in height.

Item number 8900 – Halloween Drinking Cups. These drinking containers are designed with a screw on lid. There is a round aperture in the middle of the top surface of the lid, through which a flexible plastic straw is inserted. The straw has multiple accordion-like ridges throughout its' length and has a plastic cap at the top. There are two different styles; Jack - O - Lantern and Skull. The Jack - O - Lantern Drinking Cup is in the shape of a three dimensional orange Jack-O'-Lantern. The Skull Drinking Cups are grey in color with a three dimensional skull shape. An illustration rather than a sample was submitted of the Skull Drinking Cup. The drinking containers measure 4 inches in height.

Item number 3019 – Easter Egg Candy Containers. These measure 2–1/2 inches high. The candy containers are composed of two parts that open up by

snapping the top half away from the bottom half. The consumers usually fill the containers with Easter jellybeans or other candies. There is a hole at the top of each egg. Although strings are not included, the directions on the retail package states the following: 1. Open egg. 2. Tie knot at end of string and thread through hole in egg. 3. Close egg and hang anywhere, indoors or outdoors.

The tongs, mugs and drinking containers are all classifiable in subheading 3924.10.4000 as plastic tableware. However, the Halloween Skeleton Tongs, the Halloween Skull Mugs and the Santa, Jack-O'-Lantern and Skull Drinking Cups are all considered symbols or motifs that are clearly associated with a specific holiday in the United States. The snowman design of the Snowman Drinking Cups, on the other hand, is not a symbol or motif that is considered to be for sale exclusively in connection with Christmas, as the tiny holy leaf on the snowman's hat is too insignificant here. Given the fact that the Easter Egg Candy Containers are designed to be hung as decorations, they are not classifiable as tableware.

The applicable subheading for the plastic Halloween Skeleton Tongs, Halloween Skull Mugs, the Santa Drinking Cups, the Jack-O'-Lantern Drinking Cups and the Skull Drinking Cups will be 9817.95.05, Harmonized Tariff Schedule of the United States (HTSUS), which provides for articles classifiable in subheadings 3924.10...the foregoing meeting the descriptions set forth below: utilitarian articles in the form of a three-dimensional representation of a symbol or motif clearly associated with a specific holiday in the United States. The rate of duty will be free.

The applicable subheading for the plastic Snowman Drinking Cups will be 3924.10.4000, HTSUS, which provides for tableware, kitchenware, other household articles...of plastics: tableware and kitchenware: other. The rate of duty will be 3.4 percent ad valorem.

The applicable subheading for the plastic Easter Egg Candy Containers will be 3924.90.5600, HTSUS, which provides for tableware, kitchenware, other household articles...of plastics: other: other. The rate of duty will be 3.4 percent ad valorem.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Gary Kalus at 646–733–3055.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity
Specialist Division

ATTACHMENT E

N021076
January 16, 2008
CLA-2–61:OT:RR:NC:3:353
CATEGORY: Classification
TARIFF NO.: 6117.80.8500, 3924.90.5600

MS. MIRIAM ESPINOZA
INTRADECO APPAREL, INC.
9500 N.W. 108TH AVE.
MIAMI, FL 33178

RE: The tariff classification of ponytail holders in plastic eggs from China.

DEAR MS. ESPINOZA:

In your letter dated December 13, 2007 you requested a tariff classification ruling. The item will be marketed in "Christmas Tree Shops" stores.

The submitted sample is an Item No. CT1401 "Plastic Easter Egg Containing Knit Hair Ponyo's." Item No. CT1401 consists of six plastic eggs, each containing 5 ponytail holders, retail packaged in disposable netting. The ponytail holders are constructed of elasticized knit polyester fabric and are approximately 1¼-inches in diameter. The plastic eggs are egg-shaped containers of various colors that are approximately 3-inches long and1½- inches in diameter. The egg-shaped container can be opened by snapping in half at the middle and is filled with matching color ponytail holders. When closed after filling, the ponytail holders are visible from the outside of the egg, due to its transparency.

The egg-shaped containers are suitable for repetitive use and are separately classified from the ponytail holders. Although they are called "Easter Eggs," they are designed to hold items. Utilitarian articles are excluded from classification as festive articles in Chapter 95 per Chapter Note 1 (v).

The applicable subheading for the Item No. CT1401 ponytail holders will be 6117.80.8500, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other made up clothing accessories, knitted or crocheted... headbands, ponytail holders and similar articles. The rate of duty will be 14.6% ad valorem.

The applicable subheading for the Item No. CT1401 egg-shaped containers will be 3924.90.5600, Harmonized Tariff Schedule of the United States (HTSUS), which provides for ...other household articles...of plastics: other: other. The duty rate will be 3.4% ad valorem.

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

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

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

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity
Specialist Division

ATTACHMENT F

NY H86212

January 14, 2002
CLA-2–95:RR:NC:SP:222 H86212
CATEGORY: Classification
TARIFF NO.: 3924.90.5500

MS. JULIE GIMM
BDP INTERNATIONAL, INC.
2721 WALKER N.W.
GRAND RAPIDS, MI 49504

RE: The tariff classification of plastic boxes from China.

DEAR MS. GIMM:

In your letter dated December 12, 2001, on behalf of your client Meijer Distributions, you requested a tariff classification ruling.

The submitted samples are identified as item number 862041, Easter candy containers. Your letter of inquiry states that the plastic containers will be available in assorted colors. They are made in the shape of a bunny with a hallow body to hold Easter candy. Your letter further states that they will be sold in retail stores for the Easter holiday. Although sold around Easter, rabbits are not a symbol of any holiday. The Easter Rabbit needs to have an egg. The bunny shaped boxes are excluded from classification in Chapter 95 as festive articles. This product will be classified in Chapter 39.

The samples are returned as you requested.

The applicable subheading for the bunny shaped plastic boxes will be 3924.90.5500, Harmonized Tariff Schedule of the United States (HTS), which provides for...other household articles...of plastics, other, other. The rate of duty will be 3.4 percent ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Alice Masterson at 646–733–3024.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity
Specialist Division

ATTACHMENT G

N025433

April 25, 2008
CLA-2–39:OT:RR:E:NC:N2:222
CATEGORY: Classification
TARIFF NO.: 3924.10.4000

MR. TROY D CRAGO
ATICO INTERNATIONAL USA, INC.
501 SOUTH ANDREWS AVENUE
FORT LAUDERDALE, FL 33301

RE: The tariff classification of plastic chick designed candy containers from China

DEAR MR. CRAGO:

In your letter dated March 28, 2008 you requested a tariff classification ruling.

The submitted illustration depicts an item identified as Easter Chick Containers, set of 3, item number A081KA01100. This item is comprised of three identical containers that are each made of 100% polypropylene (PP) plastic material. The body of each of the three containers in this item is egg shaped, is yellow in color and measures 3–1/2" in height by 2–1/2 " wide.

Each container is designed to have the appearance of a chick, with black eyes, orange beak, a yellow wing on each of two opposing sides and orange feet. The feet form a flat stable base under the egg shaped body, which allows the container to stand upright on a flat surface. Each container is hollow and is therefore designed to be filled with candy and other small items.

Although you state that these containers are intended for sale by your retail store clients to their customers during and for the Easter holiday, chicks are not an accepted symbol of a recognized holiday. Furthermore, articles that are designed to hold and store candy and other small items are considered utilitarian articles and are therefore excluded from classification as festive articles in Chapter 95, according to Chapter Note 95 (v).

The applicable subheading for item number A081KA01100 will be 3924.10.4000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for tableware, kitchenware...of plastics: tableware and kitchenware: other. The rate of duty will be 3.4 percent ad valorem.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Gary Kalus at 646–733–3055.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity
Specialist Division

ATTACHMENT H

NY D81320
September 8, 1998
CLA-2–95:RR:NC:SP:225 D81320
CATEGORY: Classification
TARIFF NO.: 9505.90.6000; 3924.90.5500

MS. LAURIE FASSETT
PAPER MAGIC GROUP
401 ADAMS AVENUE
SCRANTON, PA 18510

RE: The tariff classification of fillable Easter eggs and a plastic container from China

DEAR MS. FASSETT:

In your letter dated August 6, 1998, received in this office on August 16, 1998, you requested a tariff classification ruling.

Three samples were submitted to this office. The "Pooh Filler Eggs," item #612416, consists of 6 colored plastic eggs. One side of the egg is decorated with the raised impression of the head of the "Pooh" character. Encircling "Pooh" are tiny pin holes which may be used to insert a string loop for hanging. The eggs break open lengthwise and are hollow inside allowing them to be filled with candy or small trinkets. The six eggs will be packaged in a polybag with header which suggests the eggs may be filled or hung.

Item #611532, "3 Piece Puzzle Eggs," are hollow, plastic, colored eggs. The eggs are packaged four to a bag with a header card. Each egg is made up of three sections which vary in color. The sections pull apart and are interchangeable, thereby, permitting one to mix and match the pieces to obtain the color combination desired. The eggs are fillable and each contains a pin hole at one end to allow them to be hung.

The "Easter Egg Clipable Candy Dispenser," item #612091, is a plastic oval shaped container. It measures 4" in length and 2 3/4" in width. A small panel slides down on the side allowing the container to be filled and emptied. The cover contains the raised impression of decorated eggs. A clip is affixed to the back which allows it to be fastened onto bags, books, and similar items. Each container is packaged in a clear bag with cardboard header. The samples are being returned per your request.

As a result of the court decision of Midwest of Cannon Falls Inc. vs. U.S. 96–1271, –1279, certain articles which were perceived to be classified elsewhere in the tariff, will now fall within the realm of "festive, carnival or other entertainment articles of Chapter 95." A range of factors are considered in making this determination, which include, among other things, the intended use of the product, relationship to a recognized holiday, basic physical characteristics and marketing of the merchandise.

In the case of the "Pooh Filler Eggs" and "3 Piece Puzzle Eggs" we find that both products serve as decorations and as utilitarian items. Decorated eggs are traditionally used in celebration of and for entertainment on Easter. It has been established that decorated eggs are an accepted symbol of Easter, a recognized holiday. Additionally, the eggs serve as containers capable of holding items such as candy. When an article is functional, to qualify as festive, it must be a three dimensional, sculpted, full bodied representation of

an accepted symbol of an accepted holiday. We find the two styles of plastic eggs satisfy all requirements for festive articles and will be considered within the festive provision of Chapter 95.

The "Easter Egg Clipable Candy Dispenser," however, is not a three dimensional representation of an accepted symbol for any recognized holiday. Note that there is a distinction between oval shaped and egg shaped. They are not to be construed as one and the same. Therefore, this fillable container is classifiable as an article of plastic in Chapter 39.

The applicable subheading for the "Pooh Filler Eggs" and "3 Piece Puzzle Eggs" will be 9505.90.6000, Harmonized Tariff Schedule of the United States (HTS), which provides for festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: other: other. The rate of duty will be free.

The applicable subheading for the "Easter Egg Clipable Candy Dispenser," will be 3924.90.5500, Harmonized Tariff Schedule of the United States (HTS), which provides for...other household articles...of plastics: other: other. The rate of duty will be 3.4 percent ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Alice J. Wong at 212–466–5538.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity
Specialist Division

ATTACHMENT I

NY C83630
February 4, 1998
CLA-2–95:RR:NC:SP:225 C83630
CATEGORY: Classification
TARIFF NO.: 9505.90.6000

MR. ROBERT A. CALANDRA
ATTORNEY AT LAW
4 HENNING DRIVE
FAIRFIELD, NEW JERSEY 07004

RE: The tariff classification of plastic Easter eggs from China

DEAR MR. CALANDRA:

In your letter dated January 16, 1998 you requested a tariff classification ruling on behalf of your client Sun Hill Industries, Inc.

The sample submitted, "Fill or Hang Bunny Eggs," consists of 6 plastic eggs in a net package with cardboard header. The eggs are hollow and break open, lengthwise, allowing them to be filled with candy or trinkets. Each egg is colored on one side while the other side is transparent and painted with the face of a bunny. Although two bunny ears protrude from the egg, this does not detract from the basic egg shape design. The eggs measure 4 inches in length.

Based upon the recent court decision of Midwest of Cannon Falls Inc. vs. U.S. 96–1271, –1279, certain articles which were perceived to be classified elsewhere in the tariff, will now fall within the realm of "festive, carnival or other entertainment articles of Chapter 95". A range of factors will be considered in making this determination, which include, among other things, the intended use of the product, relationship to a recognized holiday, basic physical characteristics and marketing of the merchandise.

In the case of the "Fill and Hang Bunny Eggs" we find that the product serves as both a decoration and as a utilitarian item. Decorated eggs are traditionally used in celebration of and for entertainment on Easter. It has been established that decorated eggs are an accepted symbol of Easter, a recognized holiday. In addition to their decorative features, the eggs serve as containers capable of holding items such as candy or small trinkets. When an article is functional, to qualify as festive, it must be a three dimensional, sculpted, full bodied representation of an accepted symbol for a holiday. This office finds that the instant product satisfies all requirements for festive articles and will now be considered within the festive provision of Chapter 95.

The applicable subheading for the "Fill or Hang Bunny Eggs" will be 9505.90.6000, Harmonized Tariff Schedule of the United States (HTS), which provides for festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: other: other. The rate of duty will be free.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Alice J. Wong at 212–466–5538.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity
Specialist Division

ATTACHMENT J

HQ 961700
February 19, 1999
CLA-2 RR:CR:GC 961700 MMC
CATEGORY: Classification
TARIFF NO.: *9505.90.60*

MS. LYNN O'BEIRN
FOUR STAR INTERNATIONAL TRADING COMPANY
3330 EAST 79TH STREET
CLEVELAND, OHIO 44127

RE: Easter Egg Container # 3

DEAR MS. O'BEIRN:

This is in response to your February 20, 1998, letter, to the Director, Customs National Commodity Specialist Division, New York, requesting a binding classification ruling for an article identified as "Easter Egg Container # 3" under the Harmonized Tariff Schedule of the United States (HTSUS). A sample was submitted with your request. Your letter was referred to this office for reply. We regret the delay in responding.

FACTS:

The subject article consists of 2 dozen pastel colored egg-shaped containers in a "novelty net bag." The eggs are 2 inches long and split open at the center so they may be filled with small candies or trinkets and then closed. The "novelty net bag" is essentially a plastic net drawstring bag with stuffed 3 dimensional textile replications of a bunny rabbit's head feet and legs attached in the appropriate places on the bag. The "novelty net bag" is constructed in a manner which resembles a rabbit.

"Easter Egg Container #3" will be used on the Easter holiday for the tradition of Easter egg hunting. An Easter egg hunt is conducted by filling the plastic "eggs" with goodies hiding them and then allowing children to collect them. The bag will be used by children to hold the various eggs they collect.

ISSUE:

What is the classification of the "Easter Egg Container # 3 ?"

LAW AND ANALYSIS:

In Midwest of Cannon Falls, Inc. v. United States, 122 F.3d 1423 (Fed Cir. 1997) (hereinafter Midwest), the Court addressed the scope of heading 9505, HTSUS, specifically, the class or kind "festive articles," and provided new guidelines for classification of articles in the heading. In general, merchandise is classifiable in heading 9505, HTSUS, as a festive article when the article, as a whole:

1. Is not predominately of precious or semiprecious stones, precious metal or metal clad with precious metal;
2. Functions primarily as a decoration or functional item used in celebration of and for entertainment on a holiday; and
3. Is associated with or used on a particular holiday.

Based on a review of the Midwest articles, Customs is of the opinion that the court has included within the scope of the class "festive articles," decorative household articles which are representations of an accepted symbol for

a recognized holiday and utilitarian/functional articles if such utilitarian articles are a three dimensional representation of an accepted symbol for a recognized holiday. See 32 Customs Bulletin 2/3, dated January 21, 1998.

In addition to the above listed criteria, the Court gave consideration to the general criteria for classification set forth in United States v. Carborundum Company, 63 CCPA 98, C.A.D. 1172, 536 F. 2d 373 (1976), cert. denied, 429 U.S. 979 (hereinafter Carborundum). As such, for those decorative and utilitarian articles involving holidays and symbols not specifically recognized in Midwest or the January 21, 1998, Customs Bulletin, in addition to the above criteria, Customs will consider the general criteria set forth in Carborundum to determine whether a particular article belongs to the class or kind "festive articles." Those criteria include: the general physical characteristics of the article, the expectation of the ultimate purchaser, channels of trade, environment of sale (accompanying accessories, manner of advertisement and display), use in the same manner as merchandise which defines the class, economic practicality of so using the import, and recognition in the trade of this use.

The subject bag and egg shaped container has no precious or semi-precious stones, metals or metal clad with precious metal. Furthermore, it is a decorative item used in an Easter egg hunt; a well documented form of entertainment for the holiday, Easter. As such, it is classifiable as a festive article, in heading 9505, HTSUS.

HOLDING:

The "Easter Egg Container # 3" is classifiable under subheading *9505.90.60*, HTSUS, as "[f]estive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: [o]ther:[o]ther."

Sincerely,

JOHN DURANT,
Director
Commercial Rulings Division

ATTACHMENT K

HQ H043742
OT:RR:CTF:CPMM H043742 APP
CATEGORY: Classification
TARIFF NO.: 3926.40.00

MS. LEAH CANTERO
WILLIAMS-SONOMA, INC.
151 UNION STREET
ICE HOUSE 1 – 7TH FLOOR
SAN FRANCISCO, CA 94111

RE: Fillable plastic containers; Revocation of NY N018731, NY N013622, NY N012286, NY N021076, NY H86212, NY N025433, NY D81320, NY C83630 and HQ 961700, and Modification of NY N007698

DEAR MS. CANTERO:

This is to inform you that U.S. Customs and Border Protection ("CBP") has reconsidered New York Ruling Letter ("NY") N018731, dated November 8, 2007 (issued to Williams-Sonoma, Inc.); NY N013622, dated July 25, 2007, NY N012286, dated July 5, 2007, and NY N007698, dated March 30, 2007 (issued to Easter Unlimited, Inc.); NY N021076, dated January 16, 2008 (issued to Intradeco Apparel, Inc.); NY H86212, dated January 14, 2002 (issued to Meijer Distributions); NY N025433, dated April 25, 2008 (issued to Atico International USA, Inc.); NY D81320, dated September 8, 1998 (issued to Paper Magic Group); NY C83630, dated February 4, 1998 (issued to Sun Hill Industries, Inc.); and Headquarters Ruling Letter ("HQ") 961700, dated February 19, 1999 (issued to Four Star International Trading Company), regarding the classification, under the Harmonized Tariff Schedule of the United States ("HTSUS"), of fillable plastic containers. CBP classified the containers in heading 3924, HTSUS, which provides for "Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics" and in heading 9505, HTSUS, which provides for "Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof."

We have determined that these ten rulings are in error. For the reasons set forth below, we hereby revoke NY N018731, NY N013622, NY N012286, NY N021076, NY H86212, NY N025433, NY D81320, NY C83630 and HQ 961700, and we modify NY N007698.

FACTS:

Unless otherwise noted, the subject merchandise consists of plastic empty containers that open by snapping in half at the middle. In their condition as imported, the containers are empty unless otherwise noted. The purchaser can fill them with small items after purchase.[1] Some of the containers are imported packaged with a plastic bag as noted below.

The plastic egg-shaped containers in NY N018731 are identified as "The Pottery Barn Kids Easter Transparent Eggs, SKU # 5064852." These are ten transparent pastel-colored egg-shaped containers packaged together. Each is made of acrylic and is approximately 4 inches long and 3 inches in diameter.

[1] Classification is based upon the condition of the articles at the time of importation. *See United States v. Citroen*, 223 U.S. 407 (1911).

The plastic egg-shaped containers in NY N013622 are identified as "Item number 3051 – Funny Farm Eggs," "Item number 3058 – Crazy Eggs," and "Item number 3088 – Easter Egg Hunt." Each container measures approximately 2.5 inches in height. The "Funny Farm Eggs" are packaged eight pieces to a polybag for retail sale and have a different animal printed on the surface of one side. The "Crazy Eggs" are packaged ten pieces to a polybag for retail sale and have a different humorous facial expression printed on the surface of one side. The "Easter Egg Hunt" consists of 50 plastic egg-shaped containers packaged in a reusable carry bag composed primarily of vinyl with a zippered closure.

The fillable plastic containers in NY N012286 are identified as "Item number 3019Q – 12 Large Eggs," "Item number 3002 – 48 Count Eggs," "Item number 3001 – Easter Egg Hunt," "Item number 3041 – Vibrant Colors Chrome Eggs," and "Item number 3056 – Carrot Containers." The "12 Large Eggs" are colored plastic egg-shaped containers measuring approximately 2.5 inches in height packaged 12 pieces to a polybag for retail sale. The "48 Count Eggs" are colored plastic egg-shaped containers measuring approximately 2.5 inches in height and packaged 48 pieces to a polybag for retail sale. The "Easter Egg Hunt" consists of 48 colored plastic egg-shaped containers each measuring 2.5 inches in height as well as one gold colored and one silver colored container each measuring 3.5 inches in height for a total of 50 containers. The "Vibrant Colors Chrome Eggs" are colored plastic egg-shaped containers each measuring approximately 2.5 inches in height and packaged eight pieces to a polybag for retail sale. The "Carrot Containers" consist of plastic carrot-shaped containers that are orange in color with a green colored top, each measuring approximately 3.25 inches in height and packaged eight pieces to a polybag for retail sale.

The plastic egg-shaped containers in NY N007698 are identified as "Item number 3019 – Easter Egg Candy Container." Each measures 2.5 inches in height. There is a hole at the top of each for hanging. No strings are included.

The plastic container in NY N021076 is identified as "Item No. CT1401 Plastic Easter Egg Containing Knit Hair Ponyo's." The item consists of six plastic eggs each containing five ponytail holders matching the color of the eggs and retail packaged in disposable netting. The ponytail holders are constructed of elasticized knit polyester fabric and are approximately 1.25 inches in diameter. The plastic eggs are transparent egg-shaped containers of various colors that are approximately 3 inches long and 1.5 inches in diameter. The egg-shaped containers are suitable for repetitive use.

The plastic containers in NY H86212 are available in assorted colors. They are identified as "item number 862041, Easter candy containers." The containers are in the shape of a bunny with a hollow body.

The plastic containers in NY N025433 are identified as "Easter Chick Containers, set of 3, item number A081KA01100." This item is comprised of three identical hollow containers made of 100% polypropylene plastic material. The body of each container is egg-shaped, yellow in color, and measures 3.5 inches in height by 2.5 inches wide. Each container has painted onto it black eyes, an orange beak, a yellow wing on each of the two opposing sides, and orange feet, evoking the appearance of a chicken.

The plastic containers in NY D81320 are identified as "Pooh Filler Eggs, item #612416," "Item #611532, 3 Piece Puzzle Eggs," and "Easter Egg Clipable Candy Dispenser, item #612091." The "Pooh Filler Eggs" item consists of six colored plastic egg-shaped containers. One side of the egg is decorated

with the raised impression of the head of the "Pooh" character. Encircling "Pooh" are tiny pin holes. No string or chain is included. The eggs open lengthwise and are hollow inside. The "Pooh Filler Eggs" will be packaged in a polybag with header. The "3 Piece Puzzle Eggs" are hollow, plastic, colored egg-shaped containers packaged four to a bag with a header card. Each container is made of three sections, which vary in color. The sections pull apart and are interchangeable allowing to mix and match the pieces to obtain different color combinations. The containers contain a pin hole at one end for hanging. The "Easter Egg Clipable Candy Dispenser" is a plastic oval-shaped container measuring 4 inches in length and 2.75 inches in width, and packaged in a clear bag with cardboard header. A small panel slides down on the side allowing the container to be filled and emptied. The cover contains the raised impression of decorated eggs. A clip is affixed to the back, which allows it to be fastened onto bags, books, and similar items.

The merchandise in NY C83630 is identified as "Fill or Hang Bunny Eggs." It consists of six plastic egg-shaped containers in a net package with cardboard header. The containers are hollow and break open lengthwise. Each container is colored on one side while the other side is transparent and painted with the face of a bunny with protruding ears measuring 4 inches in length each.

The plastic container in HQ 961700 is identified as "Easter Egg Container #3." It consists of two dozen pastel colored egg-shaped containers in a "novelty net bag." The containers are 2 inches long. The "novelty net bag" is a plastic net drawstring bag resembling a rabbit with stuffed textile representations of a rabbit's head, feet, and legs attached in the appropriate places on the bag.

ISSUE:

1. Whether the fillable plastic containers are classifiable in heading 3924, HTSUS, as household articles of plastics, or in heading 3926, HTSUS, as other articles of plastics, or in heading 9505, HTSUS, as festive articles.

2. Whether, when combined with plastic bags or in one instance filled with ponytail holders, the product constitutes a set with the fillable plastic container imparting the essential character.

LAW AND ANALYSIS:

Merchandise imported into the United States is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation ("GRIs") and, in the absence of special language or context which requires otherwise, by the Additional U.S. Rules of Interpretation ("AUSR"). The GRIs and the AUSR are part of the HTSUS and are to be considered statutory provision of law for all purposes. GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in their appropriate order. Pursuant to GRI 6, classification at the subheading level uses the same rules, *mutatis mutandis*, as classification at the heading level.

GRI 3 provides, in relevant part, as follows:

> 3. When, by application of rule 2(b) or for any other reason, goods are, [*prima facie*], classifiable under two or more headings, classification shall be effected as follows:

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

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

(c) When goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

The HTSUS headings under consideration are the following:

3924	Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics:
3926	Other articles of plastics and articles of other materials of headings 3901 to 3914:
9505	Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof:

Note 2(y) to chapter 39, HTSUS, provides that this chapter does not cover articles of chapter 95, HTSUS.

Note 1(w) to chapter 95, HTSUS, states that this chapter does not cover, "Tableware, kitchenware, toilet articles, carpets and other textile floor coverings, apparel, bed linen, table linen, toilet linen, kitchen linen and similar articles having a utilitarian function (classified according to their constituent material)."

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

EN (VIII) to GRI 3(b), states, "The factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods."

EN (X) to GRI 3(b) defines the term "set" in GRI 3(b) as follows:

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

(a) consist of at least two different articles which are, *prima facie*, classifiable in different headings ...

(b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and

(c) are put up in a manner suitable for sale directly to end users without repacking (e.g., in boxes or cases or on boards).

EN 39.24 states that heading 3924 covers the following articles of plastics:

(A) Tableware such as tea or coffee services, plates, soup tureens, salad bowls, dishes and trays of all kinds, coffee-pots, teapots, sugar bowls, beer mugs, cups, sauce-boats, fruit bowls, cruets, salt cellars, mustard pots, egg-cups, teapot stands, table mats, knife rests, serviette rings, knives, forks and spoons.

(B) Kitchenware such as basins, jelly moulds, kitchen jugs, storage jars, bins and boxes (tea caddies, bread bins, etc.), funnels, ladles, kitchen-type capacity measures and rolling-pins.

(C) Other household articles such as ash trays, hot water bottles, match-box holders, dustbins, buckets, watering cans, food storage containers, curtains, drapes, table covers and fitted furniture dust-covers (slipovers).

(D) Hygienic and toilet articles (whether for domestic or non-domestic use) such as toilet sets (ewers, bowls, etc.), sanitary pails, bed pans, urinals, chamber-pots, spittoons, douche cans, eye baths; teats for baby bottles (nursing nipples) and finger-stalls; soap dishes, towel rails, tooth-brush holders, toilet paper holders, towel hooks and similar articles for bathrooms, toilets or kitchens, not intended for permanent installation in or on walls. However, such articles intended for permanent installation in or on walls or other parts of buildings (e.g., by screws, nails, bolts or adhesives) are **excluded** (**heading 39.25**).

EN 39.26 states, in relevant part:

This heading covers articles, not elsewhere specified or included, of plastics (as defined in Note 1 to the Chapter) or of other materials of headings 39.01 to 39.14. They include: ... (3) Statuettes and other ornamental articles.

EN 95.05 states, in relevant part, that heading 9505 covers the following:

(A) **Festive, carnival or other entertainment articles**, which in view of their intended use are generally made of non-durable material. They include: (1) Festive decorations used to decorate rooms, tables, etc. (such as garlands, lanterns, etc.); decorative articles for Christmas trees (tinsel, coloured balls, animals and other figures, etc); cake decorations which are traditionally associated with a particular festival (e.g., animals, flags) ....

The heading also **excludes** articles that contain a festive design, decoration, emblem or motif and have a utilitarian function, e.g., tableware, kitchenware, toilet articles, carpets and other textile floor coverings, apparel, bed linen, table linen, toilet linen, kitchen linen.

If the instant fillable plastic containers are properly classified under heading 9505, HTSUS, they cannot be classified under headings 3924 or 3926,

HTSUS. *See* Note 2(y) to Chapter 39, HTSUS. Therefore, we must first consider whether the instant containers are classifiable in heading 9505, HTSUS.

Heading 9505, HTSUS, provides, among other things, for festive, carnival, or other entertainment articles. EN 95.05 explains that these articles are typically made of non-durable material and include festive decorations used to decorate rooms, tables or Christmas trees such as garlands, lanterns, tinsels, colored balls, and other figures. The heading excludes articles that contain a festive design, decoration, emblem or motif, and have a utilitarian function. The Court of Appeals for the Federal Circuit ("CAFC") has laid out the following two-prong test for determining whether a product is a festive article of heading 9505, HTSUS: "(1) [I]t must be closely associated with a festive occasion and (2) the article [must] be used or displayed principally during that festive occasion." *Michael Simon Design, Inc. v. United States*, 501 F.3d 1303, 1306 (Fed. Cir. 2007) (citations omitted). "[C]losely associated with a festive occasion" requires that "the physical appearance of an article is so intrinsically linked to a festive occasion that its use during other time periods would be aberrant." *See Park B. Smith, Ltd. v. United States*, 347 F.3d 922, 927 (Fed. Cir. 2003) (citations omitted).

The subject containers do not satisfy the first prong of the festive articles test set forth in *Michael Simon Design, supra* because they are not closely associated with Easter. Although the containers are egg-shaped or carrot-shaped, or in the shape of a bunny, they hold various items such as coins and ponytail holders all year.[2] The plastic containers can be filled with candy, ponytail holders, cards, animal erasers, cookies, and small gifts to give away as prizes at children's parties or parades any time during the year.[3] Thus, it would not be "aberrant" to use them throughout the year.

The containers do not satisfy the second prong of the *Michael Simon Design*test because they are not used or displayed principally during Easter. These containers are not decorated eggs principally used during the Easter holiday observed on the first Sunday after the full moon after the vernal equinox. *See* NY 869171, dated December 17, 1991 (classifying a hand-painted wooden decorative egg in heading 9505, HTSUS); NY R04944, dated September 29, 2006 (classifying a decorated Easter egg in heading 9505, HTSUS).

Arguendo, the containers could be described as festive or entertainment articles due to being egg-shaped or due to any Easter design or motif pictured on the container, they are excluded from heading 9505, HTSUS, by virtue of Note 1(w) to chapter 95, HTSUS and EN 95.05. The containers snap closed to secure and protect the small articles inside. They are functional and utilitarian articles, excluded as such.

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[2] Easter is "an annual Christian festival in commemoration of the resurrection of Jesus Christ, observed on the first Sunday after the first full moon after the vernal equinox, as calculated according to tables based in Western churches on the Gregorian calendar or in Orthodox churches on the Julian calendar. Easter Definition, DICTIONARY.COM, http://www.dictionary.com/ browse/easter (last visited Apr. 3, 2018).

[3] *See* Plastic Surprise Easter Eggs, https://www.amazon.co.uk/UNOMOR-Plastic-Surprise-Easter-Containers/dp/B078HW4VQ2 (last visited Apr. 3, 2018) (a purchaser commented that, "These are the perfect eggs! My children love it when they get a surprise egg and these hold so many things inside. Don't just buy them for Easter, but all year! They are fantastic quality and I expect them to last us for quite some time.").

Therefore, the instant containers are not a festive article of heading 9505, HTSUS, and are not excluded from Chapter 39, HTSUS, pursuant to Note 2(y) to this chapter. We will next determine whether they are classifiable under heading 3924, HTSUS, as household articles of plastics or under heading 3926, HTSUS, as other articles of plastics.

Heading 3924, HTSUS, covers tableware, kitchenware, and other household articles "such as ash trays, hot water bottles, matchbox holders, dustbins, buckets, watering cans, food storage containers, curtains, drapes, table covers and fitted furniture dust-covers (slipovers)." EN 39.24. The essential characteristics of these listed articles are that they are of plastic, are used in the household, and are reusable. *See* HQ H251141, dated December 15, 2014 (classifying portable plastic air freshener units in heading 3926, HTSUS and not in heading 3924, HTSUS, because they did not belong to a class of product principally used in the home and were not of the same class or kind as the exemplars of household articles listed in EN 39.24). According to EN 39.24, household articles are utilitarian and decorative in character or function as an ash tray and are closely associated with household functions and activities such as dustbins and buckets for cleaning, watering cans for watering plants, and food storage containers for storing food products. Unlike the exemplars listed in EN 39.24, the plastic fillable containers are not strictly or primary used in the household. The fillable containers are designed to facilitate the consumer's personal transportation and storage of candy, and other small food or non-food items, and are usable at home, in a car, in an office, in a garden, and in a variety of other locations. As a result, the containers are not household articles of plastics within the meaning of heading 3924, HTSUS.

We next turn to heading 3926, HSTUS, which is a residual provision and covers articles of plastics not elsewhere specified or included. Heading 3926, HTSUS, is a general heading or basket provision, as evidenced by the word "other." *See Item Co. v. United States*, 98 F.3d 1294, 1296 (Fed. Cir. 1996). Classification of imported merchandise in a basket provision is only appropriate if there is no tariff provision that covers the merchandise more specifically. *See EM Indus., Inc. v. United States*, 22 CIT 156, 165 (1998). Since the plastic containers are not included in headings 3924 and 9505, HTSUS, they fall by default into heading 3926, HTSUS. *See* HQ H177798, dated February 5, 2015 (classifying a plastic candy dispenser under heading 3926, HTSUS, as an inexpensive but functional device for the storage, transport, and dispensing of candy); NY R03928, dated May 16, 2006 (classifying two-piece egg-shaped hollow plastic containers colored and printed to resemble sports balls and used as decorations for sports themed parties in subheading 3926.40.00, HTSUS); NY K88154, dated August 18, 2004 (classifying animal decorative plastic containers designed to resemble the traditional Easter egg and to be filled with small items in subheading 3926.40.00, HTSUS); NY M85563, dated August 18, 2006 (classifying plastic egg-shaped containers including one styled as a carrot, that are opened in half and can be filled with candy or other small treats in subheading 3926.40.00, HTSUS); NY L88278, dated November 9, 2005 (classifying two-piece egg-shaped plastic containers colored and printed to resemble sports balls to be used as decorations for sports themed parties and to be filled with small items such as candy or change in subheading 3926.40.00, HTSUS). Just like the plastic containers in these rulings, the instant containers can be opened and filled with candy and/or trinkets, and their primary purpose is to load and carry small items.

Some of the containers are packaged in a polybag for retail sale (*see* NY N013622, NY N012286, NY D81320, *supra*), in a reusable carry bag of vinyl with a zippered closure (*see* NY N013622, *supra*), in a clear bag with cardboard header (*see* NY D81320, *supra*), in a plastic net drawstring bag with stuffed textile representations of a rabbit's head, feet, and legs attached in the appropriate places of the bag (*see* HQ 961700, *supra*), in a disposable netting (*see* NY N021076, *supra*), or contain ponytails (*see* NY N021076, *supra*). The disposable netting, polybags, and other plush appear to be packaging of the merchandise and under GRI 5, they are classified with the goods. The drawstring bag, the reusable carry bag of vinyl, the clear bag with cardboard header, and ponytails are another component of the entire good, and thus, these items must be classified in accordance with GRI 3. Consistent with the EN (X) to GRI 3(b), the goods are put up in sets for retail sale because they consist of at least two different articles that are *prima facie* classifiable in different headings (for example: plastic containers in 3926, HTSUS, plastic bags in 4202, HTSUS, and ponytail holders in 6117, HTSUS); are put up together to facilitate the transportation of trinkets; and are put up in a manner suitable for sale directly to users without repacking. Thus, we need to address whether these bags are classified as part of the retail set or separately. Pursuant to GRI 3(b), if the fillable plastic containers provide the set with its essential character, then the entire set should be classified under the heading for the container, which we determined was heading 3926, HTSUS. If not, then the set should be classified according to that other item that provides the essential character.

In *Estee Lauder, Inc. v. United States*, 815 F. Supp. 2d 1287, 1299–1300 (CIT 2012), the Court of International Trade ("CIT") held that a GRI 3(b) set should be classified according to the item that provided the essential character. Essential character is determined based on a review of "the nature of the [good], its bulk, quantity, weight or value, or by the role of a constituent [good] in relation to the use of the goods." *Id.* at 1300. This list is not exhaustive. The essential character of an article is "'that which is indispensable to the structure, core or condition of the article, i.e., what it is.' Further, 'the existence of other materials which impart something to the article ought not to preclude an attempt to isolate the *most outstanding and distinctive characteristic* of the article.'" *Structural Indus., Inc. v. United States*, 29 CIT 180, 185, 360 F. Supp. 2d 1330, 1336 (2005) (citations omitted).

While the plastic drawstring bag, the vinyl carry bag, and the clear bag with cardboard header are reusable, they contain the actual article being sold, namely the plastic containers. We note that by application of GRI 3(b), the component that provides the subject merchandise with its essential character would be the fillable plastic container because it is the more substantial article and the "most outstanding and distinctive characteristic" of the set that will be filled with candy and other small gifts after purchase. This is also the case for the ponytail holder-filled container. The containers provide the bulk and weight of the article and are more important in relation to the role of the good.

Therefore, the instant fillable plastic containers are provided for under subheading 3926.40.00, HTSUS, as "[o]ther articles of plastics ... [s]tatuettes and other ornamental articles."

HOLDING:

By application of GRIs 1, 3(b), 5, and 6, the subject fillable plastic containers (sold with or without bags, and with or without ponytail holders) are classified in heading 3926, HTSUS, specifically under subheading 3926.40.00, HTSUS, which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Statuettes and other ornamental articles." The 2018 rate of duty is 5.3% *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY N018731, dated November 8, 2007, is hereby REVOKED.
NY N013622, dated July 25, 2007, is hereby REVOKED.
NY N012286, dated July 5, 2007, is hereby REVOKED.
NY N021076, dated January 16, 2008, is hereby REVOKED.
NY H86212, dated January 14, 2002, is hereby REVOKED.
NY N025433, dated April 25, 2008, is hereby REVOKED.
NY D81320, dated September 8, 1998, is hereby REVOKED.
NY C83630, dated February 4, 1998, is hereby REVOKED.
HQ 961700, dated February 19, 1999, is hereby REVOKED.
NY N007698, dated March 30, 2007, is hereby MODIFIED.

Sincerely,

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Cc: Ms. Miriam Espinoza
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19 CFR PART 177

REVOCATION OF THREE RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF INFLATABLE AQUATIC ARTICLES FOR PHYSICAL RECREATION

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

ACTION: Notice of revocation of three ruling letters and of revocation of treatment relating to the tariff classification of inflatable aquatic articles for physical recreation.

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 three ruling letters concerning tariff classification of inflatable aquatic articles for physical recreation under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 50, No. 34, on August 24, 2016. Two 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 November 26, 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. 50, No. 34, on August 24, 2016, proposing to revoke three ruling letters pertaining to the tariff classification of inflatable aquatic articles for physical recreation. 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") K88277, dated August 17, 2004, and NY F84500, dated March 29, 2000, CBP classified inflatable aquatic articles for physical recreation in heading 3926, HTSUS, specifically in subheading 3926.90.75, HTSUS, which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Pneumatic mattresses and other inflatable articles, not elsewhere specified or included." In NY N019683, dated November 26, 2007, CBP classified inflatable aquatic articles for physical recreation in heading 9506, HTSUS, specifically in subheading 9506.29.00, HTSUS, which provides for "Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof: Water skis, surf boards, sailboards and other water-sport equipment; parts and accessories thereof: Other." CBP has reviewed NY K88277, NY F84500, and NY N019683 and has determined the ruling letters to be in error. It is now CBP's position that inflatable aquatic articles for physical recreation are properly classified, by operation of GRIs 1 and 6, in heading 9506, HTSUS, specifically in subheading 9506.99.60, HTSUS, which provides for "Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof: Other: Other."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY K88277, NY F84500, and NY N019683 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter ("HQ") H225359, set forth as an attachment to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: July 25, 2018

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

Attachment

HQ H225359

July 25, 2018

CLA-2 OT:RR:CTF:CPMM H225359 RGR

CATEGORY: Classification

TARIFF NO.: 9506.99.6080

MR. KEVIN ANDERSON
WHAM-O INC.
5903 CHRISTIE AVENUE
EMERYVILLE, CA 94608

RE: Revocation of NY K88277, NY N019683, and NY F84500; Classification of Inflatable Aquatic Articles for Physical Recreation

DEAR MR. ANDERSON:

This is in reference to New York Ruling Letter (NY) K88277, dated August 17, 2004, issued to you concerning the tariff classification of two Sea Doo brand products, Splash Island and Paradise Peak, under the Harmonized Tariff Schedule of the United States (HTSUS). Both are plastic inflatable floats meant for use in calm open water. U.S. Customs and Border Protection (CBP) classified them under heading 3926, HTSUS, as other articles of plastics. We have reviewed NY K88277 and find it to be in error.

Upon reconsideration, we have determined that the appropriate classification for inflatable aquatic articles for physical recreation, like the ones in NY K88277, is under heading 9506, HTSUS, and, more specifically, subheading 9506.99, HTSUS, as other sports or outdoor games. Accordingly, we propose revocation of NY K88277 as well as two other rulings on similar inflatable aquatic articles. In NY F84500, dated March 29, 2000, CBP erred when classifying H2O Mountain, H2O Trampoline, and H2O Totter under heading 3926, HTSUS. In NY N019683, dated November 26, 2007, CBP properly classified a water bouncer under heading 9506, HTSUS, but erred when classifying it under subheading 9506.91, HTSUS, as articles for general physical exercise, gymnastics or athletics. The appropriate classification for the products described in NY F84500 and NY N019683 is the same as what we have determined for NY K88277, *i.e.*, under heading 9506, HTSUS, and, more specifically, subheading 9506.99, HTSUS, as other sports and outdoor games.

Pursuant to 19 U.S.C. § 1625(c)(1), a notice was published in the *Customs Bulletin*, Volume 50, No. 34, on August 24, 2016, proposing to revoke NY K88277, NY N019683, and NY F84500, and any treatment accorded to substantially similar transactions. Two comments were received and the arguments made therein were considered in this office's analysis below.

FACTS:

The subject merchandise at issue in NY K88277 consists of two Sea Doo brand products, Splash Island and the Paradise Peak, which are plastic inflatable floats meant to facilitate physical recreation in calm open water. Splash Island resembles a trampoline, and includes a small inflatable extension identified as an easy access platform that provides access for the jumper as well as a seating area for a second person. Paradise Peak resembles a sliding pond. There are recesses (molded steps) on one side so that a person can climb to the top and then slide down the other side. The float portion underneath the sliding pond provides a shaded resting area that is large

enough for several people. There is an easy access inflatable platform extension on the climbing part of the float, and an additional floating platform next to the resting area. Both Splash Island and Paradise Peak incorporate anchor bags and anchor ropes.

In addition to the original descriptive information set forth in NY K88277, we have reviewed representative product specific literature that is available on the Internet.[1] Splash Island has a 125" diameter (with a 72" diameter for the nylon jump area). It is constructed of 30 gauge PVC and has the following features (in addition to what was described in NY K88277): four soft vinyl handles, four swimmer ropes, and a wrap-around swimmer rope. The total weight limit for Splash Island is 1000 pounds and the jump surface weight limit is 235 pounds. Paradise Peak has the following dimensions: 10.5' x 7' x 7.5' and a 8' x 4' sliding surface. There are soft vinyl handles attached at various points on the molded steps as well as on the access platforms. The total weight limit for Paradise Peak is 600 pounds and the access platform and sliding surface are limited to 200 pounds.

ISSUE:

(1) Whether the Splash Island and Paradise Peak Sea Doo brand products are classified under heading 3926, HTSUS, as other articles of plastics, or heading 9506, HTSUS, as other sports or outdoor games.
(2) If these articles are classified under heading 9506, HTSUS, what is the correct subheading?

LAW AND ANALYSIS:

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

3926	Other articles of plastics and articles of other materials of headings 3901 to 3914:
	* * *
3926.90	Other:
	* * *

[1] Quality Adventure LLC's website, QualityInflatables.com, provides information on Splash Island and Peak Island. While both models are no longer in stock, the product information is considered representative for both products given that it is consistent with the other descriptive information previously provided in NY K88277. *See* "Sea-Doo Inflatable 125" Splash Island" *at http://qualityinflatables.com/seadooisland20031.html* (last visited December 29, 2015) and "Sea-Doo Inflatable Paradise Peak Island" *at http://www.qualityinflatables.com/62098.html* (*last visited* December 29, 2015). The Splash Island model depicted on the website does not appear to include a seating area, which is mentioned in the product description in NY K88277, but appears to be otherwise the same in terms of its design features.

3926.90.7500	Pneumatic mattresses and other inflatable articles, not elsewhere specified or included
* * *	
9506	Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof:
	* * *
	Water skis, surf boards, sailboards and other water-sport equipment; parts and accessories thereof
	* * *
9506.29.00	Other:
	* * *
9506.29.0080	Other
	* * *
9506.91.00	Articles and equipment for general physical exercise, gymnastics or athletics; parts and accessories thereof
	* * *
9506.91.0030	Other
9506.99	Other:
	* * *
9506.99.60	Other
	* * *
9506.99.6080	Other

The only applicable note is Legal Note 2(y) to Chapter 39, which provides as follows: "This chapter does not cover: ... [a]rticles of chapter 95 (for example, toys, games and sports equipment)[.]"

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System (HS) at the international level. While not legally binding, the ENs provide a commentary on the scope of each heading of the HS and are thus useful in ascertaining the proper classification of merchandise. *See* T.D. 89–90, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989). The relevant ENs, which are for heading 9506, are the following:

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

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

(B) **Requisites for other sports and outdoor games (other than** toys presented in sets, or separately, of **heading 95.03**), e.g.:

* * *

(2) Water-skis, surf-boards, sailboards and other water-sport equipment, such as diving stages (platforms), chutes, divers' flippers and respiratory masks of a kind used without oxygen or compressed air in bottles, and simple underwater breathing tubes (generally known as "snorkels") for swimmers or divers.

* * *

(12) Equipment of a kind used in children's playgrounds (e.g., swings, slides, see saws and giant strides).

* * *

Issue 1: Classification at the Heading Level

By application of GRI 1 and Legal Note 2(y) to Chapter 39, the threshold inquiry is whether the inflatable aquatic articles for physical recreation are classifiable under heading 9506, HTSUS. If so, then classification under heading 3926 is precluded. We have determined that Splash Island and Paradise Peak are intended to facilitate physical recreation in the form of sports or outdoor games, as described in EN (B)(2) to heading 9506. HTSUS. Splash Island, which has a jump surface weight limit, is intended for bouncing and serving as a platform to bounce and jump into water. Paradise Peak is intended for climbing and sliding into water. While it may be possible to lounge upon these articles, that is not their primary function nor would a consumer buy such articles principally for this purpose. *Cf.* HQ 966929, dated March 23, 2004 (determining that the subject floating pool lounger was "not intended for use in connection with any sporting or athletic activity as are the items set forth in EN 95.06" and its "purpose is as a lounging device for relaxing in the water and not for any type of physical activity"). In short, Splash Island and Paradise Peak are akin to outdoor play equipment (albeit for use in calm open water) and are thus classifiable under heading 9506, HTSUS.

It is noteworthy that the substantial construction of Splash Island and Paradise Peak means that they are distinguishable from toys of heading 9503, HTSUS. Splash Island and Paradise Peak lack the "manipulative play value or frivolous amusement characteristic of a toy," which is a defining characteristic of articles of heading 9503 cited in NY N122501, dated October 6, 2010 (holding that a modular slide kit is not a toy of heading 9503). This is a critical distinction from the land-based inflatable play structures that CBP has classified as toy sports equipment of heading 9503. *See, e.g.*, HQ H097740, dated March 29, 2011 (classifying an inflatable land-based play structure, identified as the "Mega Bounce Trampoline," under heading 9503). While they are intended for bouncing/jumping and climbing/sliding, Splash Island and Paradise Peak are constructed of 30 gauge PVC, with anchoring systems, and they are designed to remain outdoors for extended periods of time. *Cf.* HQ 963284, dated June 12, 2001 (citing HQ 950758, dated January 3, 1992, wherein CBP found that a "Mini-Court" miniature basketball game was classified under subheading 9506.99 because "[i]t was not so flimsily constructed as to be an article for amusement, eligible for classification as a toy.")

Our determination to classify Splash Island and Paradise Peak under heading 9506, HTSUS, per the analysis above, does not rely on NY F84500, which was cited in NY K88277. Upon reconsideration, NY F84500 also appears to be in error. CBP incorrectly classified other inflatable aquatic articles for physical recreation, specifically H2O Mountain, H2O Trampoline, and H2O Totter, under heading 3926, HTSUS. In NY F84500, the products are described as follows:

> One item, described as the H2O Mountain, is an inflatable object made of 1000 denier PVC designed to float on water. The H2O Mountain has climbing handles randomly placed on three sides presenting variable degrees of climbing difficulty in a recreational activity similar to a climbing wall. The fourth side acts as a slide into the water. The H2O Mountain comes in eight, 14 and 20-foot sizes.
>
> A second item, the H2O Trampoline, is an inflatable water trampoline. The article comes in 10, 15 and 20-foot sizes and is made of 30 ounce, 1000 denier PVC around a multi-section steel framework.
>
> The H2O Totter consists of an inflatable teeter totter-like device made of 1000 denier, 30 ounce PVC. Two to six people can climb on opposite ends of the totter device and rock back and forth, trying to avoid falling into the water.

In NY F84500, CBP rejected classification of these three products under heading 9506, HTSUS, because they did not satisfy the terms of subheading 9506.29, HTSUS. While it is true that subheading 9506.29, HTSUS, did not apply to those three products (see analysis below), CBP did not consider the general applicability of heading 9506, HTSUS, and analyze its other subheadings, as appropriate. We have determined that H2O Mountain is similar to Paradise Peak, H2O Trampoline is similar to Splash Island, and H2O Totter is also used for comparable physical recreation on calm open water. Accordingly, these products are also classifiable under heading 9506, HTSUS, for the reasons set forth above.

Issue 2: Classification at the Subheading Level

Classification of Splash Island and Paradise Peak under heading 9506, HTSUS, is appropriate in light of the above, and so the next step in the classification analysis is to determine the proper subheading under the HTSUS. GRI 6 states that the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to the above rules, on the understanding that only subheadings at the same level are comparable. The subheadings under consideration are as follows: 9506.29, HTSUS, which provides for other watersport equipment; 9506.91, HTSUS, which provides for other articles and equipment for general physical exercise, gymnastics or athletics; and 9506.99, HTSUS, which provides for articles and equipment for other sports or outdoor games.

Subheading 9506.29, HTSUS, is inapplicable because Splash Island and Paradise Peak are not water-sport equipment. As noted in NY K88277, and consistent with EN (B)(2) to heading 9506, "this subheading [9506.29] is intended to cover such water sport articles as water skis, surf boards and body boards, sailboards, swim masks and flippers, underwater breathing tubes, swim training devices, and various other water sport equipment" and

"[t]he subject inflatable floats are not used in the performance or achievement of such similar sport/athletic water activities as are the aforementioned class of goods." While being towed by boats in order to perform will qualify an aquatic inflatable article for classification under subheading 9506.29, HTSUS, physical recreation in the form of jumping/bouncing and climbing/sliding in calm waters is not within its scope. *See* NY C88968, dated June 25, 1998 (classifying the following inflatable aquatic articles that are towable under subheading 9506.29: ski tubes with two air chambers and two large grab handles, and Ski Rocket and Jet Towable, both having grab handles and separate harness systems for towing).

Subheading 9506.91, HTSUS, is inapplicable because Splash Island and Paradise Peak are not "[a]rticles and equipment for general physical exercise, gymnastics or athletics." Neither the legal notes nor the ENs provide a definition of what is meant by this phrase, but EN (A) to heading 9506 provides some exemplars. None of those exemplars is comparable to jumping/bouncing and climbing/sliding for physical recreation on calm open water. With respect to Splash Island, we note that while land-based trampolines used for exercise and/or gymnastics are not specifically listed in EN (A), CBP has classified them under subheading 9506.91, HTSUS (*see, e.g.*, NY N144678, dated February 14, 2011). However, a trampoline-type device that is principally used for bouncing and jumping into water is distinguishable because it is not for general physical exercise, gymnastics or athletics; but, rather, it as an article for physical recreation. In this regard, Splash Island lacks the essential character of a traditional land-based trampoline and would not be classified under subheading 9506.91, HTSUS. The same is true for Paradise Peak, as climbing and sliding on calm open water are recreational in nature, as opposed to being for general physical exercise, gymnastics or athletics.

Because subheadings 9506.29 and 9506.91 are inapplicable, the classification of Splash Island and Paradise Peak falls under the residual "other" provision in subheading 9506.99, HTSUS. This determination is consistent with EN (B)(12) to heading 9506, HTSUS, which specifies that the heading covers "[e]quipment of a kind used in children's playgrounds" and identifies the following as examples thereof: "swings, slides, see saws and giant strides." Such equipment is for use in physical recreation that involves sports or outdoor games of heading 9506, HTSUS, other than those specifically covered by subheadings 9506.29 and 9506.91, HTSUS. The Court of International Trade has also previously determined that an article that is not classifiable in the other six-digit subheadings of heading 9506, HTSUS, but which "provide[s] users with meaningful exercise and a reasonable degree of physical activity" may be classified as other sport equipment under subheading 9506.99. *Streetsurfing LLC v. United States*, 11 F. Supp. 38 1287, 1302 – 04 (Ct. Int'l Trade 2014) (classifying waveboards under subheading 9506.99.60, HTSUS).

We note that classification of Splash Island and Paradise Peak under subheading 9506.99, HTSUS, is also consistent with other rulings on land-based playground equipment that facilitates physical recreation. *See, e.g.*, N260626, dated January 30, 2015 (classifying climbing structures under subheading 9506.99, HTSUS); NY L86306, dated July 26, 2005 (classifying slides under subheading 9506.99, HTSUS); and N019537, dated November 26, 2007 (classifying a teeter totter under subheading 9506.99, HTSUS).

Moreover, this rationale applies to the classification of the H2O Mountain, H2O Trampoline, and H2O Totter, as described in NY F84500.

Our determination to classify Splash Island and Paradise Peak under subheading 9506.99, HTSUS, per the analysis above, does not rely on NY N019683. Upon reconsideration, NY N019683 appears to be in error. CBP incorrectly classified a water bouncer under subheading 9506.29, HTSUS, instead of subheading 9506.99, HTSUS. In NY N019683, the water bouncer was described as follows:

> The Water Bouncer is [an inflatable tube] constructed of 30 Gauge PVC and includes a ladder, a storage bag, and a pump. The platform across the top of the tube enables either children or adults to bounce on the platform before jumping into the water. The Water Bouncer which is 10 feet in diameter may be towed by a boat for use in deep water.

We have determined that the water bouncer is similar to Splash Island and, thus, it is also classifiable under subheading 9506.99, HTSUS, for the reasons set forth above.

The first set of comments received by our office in response to the notice of proposed revocation of NY K88277, NY N019683, and NY F84500 argues that the instant ruling conflicts with HQ H145739, dated November 16, 2012, which classified inflatable swimming pool floats, chairs and lounges for infants, children, and adults in heading 6307, HTSUS. Specifically, the commenter requests that CBP revoke its prior treatment of substantially similar merchandise, including the articles addressed in HQ H145739. We understand that this issue is under review by the U.S. Court of International Trade. *See Swimways Corp. v. United States,* No. 13–00216 (Ct. Int'l Trade filed June 20, 2013) and *Swimways Corp. v. United States*, No.13–00397 (Ct. Int'l Trade filed Dec. 11, 2013). However, the articles at issue in HQ H145739 and *Swimways Corp.* are distinguishable from the protested merchandise because the merchandise in those matters are floats for lounging, are not for recreational activity, are not used in the performance or achievement of athletic water activities described in the EN to 95.06, and are not pieces of sports equipment within the scope of heading 9506, HTSUS.

The second set of comments urges CBP not to classify inflatable aquatic articles for physical recreation under subheading 9506.99.6080. HTSUSA (Annotated), but rather under subheading 9506.29.0080, HTSUSA, as addressed in NY N019683. As explained above, NY N019683 was in error because the merchandise at issue in that ruling was not water-sport equipment. Moreover, none of the exemplars in EN (A) to heading 9506, which describes "articles and equipment for general physical exercise, gymnastics, or athletics" under subheading 9506.91, HTSUS, is comparable to jumping/bouncing for physical recreation on calm open water. *Cf.* NY N144678, dated February 14, 2011, and HQ H270403, dated October 31, 2017 (traditional land-based trampolines are distinguishable from the merchandise in NY N019683 because they are used for general physical exercise, gymnastics or athletics). Therefore, the proper classification of the merchandise in NY N019683 is under subheading 9506.99.6080, HTSUSA.

HOLDING:

By application of GRIs 1 and 6, the Splash Island and Paradise Peak Sea Doo brand products are classified under subheading 9506.99.6080, HTSUSA, which provides for "Articles and equipment for general physical exercise,

gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof: ... Other: ... Other: ... Other: ... Other." The 2018 column one, general rate of duty is 4 percent *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY K88277, dated August 17, 2004, NY F84500, dated March 29, 2000, and NY N019683, dated November 26, 2007, are hereby revoked.

Sincerely,

ALLYSON MATTANAH
For

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

19 CFR PART 177

REVOCATION OF ONE RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF EZ COMB FROM CHINA

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

ACTION: Notice of revocation of one ruling letter and of revocation of treatment relating to the tariff classification of EZ Comb from China.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking one ruling letter concerning tariff classification of EZ Comb from China under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 52, No. 16, on April 18, 2018. No comments were received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after November 26, 2018.

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the public and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter,

classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether any other applicable legal requirement is met.

Pursuant to 19 U.S.C. § 1625(c)(1), a notice was published in the *Customs Bulletin*, Vol. 52, No. 16, on April 18, 2018, proposing to revoke one ruling letter pertaining to the tariff classification of EZ Comb from China. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

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

In New York Ruling Letter ("NY") N048195, dated February 3, 2009, CBP classified EZ Comb from China in heading 9615, HTSUS, specifically in subheading 9615.11.50, HTSUS, which provides for "Combs, hair-slides and the like; hairpins, curling pins, hair-curlers, and the like, other than those of heading 8516, and parts thereof: Combs, hair-slides, and the like: of hard rubber or plastic: Other: Other." CBP has reviewed NY N048195 and has determined the ruling letter to be in error. It is now CBP's position that EZ Comb from China is properly classified, in heading 9615, HTSUS, specifically in subheading 9615.11.10 or 9615.11.30, HTSUS, which provides for "Combs, hair-slides and the like; hairpins, curling pins, curling grips, hair-curlers and the like, other than those of heading 8516, and parts thereof: Combs, hair-slides and the like: Of hard rubber or plastics: Combs: Valued not over $4.50 per gross" or "...Other: Valued over $4.50 per gross."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY N048195 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter ("HQ") H088397, set forth as an attachment to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: July 25, 2018

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

Attachment

HQ H088397

July 25, 2018
CLA-2 OT:RR:CTF:CPM H088397 MAB
CATEGORY: Classification
TARIFF NO.: 9615.11.10/30

MS. MIKA MCLAFFERTY
GRUNFELD, DESIDERIO, LEBOWITZ, SILVERMAN AND KLESTADT, LLP
599 LEXINGTON AVENUE 36TH FLOOR
NEW YORK, NY 10022–7648

RE: Revocation of NY N048195; tariff classification of an EZ Comb from China

DEAR MS. MCLAFFERTY:

On February 3, 2009, U.S. Customs and Border Protection (CBP) issued your client, Telebrands Corp., New York Ruling Letter (NY) N048195. The ruling pertained to the tariff classification under the Harmonized Tariff Schedule of the United States (HTSUS) of a plastic hair accessory known as an "EZ Comb." We have reviewed additional information and find N048195 to be in error with respect to the tariff classification.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI, notice of the proposed action was published in the Customs Bulletin, Vol. 52, No. 16, on April 19, 2018. No comments opposing the instant action were received in response to the notice.

FACTS:

In NY N048195, CBP stated in pertinent part, the following:

> The item at issue is a plastic hair accessory referred to as an "EZ Comb." The hair accessory measures 5 inches by 2.5 inches, and features two rows of teeth that are joined together by adjustable bands. The adjustable bands are 2.5 inches long and are embellished with imitation gemstones. This item is used by women and girls to style their hair and to create updos, pony tails, butterfly twists, French twists and additional hair styles.
>
> The applicable subheading for the EZ Comb will be 9615.11.5000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Combs, hair-slides and the like; hairpins, curling pins, hair-curlers, and the like, other than those of heading 8516, and parts thereof: Combs, hair-slides, and the like: of hard rubber or plastic: Other: Other." The rate of duty will be free.

Additional information on the Telebrands website describes a similar if not identical item to the instant merchandise (called an "EZ CombsT") as having "dual combs with 10 durable bungees that stretch and hold your hair."[1]

ISSUE:

Whether the subject plastic hair accessory referred to as EZ Comb is considered a hair comb of subheading 9615.11.10/30, HTSUS, or a hair-slide of subheading 9615.11.50, HTSUS?

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[1] TELEBRANDS, *https://inventors.telebrands.com/EZCombs.html* (last visited on Dec. 28, 2017).

LAW AND ANALYSIS:

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

The HTSUS provisions under consideration are as follows:

9615	Combs, hair-slides and the like; hairpins, curling pins, curling grips, hair-curlers and the like, other than those of heading 8516, and parts thereof:
	Combs, hair-slides and the like:
9615.11	Of hard rubber or plastics:
	Combs:
9615.11.10	Valued not over $4.50 per gross
	Valued over $4.50 per gross:
9615.11.20	Of hard rubber
9615.11.30	Other
	Other:
9615.11.40	Not set with imitation pearls or imitation gemstones
9615.11.50	Other

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

Heading 9615, HTSUS, provides for, among other things, combs, hair-slides and the like. The ENs to heading 9615, HTSUS, state that the heading covers, *inter alia*:

(1) **Toilet combs of all kinds**, including combs for animals.

(2) **Dress combs of all kinds**, whether for personal adornment or for keeping the hair in place.

(3) **Hair-slides and the like** for holding the hair in place or for ornamental purposes.

These articles are usually made of plastics, ivory, bone, horn, tortoise-shell, metal, etc.

Heading 9615, HTSUS, specifically provides for combs, hair-slides and the like. Thus, there is no dispute that the instant merchandise is properly classified in heading 9615, HTSUS. Therefore, by application of GRI 6, we must determine classification at the subheading level. Regardless of whether EZ Comb is considered a comb or a hair-slide, there is no dispute that at the 6 digit level, it is classified in subheading 9615.11, HTSUS. The pertinent question therefore becomes as to its classification at the 8 digit level. The

alternatives are subheadings 9615.11.10/30, HTSUS, if the article is considered a comb, i.e., plastic hair combs valued not over $4.50 per gross or valued over $4.50 per gross: Other, or subheading 9615.11.50, HTSUS, if it is considered a hair-slide or something similar, i.e., plastic hair-slides and the like...Other.

As noted above, the supporting EN states that both dress combs and hair-slides may have the dual nature of holding the hair in place and adorning the hair. The EZ Comb indeed possesses this dual nature. However, neither the EN nor the Legal Notes to heading 9615, HTSUS, provide definitions for the words comb or hair-slides.

In considering the definition of comb, we note that the previous tariff schedule (TSUSA) in Subpart A, of Schedule 7, provided "the term combs means toothed instruments having not over two rows of teeth, for adjusting, cleaning, or confining hair, or for personal adornment." *See* Headquarters Rulings Letter HQ 951234 (March 11, 1992). Common definitions as found in dictionaries define a comb as "a toothed instrument used especially for adjusting, cleaning, or confining hair,"[2] as "a toothed strip of plastic, hard rubber, bone, wood, or metal, used for arranging the hair....or holding it in place,"[3] as well as a "small comb-shaped object that women put in their hair to hold their hair away from their face or for decoration."[4]

HQ 951234 also addressed the meaning of hair-slides and the like, and found no definition for the word hair-slides. However, common definitions as found in dictionaries include that it is British term for "a typically bar-shaped clip or ornament for the hair" and that the North American term is "barrette,"[5] that it is a British term for "a clip or bar for holding hair in place,"[6] it is "a decorative hinged clip that girls and women put in their hair to hold it in place,"[7] and in British it is "a hinged clip with a tortoiseshell, bone, or similar back, used to fasten the hair.

We find that the EZ Comb exhibits the characteristics of a comb and not a hair-slide and the like. Most noteworthy is that EZ Comb contains the word "comb" in its name and not "hair-slide," "barrette," or other like object (i.e., EZ Hair-Slide, EZ Barrette, etc.). It is therefore reasonable to assume that EZ Comb is named such because it has two combs with rows of teeth that are joined together on their non-toothed sides by adjustable elastic bands/bungees measuring 2.5 inches in length. Together the combs and bands/bungees hold the hair into place and create versatile hair styles. While the two combs are hidden underneath the hair (and therefore are not visible), the bands/bungees form a visible, decorative pattern on top of the hair. The gemstones attached to the bands/bungees are also decorative, adding to the aesthetic appearance.

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[2] MERRIAM-WEBSTER, *https://www.merriam-webster.com/dictionary/comb* (last visited on Dec. 28, 2017).

[3] DICTIONARY.COM, *http://www.dictionary.com/browse/comb* (last visited on Dec. 28, 2017).

[4] CAMBRIDGE DICTIONARY, *http://dictionary.cambridge.org/us/dictionary/english/comb* (last visited on Dec. 28, 2017).

[5] ENGLISH OXFORD LIVING DICTIONARIES, *https://en.oxforddictionaries.com/definition/hairslide* (last visited on Dec. 28, 2017).

[6] MERRIAM-WEBSTER, *https://www.merriam-webster.com/dictionary/hair%20slide* (last visited on Dec. 28, 2017).

[7] VOCABULARY.COM, *https://www.vocabulary.com/dictionary/hair%20slide* (last visited on Dec. 28, 2017).

A review of our prior rulings indicates that CBP has classified merchandise similar to EZ Comb in subheading 9615.11.30, HTSUS, including fashion double hair combs with metal teeth and decorative beads attached by fabric covered elastics (N086258 dated December 8, 2009), hair combs decorated with imitation pearls or plastic colored balls (NY 884650, dated May 6, 1993), decorative hair comb clips (N137675 dated January 4, 2011) and plastic toothed horseshoe headbands (N118302 dated September 3, 2010).

Since EZ Comb is anchored by two combs with teeth to secure the hair in place and does not contain any bars, hinges, or clips, it does not meet the dictionary definitions of a hair-slide (or the American-term of barrette), as noted above. Nor is it similar to any of the "hair-slides and the like" that CBP typically classifies in subheading 9615.11.50, HTSUS, including barrettes (NY 884650 dated May 6, 1993; NY K85329 dated April 26, 2004; and NY E85470 dated August 13, 1999), hair clips (N016358 dated September 5, 2007 and NY N218827 dated June 13, 2012), plastic tiaras and fabric headbands without teeth (NY PD B83463 dated April 5, 1997 and N199299 dated January 19, 2012) and a ponytailer (or scrunchie) to hold a ponytail (NY N028057 dated May 20, 2007).

Based on the above, the applicable subheading for the EZ Comb is 9615.11.10/30, HTSUS, which provides for "Combs, hair-slides and the like; hairpins, curling pins, curling grips, hair-curlers and the like, other than those of heading 8516, and parts thereof: Combs hair-slides and the like: Of hard rubber or plastics: Combs: Valued not over $4.50 per gross/Valued over $4.50 per gross: Other."

HOLDING:

Under the authority of GRIs 1 and 6, the subject EZ Comb is properly classifiable under subheading subheading 9615.11.10/30, HTSUS, which provides for "Combs, hair-slides and the like; hairpins, curling pins, curling grips, hair-curlers and the like, other than those of heading 8516, and parts thereof: Combs hair-slides and the like: Of hard rubber or plastics: Combs: Valued not over $4.50 per gross/Valued over $4.50 per gross: Other." The 2017 general column one duty rate is 14.4¢/gross + 2% *ad valorem* if valued not over $4.50 per gross or 28.8¢/gross + 4.6% *ad valorem* if valued over $4.50 per gross.

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

EFFECT ON OTHER RULINGS:

NY 048195, dated February 3, 2009 is hereby REVOKED in accordance with the above analysis.

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

Sincerely,

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

19 CFR PART 177

REVOCATION OF TWO RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF BRASS PLUMBING COMPONENTS

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

ACTION: Notice of revocation of two ruling letters and revocation of treatment relating to the tariff classification of brass plumbing components.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking two ruling letters concerning tariff classification of brass plumbing components under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 52, No. 18, on May 2, 2018. One comment was received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after November 26, 2018.

FOR FURTHER INFORMATION CONTACT: Nicholai Diamond, Electronics, Machinery, Automotive, and International Nomenclature Branch, Regulations and Rulings, Office of Trade, at (202) 325–0292.

SUPPLEMENTARY INFORMATION:

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. 18, on May 2, 2018, proposing to revoke two ruling letters pertaining to the tariff classification of brass plumbing components. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

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

In NY N262070 and NY L82336, CBP classified brass plumbing components in heading 7419, HTSUS, specifically in subheading 7419.99.50, HTSUS, which provides for: "Other articles of copper: Other: Other: Other: Other." CBP has reviewed NY N262070 and NY L82336 and has determined the ruling letters to be in error. It is now CBP's position that the brass plumbing components are properly classified, in heading 7412, HTSUS, specifically in subheading 7412.20.00, HTSUS, which provides for "Copper tube or pipe fittings (for example couplings, elbows, sleeves): Of copper alloys."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY N262070 and NY L82336 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter ("HQ") H260141, 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: August 6, 2018

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

Attachment

HQ H260141

August 6, 2018
CLA-2 OT:RR:CTF:EMAIN H260141 NCD
CATEGORY: Classification
TARIFF NO.: 7412.20.0035

MR. CRAIG M. SCHAU
MENLO WORLDWIDE TRADE SERVICES
6940 ENGLE ROAD, SUITE A
MIDDLEBURG HEIGHTS OH, 44130

RE: Revocation of NY N262070 and NY L82336; Classification of brass plumbing components

DEAR MR. SCHAU:

This letter concerns New York Ruling Letter (NY) N262070, issued to you on March 16, 2015 by U.S. Customs and Border Protection (CBP), concerning the tariff classification of five brass plumbing components under the Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed NY N262070, determined that it is incorrect, and for the reasons set forth below, are revoking the ruling.

We have additionally reviewed NY L82336, dated February 23, 2005, which likewise pertains to brass plumbing components, and have similarly determined that ruling to be incorrect. Accordingly, we are also revoking NY L82336.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice of the proposed action was published in the Customs Bulletin, Vol. 52, No. 18, on May 2, 2018. One comment opposing the proposed action was received in response. That comment is addressed below.

FACTS:

The merchandise at issue in both rulings at issue consists of various articles designed to connect pipe ends and fixtures in plumbing systems. Three of the articles at issue in NY L82336, and the sole article at issue in NY N262070, are brass "p-traps" designed to connect the ends of pipes to plumbing fixtures like sinks, bathtubs, and toilets.[1] They consist of a singular, uninterrupted bore that is straight at one end and convexly curved at the other so as to form the shape of the letter "P" (see Figure 1 below). By all indications, the p-trap at issue in NY N262070 is wholly made up of brass with a chrome finish. The three p-traps at issue in NY L82336 are predominantly made up of chrome-finished brass, but all three also include rubber washers and one of the three also includes an adapter of polyvinyl chloride (PVC) or acrylonitrile butadiene styrene (ABS).

The other two articles at issue in NY L82336 are a center outlet waste with slip joint connection and an end outlet waste, both of which are similarly designed to connect the ends of pipes to plumbing fixtures. The former consists of two separate apertures that curve 90 degrees at their ends, and that dovetail at their opposite ends into a single aperture (see Figure 2 below). The end outlet waste consists of a single aperture that curves 90

[1] Brass is a metal alloy consisting of copper and zinc. See Brass Definition, OXFORD DICTIONARY https://en.oxforddictionaries.com/definition/brass (last visited March 6, 2018).

degrees at one end and that intersects and flows into a perpendicular aperture at the other (see Figure 3 below). Like the p-traps at issue in NY L82336, both variants of the outlet wastes are predominantly brass in composition but also include rubber washers.

All p-traps and outlet wastes at issue in NY N262070 and NY L82336 were classified by CBP in heading 7419, HTSUS. They were specifically classified in subheading 7419.99.50, HTSUS, which provides for: "Other articles of copper: Other: Other: Other: Other."

Figure 1

Figure 2

Figure 3

ISSUE:

Whether the brass plumbing components are properly classified in heading 7412, HTSUS, as copper pipe fittings, or in heading 7419, HTSUS, as other articles of copper.

LAW AND ANALYSIS:

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in their appropriate order. GRI 3(b) provides, in relevant part, that "composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale...shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable."

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

The 2018 HTSUS provisions under considerations, in pertinent part, are as follows:

7412	Copper tube or pipe fittings (for example couplings, elbows, sleeves):
7412.20.00	Of copper alloys
7419	Other articles of copper:
	Other:
7419.99	Other:
	Other:
7419.99.50	Other

Because heading 7419, HTSUS, applies only to "other" articles of copper, we initially consider heading 7412, HTSUS, which applies more specifically to copper tube or pipe fittings. *See* EN 74.19 ("This heading covers all articles of copper *other than* those covered by the preceding headings of this Chapter..."). EN 74.12 provides in relevant part, as follows:

> The Explanatory Note to heading 73.07 applies, *mutatis mutandis,* to this heading.

In turn, EN 73.07 provides, in relevant part, as follows:

> This heading covers fittings of iron or steel, mainly used for connecting the bores of two tubes together, or for connecting a tube to some other apparatus, or for closing the tube aperture...
>
> * * *
>
> This heading therefore includes flat flanges and flanges with forged collars, elbows and bends and return bends, reducers, tees, crosses, caps and plugs, lap joint stub-ends, fittings for tubular railings and structural elements, off sets, multi-branch pieces, couplings or sleeves, clean out traps, nipples, unions, clamps and collars.

The term "pipe fitting" is not defined in the HTSUS. As such, it must be construed in accordance with its common meaning, which may be ascertained by reference to "standard lexicographic and scientific authorities" and to the pertinent ENs. *See GRK Can., Ltd. v. United States*, 761 F.3d 1354, 1357 (Fed. Cir. 2014). According to various technical references and EN 73.07 alike, pipe fittings denote articles used to connect pipes to each other and/or to wholly separate apparatus. *See L & B Prods. Corp. v. United States*, 66 Cust. Ct. 424, 429 (Cust. Ct. 1971) (citing *Audels Mech. Dictionary, Knight's New Am. Mech. Dictionary* and *The Dictionary of Mech. Eng'g* in defining "pipe fitting" as "auxiliary pieces to the main pipe system which is generally designed to transmit either a fluid or gas"); *see also GRK Canada, Ltd. v. United States*, 761 F.3d 1354, 1358 (Fed. Cir. 2014) ("Although an *eo nomine* provision generally describes the merchandise by name, not by use, such a provision may be limited by use when the name itself inherently suggests a type of use."). Those authorities and others also indicate that for purposes of tariff classification, pipe fittings encompass tees, traps, and elbows or bends. See EN 73.07 (enumerating those items as exemplars of pipe fittings); *see also Mitsubishi Int'l Corp. v. United States*, 78 Cust. Ct. 4, 19 (1977) (citing various mechanical engineering dictionaries in determining that bends and tees qualify as pipe fittings); *Mundo Corp.*, 56 Cust. Ct. 303, 308, 311 (1966) (determining that cleanouts used in conjunction with traps are describable as pipe fittings).[2]

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[2] As noted in HQ H168717, dated July 17, 2015, H.R. Conf. Rep. No. 100–576, at 549–50 (1988), reprinted in 1988 U.S.C.C.A.N. 1547, 1582–83, states as follows:

> Decisions by the Customs Service and the courts interpreting the nomenclature under the TSUS are not to be deemed dispositive in interpreting the HTSUS. Nevertheless, on a case-by-case basis prior decisions should be considered instructive in interpreting the HTSUS, particularly where the nomenclature previously interpreted in those decisions remains unchanged and no dissimilar interpretation is required by the text of the HTSUS.

In *Mitsubishi* and the above-cited *L & B Prods.*, the pertinent heading at issue was Schedule 6, part 2, subpart B of the TSUS, which provided for "Pipe and tube fittings, or

Common among those items, as well as various others enumerated in EN 73.07, is that they allow fluids to flow through their apertures while simultaneously affecting the flow of the fluid in some manner. Specifically, pipe tees combine or split fluid streams whereas bends, elbows, and traps change the directional flow of the fluid and, in the case of the traps, prevent backflow. *See Mitsubishi*, 78 Cust. Ct. at 19–20 (describing functions of bends and elbows). Thus, an article which conducts one or more of these functions while channeling fluid from one adjoining pipe end to another (or to an apparatus intake, as the case may be) qualifies as a pipe fitting. *See LeMans Corp. v. United States*, 660 F.3d 1311, 1320–21 (Fed. Cir. 2011) (holding that use of EN examples to define the scope of a tariff term is permissible).

As stated above, the subject p-traps and outlet wastes are all designed to connect pipe ends to various fixtures in plumbing systems. The p-traps, like any other common plumbing traps, consist of conjoined bends that effectively alter the direction in which fluid flows through the plumbing systems while preventing backflow into the fixtures. In light of this, and that "traps" are specifically identified as "pipe fittings" in case law and the relevant EN alike, the p-traps qualify as pipe fittings within the meaning of heading 7412, HTSUS. Both the outlet wastes incorporate the physical and functional aspects of bends and tees, insofar as they include turns and intersections that, respectively, alter directional fluid flow and combine fluid streams. Therefore, they likewise qualify as pipe fittings within the meaning of heading 7412, HTSUS. *See* HQ H282297, *supra*.

We note that all five articles at issue in NY L82336 include limited non-brass components, including rubber washers and, in the case of one of the p-traps, plastic adapters. Even if the articles at issue could be considered "composite goods" on this basis, our determination would remain unchanged. It is clearly the brass components which account for the overwhelming majority of the articles' surface areas and weights, and which wholly enable the transmission of fluid within plumbing systems. *See* EN(VIII) to GRI 3(b) ("Essential character...may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods."); *see also Home Depot USA, Inc. v. United States*, 491 F.3d 1334, 1337 (Fed. Cir. 2007) ("Many factors should be considered when determining the essential character...specifically including but not limited to those factors enumerated in Explanatory Note (VIII) to GRI 3(b)."). By any measure, therefore, all articles at issue in NY N262070 and NY L82336 are products of heading 7412, HTSUS.

In challenging this determination, the submitter of the above-referenced comment avers that these articles cannot be classified in heading 7412 under GRI 1 because they are also *prima facie* classifiable in heading 7419, HTSUS. We disagree. As stated above, heading 7419 can only be considered if the articles are not fully described by one of the more specific provisions preceding the heading. *See Dmv United States v. United States*, 25 C.I.T. 970, 972 (2001) ("The 'other,' or 'basket,' provision...should be used only if there is no tariff category that more specifically covers the merchandise."). Because they

iron or steel." 78 Cust. Ct. at 19; 66 Cust. Ct. at 428. In *Mundo Corp.*, the pertinent heading at issue was paragraph 327 of the Tariff Act of 1930, as modified by T.D. 51802, which provided for "Cast-iron pipe of every description, and cast-iron fittings for cast-iron pipe." 56 Cust. Ct. at 304. While neither of those provisions is identical to heading 7412, HTSUS, all three pertain to "pipe fittings." Therefore, because the proper interpretation of "pipe fitting" is central to the instant matter, those cases are instructive here.

are described fully by heading 7412, we need not reach the commenter's arguments that the articles are instead classified in heading 7419 pursuant to GRI 3.

Lastly, we disagree with the commenter's assertion that our determination is inconsistent with prior rulings pertaining to "other brass plumbing goods," including NY N267667 and NY N267669, both dated August 31, 2015, NY N262071, dated March 16, 2015, NY M84746, dated July 17, 2006, and NY I87619, dated November 7, 2002. None of the articles at issue in NY N267667, NY N267669, and NY M84746 are used to connect pipes to each other or to separate apparatus, and it is not clear whether the "brass subassembly" in NY I87619 is used to this end. Moreover, our determination is consistent with NY L83398, which was issued to you March 31, 2005, insofar as that ruling classified various items with the form and function of tees and bends in heading 7412, HTSUS. We therefore remain of the view that the particular plumbing components at issue are pipe fittings of heading 7412.

HOLDING:

By application of GRI 1, the subject brass components are classified in heading 7412, HTSUS. They are specifically classified in subheading 7412.20.0035, HTSUSA (Annotated), which provides for "Copper tube or pipe fittings (for example couplings, elbows, sleeves): Of copper alloys: Other: Of copper-zinc base alloys (brass): Threaded: Other." The duty rate is 3 percent *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY N262070, dated March 16, 2015, and NY L82336, dated February 23, 2005, are hereby REVOKED.

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

Sincerely,

ALLYSON MATTANAH
for

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

PROPOSED REVOCATION OF 11 RULING LETTERS AND PROPOSED MODIFICATION OF FIVE RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF CERTAIN SHEEP'S MILK CHEESES

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

ACTION: Notice of proposed revocation of 11 ruling letters, proposed modification of five ruling letters and revocation of treatment relating to the tariff classification of certain sheep's milk cheeses.

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 11 ruling letters and to modify five ruling letters concerning tariff classification of certain sheep's milk cheeses 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 October 26, 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: Beth Jenior, Food, Textiles, and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325–0347.

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 11 ruling letters and to modify five ruling letters pertaining to the tariff classification of certain sheep's milk cheese. Although in this notice, CBP is specifically referring to New York Ruling Letter ("NY C82288, dated December 8, 1997 (Attachment A), NY D81251, dated September 3, 1998 (Attachment B), NY D83014, dated October 2, 1998 (Attachment C), NY I82452, dated May 22, 2002 (Attachment D), NY I83887, dated July 16, 2002 (Attachment E), NY J88309, dated October 10, 2003 (Attachment F), NY M81478, dated April 11, 2006 (Attachment G), NY N089415, dated January 20, 2010 (Attachment H), NY N089417, dated January 20, 2010 (Attachment I), NY N104824, dated May 24, 2010 (Attachment J), and NY N236149, dated December 17, 2012 (Attachment K), and modification of NY 815281, dated October 4, 1995 (Attachment L), NY G85117, dated December 7, 2000 (Attachment M), NY J81192, dated March 12, 2003 (Attachment N), NY N094196, dated March 9, 2010 (Attachment O), and NY N099535, dated April 9, 2010 (Attachment P), 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 16 rulings identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should 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 the aforementioned rulings, CBP classified certain sheep's milk cheeses in heading 0406, HTSUS, specifically in subheading 0406.90.57, HTSUS, which provides for "Cheese and curd: other cheese: other cheeses, and substitutes for cheese, including mixtures of the above: cheeses made from sheep's milk: pecorino, in original loaves, not suitable for grating." CBP has reviewed the 16 rulings to be revoked or modified and has determined the ruling letters to be in error. It is now CBP's position that sheep's milk cheeses are properly classified, in heading 0406, HTSUS, specifically in subheading 0406.90.59, HTSUS, which provides for "Cheese and curd: other cheese: other cheeses, and substitutes for cheese, including mixtures of the above: cheeses made from sheep's milk: other."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke NY C82288, NY D81251, NY D83014, NY I82452, NY I83887, NY J88309, NY M81478, NY N089415, NY N089417, NY N104824, and NY N236149, and to modify NY 815281, NY G85117, NY J81192, NY N094196, and NY N099535, and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter ("HQ") H287482, set forth as Attachment Q to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: August 22, 2018

IEVA K. O'ROURKE
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachments

ATTACHMENT A

NY C82288
December 8, 1997
CLA-2–04:RR:NC:2:231 C82288
CATEGORY: Classification
TARIFF NO.: *0406.90.5700*

MS. MARINA THOMAS
SAVAL WEST, INC.
P.O. BOX 3073
FORT MYERS BEACH, FL 33932

RE: The tariff classification of sheep cheese from Bulgaria.

DEAR MS. THOMAS:

In your letter, dated November 26, 1997, you have requested a tariff classification ruling.

The product is Bulgarian, white, brined sheep cheese. The ingredients are sheep cheese, water, and salt. It is packed in cans.

The applicable subheading for the Bulgarian, white, brined sheep cheese will be *0406.90.5700*, Harmonized Tariff Schedule of the United States (HTS), which provides for cheese and curd, other cheese, other cheeses, and substitutes for cheese, including mixtures of the above, cheeses made from sheep's milk, pecorino, in original loaves, not suitable for grating. The rate of duty will be free.

Importations of this product are subject to import regulations administered by various U.S. agencies. Requests for information regarding applicable regulations administered by the U.S. Department of Agriculture may be addressed to that agency at the following location:

U.S. Department of Agriculture
Federal Building, Room 758
6505 Belcrest Road
Hyattsville, MD 20782
Att: Dr. John Blackwell

A.P.H.I.S. Veterinary Services

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import specialist Ralph Conte at (212) 466–5759.

Sincerely,

ROBERT B. SWIERUPSKI
Director
National Commodity Specialist Division

ATTACHMENT B

NY D81251
September 3, 1998
CLA-2–04:RR:NC:2:231 D81251
CATEGORY: Classification
TARIFF NO.: *0406.90.5700*

MS. ANDREA PIETRI
SAVANT CUSTOMS BROKERS AND FREIGHT FORWARDERS, INC.
11 BROADWAY, SUITE 1068
NEW YORK, NY 10004

RE: The tariff classification of sheep cheese from Turkey.

DEAR MS. PIETRI:

In your letter, dated August 10, 1998, you have requested a tariff classification ruling on behalf of your client, Near East Importing Corporation, Glendale, NY.

The product is white sheep cheese. It will be packed in vacuum packed and/or sealed cans. The net weight will be 0.5 or one kilograms.

The applicable subheading for the white sheep cheese will be *0406.90.5700*, Harmonized Tariff Schedule of the United States (HTS), which provides for cheese and curd, other cheese, other cheeses, and substitutes for cheese, including mixtures of the above, cheeses made from sheep's milk, pecorino, in original loaves, not suitable for grating. The rate of duty will be free.

Importations of this product are subject to import regulations administered by various U.S. agencies. Requests for information regarding applicable regulations administered by the U.S. Department of Agriculture may be addressed to that agency at the following location:

U.S. Department of Agriculture A.P.H.I.S. Veterinary Services
Federal Building, Room 758
6505 Belcrest Road
Hyattsville, MD 20782
Att: Dr. John Blackwell

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import specialist Ralph Conte at (212) 466–5759.

Sincerely,

ROBERT B. SWIERUPSKI
Director
National Commodity Specialist Division

ATTACHMENT C

NY D83014

October 2, 1998
CLA-2–04:RR:NC:2:231 D83014
CATEGORY: Classification
TARIFF NO.: *0406.90.5700*

MR. RUSSELL THORNBURG
RUSSELL BRUCE THORNBURG CHB
14636 CARMEL RIDGE ROAD
SAN DIEGO, CA 92128–3738

RE: The tariff classification of feta cheese from Bulgaria.

DEAR MR. THORNBURG:

In your letter, dated September 18, 1998, you have requested a tariff classification ruling on behalf of your client, Euro Dynamics, Limited, San Diego, CA.

The product is feta cheese. The ingredients are sheep cheese, water, and salt. It is in original loaves and it is packed in brine solution. The net weight is one kilogram.

The applicable subheading for the feta cheese will be *0406.90.5700*, Harmonized Tariff Schedule of the United States (HTS), which provides for cheese and curd, other cheese, other cheeses, and substitutes for cheese, including mixtures of the above, cheeses made from sheep's milk, pecorino, in original loaves, not suitable for grating. The rate of duty will be free.

Importations of this product are subject to import regulations administered by various U.S. agencies. Requests for information regarding applicable regulations administered by the U.S. Department of Agriculture may be addressed to that agency at the following location:

U.S. Department of Agriculture A.P.H.I.S. Veterinary Services
Federal Building, Room 758
6505 Belcrest Road
Hyattsville, MD 20782
Att: Dr. John Blackwell

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import specialist Ralph Conte at (212) 466–5759.

Sincerely,

ROBERT B. SWIERUPSKI
Director
National Commodity
Specialist Division

ATTACHMENT D

NY I82452

May 22, 2002
CLA-2–04:RR:NC:2:231 I82452
CATEGORY: Classification
TARIFF NO.: *0406.90.5700*

MR. JOSÉ QUINTANA
QUINTANA HERMANOS, INC.
P.O. BOX 364706
SAN JUAN, PR 00936–4706

RE: The tariff classification of Manchego cheese from Spain.

DEAR MR. QUINTANA:

In your letter, dated May 14, 2002, you requested a tariff classification ruling.

The merchandise is described thus:

"Gran Maestre" brand "Manchego cheese - semicurado." The ingredients are pasteurized sheep's milk, cheese cultures, rennet, and salt. The item is in the form of a wheel measuring 7 ¼ inches in diameter and 3 ¾ inches in height. It is in original loaves and it is packed in plastic. The cheese has been aged for a period of three months. In your correspondence you indicate that the cheese will contain, by weight, 58 percent fat on a dry basis and a moisture content of 42 percent. The net weight is 3 kilograms.

"Gran Maestre" brand "Manchego cheese – viejo." The ingredients are pasteurized sheep's milk, cheese cultures, rennet, and salt. The item is in the form of a wheel measuring 7 inches in diameter and 3 ½ inches in height. It is in original loaves and it is packed in plastic. The cheese has been aged for a period of twelve months. In your correspondence you indicate that the cheese will contain, by weight, 62 percent fat on a dry basis and a moisture content of 38 percent. The net weight is 3 kilograms.

The applicable subheading for Manchego cheese (items 1 and 2) will be *0406.90.5700*, Harmonized Tariff Schedule of the United States (HTS), which provides for cheese and curd, other cheese, other cheeses, and substitutes for cheese, including mixtures of the above, cheeses made from sheep's milk, pecorino, in original loaves, not suitable for grating. The rate of duty will be free.

Importations of these products are subject to import regulations administered by various U.S. agencies. Requests for information regarding applicable regulations administered by the U.S. Department of Agriculture may be addressed to that agency at the following location:

A.P.H.I.S., Veterinary Services
Federal Building, Room 756
6505 Belcrest Road
Hyattsville, MD 20782

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Thomas Brady at (646) 733–3030.

Sincerely,

ROBERT B. SWIERUPSKI
Director
National Commodity
Specialist Division

ATTACHMENT E

NY I83887

July 16, 2002
CLA-2–04:RR:NC:2:231 I83887
CATEGORY: Classification
TARIFF NO.: *0406.90.5700*

MR. GEORGE MIHAILOV
GMBG, INC.
927 NORTH OAKLEY BOULEVARD
CHICAGO, IL 60622

RE: The tariff classification of sheep cheese from Bulgaria.

DEAR MR. MIHAILOV:

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

The merchandise is described thus:

Bulgarian, creamy, white, brined, sheep cheese. The ingredients are 100 percent sheep's milk cheese. The cheese, packed in brine, will be imported in 15 kilogram tin cans (the cheese is in 1.5–2.0 kilogram pieces). The product is in original loaves and it is not suitable for grating.

"Balkan" yellow sheep cheese. The ingredients are 100 percent sheep's milk cheese. The cheese will be imported in blocks of 1.5, 5, and 10 kilograms. The product is in original loaves and it is not suitable for grating.

"Vitosha" yellow sheep cheese. The ingredients are 100 percent sheep's milk cheese. The cheese will be imported in blocks of 1, 5, and 10 kilograms. The product is in original loaves and it is not suitable for grating.

The applicable subheading for sheep cheese will be *0406.90.5700*, Harmonized Tariff Schedule of the United States (HTS), which provides for cheese and curd, other cheese, other cheeses, and substitutes for cheese, including mixtures of the above, cheeses made from sheep's milk, pecorino, in original loaves, not suitable for grating. The rate of duty will be free.

Importations of these products are subject to import regulations administered by various U.S. agencies. Requests for information regarding applicable regulations administered by the U.S. Department of Agriculture may be addressed to that agency at the following location:

A.P.H.I.S., Veterinary Services
Federal Building, Room 756
6505 Belcrest Road
Hyattsville, MD 20782

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Thomas Brady at (646) 733–3030.

Sincerely,

ROBERT B. SWIERUPSKI
Director
National Commodity
Specialist Division

ATTACHMENT F

NY J88309
October 10, 2003
CLA-2–04:RR:NC:2:231 J88309
CATEGORY: Classification
TARIFF NO.: *0406.90.5700*

MR. CHUCK THOMPSON
XL BROKERS INTERNATIONAL, INC.
P.O. BOX 60624 AMF
HOUSTON, TX 77205

RE: The tariff classification of feta cheese from New Zealand.

DEAR MR. THOMPSON:

In your letter, dated September 4, 2003, you requested a tariff classification ruling.

The merchandise is comprised of Chobani® brand feta cheese. The ingredients are pasteurized sheep's milk, salt, mineral salt, enzyme, and culture. It will be packed in plastic pails (26 pounds, net) and vacuum packs (2.2 pounds, net, and 16 ounces, net).

The applicable subheading for feta cheese will be *0406.90.5700*, Harmonized Tariff Schedule of the United States (HTS), which provides for cheese and curd, other cheese, other cheeses, and substitutes for cheese, including mixtures of the above, cheeses made from sheep's milk, Pecorino, in original loaves, not suitable for grating. The rate of duty will be free.

Importations of this product are subject to import regulations administered by various U.S. agencies. Requests for information regarding applicable regulations administered by the U.S. Department of Agriculture may be addressed to that agency at the following location:

A.P.H.I.S., Veterinary Services
Federal Building, Room 756
6505 Belcrest Road
Hyattsville, MD 20782

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Thomas Brady at (646) 733–3030.

Sincerely,

ROBERT B. SWIERUPSKI
Director
National Commodity
Specialist Division

ATTACHMENT G

NY M81478

April 11, 2006
CLA-2–04:RR:NC:SP:231 M81478
CATEGORY: Classification
TARIFF NO.: *0406.90.5700*

MR. JOSE L. QUINTANA
QUINTANA HERMANOS INC.
P.O. BOX 364706
SAN JUAN, PR 00936–4706

RE: The tariff classification of sheep's-milk cheese from Spain.

DEAR MR. QUINTANA:

In your letter dated March 16, 2006, you requested a tariff classification ruling. Samples and literature representing certain cheeses were submitted for our review.

The first item is identified as "El Pastor de Santa Cristina" brand of D.O. Zamorano cheese. The submitted sample of this cheese, packed in clear plastic, is in the form of a 3-kg wheel measuring about 7½" in diameter by 4" in height. (The product will also be supplied in 1.2-kg wheels.) The rind has a brownish color and shows basket marks. The off-white interior has a semi-hard, dry (non-plastic) texture, and exhibits scattered mechanical openings. This cheese is offered in both a "cured" version, which has been ripened for a period of 4 to 6 months, and an "aged" version, which has been ripened for a period of 12 to 15 months. In both versions, the ingredients are non-pasteurized (raw) sheep's milk, cheese culture, enzymes and salt. Both versions contain 45% fat in the dry matter and 42% moisture.

The second item is identified as "El Pastor de la Polvorosa" brand of Zamoran cheese. One of the submitted samples of this type is a 1.2-kg wheel measuring about 5" in diameter by 3¼" in height. Another is a 550-gram wheel measuring about 3½" in diameter by 2¼" in height. (The product will also be supplied in 2.8-kg and 3-kg wheels.) In exterior and interior appearance and texture, these samples are very similar to the cheese described above. This cheese is offered in an "aged" version (ripened 12 to 15 months), a "cured" version" (ripened 4 to 6 months), and a "baby" version (ripened 45 days). The ingredients of all versions are sheep's milk, cheese culture, enzymes and salt. All versions contain 45% fat in the dry material and 42–43% moisture.

The applicable subheading for all of the above-described cheeses will be *0406.90.5700*, Harmonized Tariff Schedule of the United States (HTSUS), which provides for cheese and curd: other cheese ... cheeses made from sheep's milk: pecorino, in original loaves, not suitable for grating. The rate of duty will be Free.

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

We note that your letter and the accompanying literature appear to contradict the ingredient information printed on the labels affixed to the submitted samples of the "El Pastor de la Polvorosa" cheese. Your letter indicates that the "aged" and "cured" versions of this brand are made from pasteurized sheep's milk, while the labels state that raw (non-pasteurized) sheep's milk is

used. Also, the literature indicates that the "baby" version is made from raw sheep's milk, while the label states that it is made from pasteurized sheep's milk. Please be aware that cheese made from raw (non-pasteurized) milk, ripened or cured for a period of less than 60 days, may be subject to restrictions by the Food and Drug Administration (FDA). For additional information, you may contact that agency at the following address:

FDA
Division of Import Operations and Policy, HFC-170
5600 Fishers Lane
Rockville, MD 20857

Telephone: (301) 443–6553
FAX: (301) 594–0413

This merchandise is subject to The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (The Bioterrorism Act), which is regulated by the Food and Drug Administration (FDA). Information on the Bioterrorism Act can be obtained by calling FDA at 301–575–0156, or at the Web site www.fda.gov/oc/bioterrorism/bioact.html.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Thomas Brady at 646–733–3030.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity
Specialist Division

ATTACHMENT H

N089415

January 20, 2010
CLA-2–04:OT:RR:NC:2:231
CATEGORY: Classification
TARIFF NO.: *0406.90.5700*

MS. MARY BETH MERARI
TOLEDO GOURMET
722 BLVD. EAST #2
WEEHAWKEN, NJ 07086

RE: The tariff classification of Manchego cheese from Spain.

DEAR MS. MERARI:

In your letter dated December 21, 2009, you requested a tariff classification ruling.

The item in question is "viejo"/aged Manchego cheese, "Abadia Blanca"® brand, made from pasteurized sheep's milk. The manufacturer's item code is 60003. The ingredients are pasteurized sheep's milk, rennet, salt, cheese cultures, lysozyme and calcium chloride. The cheese is said to have a fat content of 36% and a moisture content of 35%. It will be imported in whole 3-kg wheels having an inedible rind that bears a herringbone design caused by the surface of the press used in the manufacturing process. A photocopy of the label indicates that the cheese is aged for more than 12 months.

Literature accompanying your inquiry states that Manchego cheese is produced only from the whole milk of Manchega sheep in the La Mancha region of Spain. The cheese is said to be semi-firm, with a rich golden color and small holes. It ranges from mild to sharp, depending on how long it is aged.

The applicable subheading for the #60003 viejo/aged "Abadia Blanca"® Manchego cheese made from pasteurized sheep's milk will be *0406.90.5700*, Harmonized Tariff Schedule of the United States (HTSUS), which provides for cheese and curd: other cheese: other cheeses, and substitutes for cheese, including mixtures of the above: cheeses made from sheep's milk: pecorino, in original loaves, not suitable for grating. The rate of duty will be free.

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

Importations of cheese are subject to regulations administered by various U.S. agencies. Requests for information regarding applicable regulations administered by the U.S. Department of Agriculture (USDA) may be addressed to that agency at the following location:

USDA
APHIS, VS, NCIE
Products Program
4700 River Road, Unit 40
Riverdale, MD 20737–1231
Tel: (301) 734–3277

This merchandise is subject to The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (The Bioterrorism Act), which is regulated by the Food and Drug Administration (FDA). Information on the

Bioterrorism Act can be obtained by calling the FDA at 301–575–0156, or at the Web site www.fda.gov/oc/bioterrorism/bioact.html.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Nathan Rosenstein at (646) 733–3030.

Sincerely,

ROBERT B. SWIERUPSKI
Director
National Commodity Specialist Division

ATTACHMENT I

N089417

January 20, 2010
CLA-2–04:OT:RR:NC:2:231
CATEGORY: Classification
TARIFF NO.: *0406.90.5700*

MS. MARY BETH MERARI
TOLEDO GOURMET
722 BLVD. EAST #2
WEEHAWKEN, NJ 07086

RE: The tariff classification of Manchego cheese from Spain.

DEAR MS. MERARI:

In your letter dated December 21, 2009, you requested a tariff classification ruling.

The item in question is "artesano" Manchego cheese, "Abadia Blanca"® brand, made from raw sheep's milk. The manufacturer's item code is 60004. The ingredients are raw (unpasteurized) sheep's milk, rennet, salt and enzymes. The cheese is said to have a fat content of 36% and a moisture content of 35%. It will be imported in whole 3-kg wheels having an inedible rind that bears a herringbone design caused by the surface of the press used in the manufacturing process. A photocopy of the label indicates that the cheese is aged for more than three months.

Literature accompanying your inquiry states that Manchego cheese is produced only from the whole milk of Manchega sheep in the La Mancha region of Spain. The cheese is said to be semi-firm, with a rich golden color and small holes. It ranges from mild to sharp, depending on how long it is aged.

The applicable subheading for the #60004 artesano "Abadia Blanca"® Manchego cheese made from raw sheep's milk will be *0406.90.5700*, Harmonized Tariff Schedule of the United States (HTSUS), which provides for cheese and curd: other cheese: other cheeses, and substitutes for cheese, including mixtures of the above: cheeses made from sheep's milk: pecorino, in original loaves, not suitable for grating. The rate of duty will be free.

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

Importations of cheese are subject to regulations administered by various U.S. agencies. Requests for information regarding applicable regulations administered by the U.S. Department of Agriculture (USDA) may be addressed to that agency at the following location:

USDA
APHIS, VS, NCIE
Products Program
4700 River Road, Unit 40
Riverdale, MD 20737–1231
Tel: (301) 734–3277

This merchandise is subject to The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (The Bioterrorism Act), which is regulated by the Food and Drug Administration (FDA). Information on the

Bioterrorism Act can be obtained by calling the FDA at 301–575–0156, or at the Web site www.fda.gov/oc/bioterrorism/bioact.html.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Nathan Rosenstein at (646) 733–3030.

Sincerely,

ROBERT B. SWIERUPSKI
Director
National Commodity Specialist Division

ATTACHMENT J

N104824

May 24, 2010
CLA-2–04:OT:RR:NC:2:231
CATEGORY: Classification
TARIFF NO.: *0406.90.5700*

MS. MARY BETH MERARI
TOLEDO GOURMET
722 BLVD. EAST #2
WEEHAWKEN, NJ 07086

RE: The tariff classification of Manchego cheese from Spain.

DEAR MS. MERARI:

In your letter dated April 29, 2010, you requested a tariff classification ruling on two kinds of Manchego cheese.

Literature accompanying your inquiry states that Manchego cheese is produced only from the whole milk of Manchega sheep in the La Mancha region of Spain. The cheese is said to be semi-firm, with a rich golden color and small holes. It ranges from mild to sharp, depending on how long it is aged.

The first item is semi-cured Manchego cheese, "Abadia Blanca"® brand, made from raw sheep's milk. The manufacturer's item code is 60001. The ingredients are raw (unpasteurized) sheep's milk, rennet, salt, cheese cultures, lysozyme and calcium chloride. The cheese is said to have a fat content of 36% and a moisture content of 35%. It will be imported in whole 3-kg wheels having an inedible rind that bears a herringbone design caused by the surface of the press used in the manufacturing process. A photocopy of the label indicates that the cheese is aged over three months.

The second item is cured Manchego cheese, "Abadia Blanca"® brand, made from raw sheep's milk. The manufacturer's item code is 60002. The ingredients are raw (unpasteurized) sheep's milk, rennet, salt, cheese cultures, lysozyme and calcium chloride. The cheese is said to have a fat content of 36% and a moisture content of 35%. It will be imported in whole 3-kg wheels having an inedible rind that bears a herringbone design caused by the surface of the press used in the manufacturing process. A photocopy of the label indicates that the cheese is aged over six months.

The applicable subheading for the #60001 and 60002 semi-cured and cured "Abadia Blanca"® Manchego cheeses made from raw sheep's milk will be *0406.90.5700*, Harmonized Tariff Schedule of the United States (HTSUS), which provides for cheese and curd: other cheese: other cheeses, and substitutes for cheese, including mixtures of the above: cheeses made from sheep's milk: pecorino, in original loaves, not suitable for grating. The rate of duty will be free.

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

Importations of cheese are subject to regulations administered by various U.S. agencies. Requests for information regarding applicable regulations administered by the U.S. Department of Agriculture (USDA) may be addressed to that agency at the following location:

USDA
APHIS, VS, NCIE
Products Program
4700 River Road, Unit 40
Riverdale, MD 20737–1231
Tel: (301) 734–3277

This merchandise is subject to The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (The Bioterrorism Act), which is regulated by the Food and Drug Administration (FDA). Information on the Bioterrorism Act can be obtained by calling the FDA at 301–575–0156, or at the Web site www.fda.gov/oc/bioterrorism/bioact.html.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Nathan Rosenstein at (646) 733–3030.

Sincerely,

ROBERT B. SWIERUPSKI
Director
National Commodity Specialist Division

ATTACHMENT K

N236149
December 17, 2012
CLA-2–04:OT:RR:NC:N2:231
CATEGORY: Classification
TARIFF NO.: *0406.90.5700*

MR. PAUL HATZIILIADES
EXTRA VIRGIN FOODS
71 ARLINGTON STREET
WATERTOWN, MA 02472

RE: The tariff classification of feta cheese from Greece.

DEAR MR. HATZIILIADES:

In your letter dated December 4, 2012, you requested a tariff classification ruling.

The product in question is "Premium Greek Sheep's Feta Cheese" (made from 100% sheep's milk) to be imported in original uncut loaves (net weight 14.1 ounces), in brine, in plastic containers. The ingredients are pasteurized sheep's milk, salt, rennet and natural culture. The moisture content is 51%, and the total fat content is 27.8%.

The applicable subheading for the above-described feta cheese in brine will be *0406.90.5700*, Harmonized Tariff Schedule of the United States (HTSUS), which provides for cheese and curd: other cheese: other cheeses and substitutes for cheese, including mixtures of the above: cheeses made from sheep's milk: pecorino, in original loaves, not suitable for grating. The rate of duty will be free.

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

Importations of this merchandise are subject to regulations administered by various U.S. agencies. Requests for information regarding applicable regulations administered by the U.S. Department of Agriculture (USDA) may be addressed to that agency at the following location:

USDA
APHIS, VS, NCIE
Products Program
4700 River Road, Unit 40
Riverdale, MD 20737–1231
Tel: (301) 734–3277

This merchandise is subject to The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (The Bioterrorism Act), which is regulated by the Food and Drug Administration (FDA). Information on the Bioterrorism Act can be obtained by calling the FDA at 301–575–0156, or at the Web site www.fda.gov/oc/bioterrorism/bioact.html.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Nathan Rosenstein at (646) 733–3030.

Sincerely,

THOMAS J. RUSSO
Director
National Commodity Specialist Division

ATTACHMENT L

NY 815281

October 4, 1995
CLA-2–04:R:N2:231 815281
CATEGORY: Classification
TARIFF NO.: *0406.90.5700*; *0406.90.9500*; *0406.90.9700*

MR. RENE ZAYAS HADDOCK
ZAYAS HADDOCK TRADING
CAMINO LAS ROSAS, B-5
PASEO DEL PRADO
RIO PIEDRAS, PR 00926

RE: The tariff classification of Rocinante Manchego cheese, Mini-Rocinante Manchego cheese, and Super Rocinante Manchego cheese from Spain.

DEAR MR. ZAYAS HADDOCK:

In your letter, dated September 20, 1995, you have requested a tariff classification ruling.

The products are described thus:

1. Rocinante Manchego cheese and Mini-Rocinante Manchego cheese - made from a combination of pasteurized goat, cow, and lamb's milk; aged 45 days. In your correspondance you indicate that the cheese will contain, by weight, dry extract (62.08 percent), and ash (3.45 percent).

2. Super Rocinante Manchego cheese - made from pasteurized lamb's milk; aged 6 months. You state that the cheese will contain, by weight, dry extract (66.45 percent), and ash (3.55 percent).

The applicable subheading for the Rocinante Manchego cheese and Mini-Rocinante Manchego cheese will be *0406.90.5700*, Harmonized Tariff Schedule of the United States (HTS), which provides for cheese and curd, other cheese, other cheeses, and substitutes for cheese, including mixtures of the above, cheeses made from sheep's milk, pecorino, in original loaves, not suitable for grating. The rate of duty will be free.

The applicable subheading for the Super Rocinante Manchego cheese, if imported in quantities that fall within the limits described in additional U.S. note 16 to chapter 4, will be *0406.90.9500*, HTS, which provides for cheese and curd, other cheese, other cheeses, and substitutes for cheese, including mixtures of the above, other, including mixtures of the above, other, other, containing cow's milk (except soft-ripened cow's milk cheese), described in additional U.S. note 16 to chapter 4 and entered pursuant to its provisions. The rate of duty will be 10 percent ad valorem. If the quantitative limits of additional U.S. note 16 to chapter 4 have been reached, the product will be classified in subheading *0406.90.9700*, HTS, and will be dutiable at US $1.731 per kilogram. In addition, products classified in subheading *0406.90.9700*, HTS, will be subject to additional duties based on their value, as described in subheadings 9904.06.38 - 9904.06.49, HTS.

An import license, issued to the importer by the United States Department of Agriculture, will be required at the time such merchandise is entered for consumption into the United States.

Questions regarding licensing procedures and applications for licenses to import cheese subject to quota should be addressed to:

U.S. Department of Agriculture
Import Policies and Trade Analysis Division
Att: Dairy Import Group, Rm. 5531, So. Bldg.
Washington, DC 20250–1000

Foreign Agricultural Service

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Ralph Conte at (212) 466–5759.

Sincerely,

ROGER J. SILVESTRI
Director
National Commodity
Specialist Division

ATTACHMENT M

NY G85117
December 7, 2000
CLA-2–04:RR:NC:2:231 G85117
CATEGORY: Classification
TARIFF NO.: *0406.90.5700*; *0406.90.9500*; *0406.90.9700*

MR. ANDREW JACOBSON
YANKEE EXPORT SOLUTIONS
70 SOUTH STREET
FREEHOLD, NJ 07728

RE: The tariff classification of feta cheese from Bulgaria.

DEAR MR. JACOBSON:

In your letter, dated December 4, 2000, you requested a classification ruling.

The merchandise is described thus:

"Creamy Premium Bulgarian Feta" (from sheep's milk) – It is also known as Bulgarian, white, brined, sheep's milk cheese. The ingredients are pasteurized sheep's milk, salt, calf rennet, and natural culture. It contains by weight 50.53 percent moisture, 24.49 percent fat, 16.74 percent protein, 4.14 percent ash, and 4.1 percent carbohydrates (comprised of 0.0 percent sugar and 4.1 percent other carbohydrates). Coagulation is accomplished by the addition of a protease enzyme (rennet). The net weight is 7 ounces; there will be 12 packages (of 7 ounces each) per carton.

"Creamy Premium Bulgarian Feta" (from cow's milk) – It is also known as Bulgarian, white, brined, cow's milk cheese. The ingredients are pasteurized cow's milk, salt, calf rennet, and natural culture. It contains by weight 53.14 percent moisture, 22.01 percent fat, 18.95 percent protein, 4.1 percent ash, and 1.76 percent carbohydrates (comprised of 0.55 percent sugar and 1.21 percent other carbohydrates). Coagulation is accomplished by the addition of a protease enzyme (rennet). The net weight is 7 ounces; there will be 12 packages (of 7 ounces each) per carton.

The principal use will be for retail sale to the general public at supermarket stores and specialty cheese stores.

The applicable subheading for feta cheese from sheep's milk (item 1) will be *0406.90.5700*, Harmonized Tariff Schedule of the United States (HTS), which provides for cheese and curd, other cheese, other cheeses, and substitutes for cheese, including mixtures of the above, cheeses made from sheep's milk, pecorino, in original loaves, not suitable for grating. The rate of duty will be free. In 2001 the rate of duty will remain the same.

The applicable subheading for feta cheese from cow's milk (item 2), if entered under quota, will be *0406.90.9500*, HTS, which provides for cheese and curd, other cheese, other cheeses, and substitutes for cheese, including mixtures of the above, other, including mixtures of the above (excluding goods containing mixtures of subheadings 0406.90.61 or 0406.90.63), other, other, containing cow's milk (except soft-ripened cow's milk cheese), described in additional U.S. note 16 to chapter 4 and entered pursuant to its provisions. The rate of duty will be 10 percent ad valorem. In 2001 the rate of duty will remain the same.

The applicable subheading for feta cheese from cow's milk (item 2), if entered outside the quota, will be *0406.90.9700*, HTS, which provides for cheese and curd, other cheese, other cheeses, and substitutes for cheese, including mixtures of the above, other, including mixtures of the above (excluding goods containing mixtures of subheadings 0406.90.61 or 0406.90.63), other, other, containing cow's milk (except soft-ripened cow's milk), other. The rate of duty will be $1.509 per kilogram. In 2001 the rate of duty will remain the same. In addition, products classified in subheading *0406.90.9700*, HTS, will be subject to additional duties based on their value, as described in subheadings 9904.06.38 – 9904.06.49, HTS.

For goods classified in subheading *0406.90.9500*, an import license, issued to the importer by the United States Department of Agriculture, will be required at the time such merchandise is entered for consumption into the United States.

Questions regarding licensing procedures and applications for licenses to import cheese subject to quota should be addressed to:

Import Quota Manager for Dairy Products
STOP 1029/Room 5531-S
U.S. Department of Agriculture
1400 Independence Ave., S.W.
Washington, DC 20250–1029

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Thomas Brady at 212–637–7064.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity
Specialist Division

ATTACHMENT N

NY J81192

March 12, 2003
CLA-2–04:RR:NC:2:231 J81192
CATEGORY: Classification
TARIFF NO.: *0406.90.5700*; *0406.90.9500*; *0406.90.9700*

MR. VLADIMIR PAPAZOV
VI TRADE CORPORATION
3 RAMBLING BROOK LANE
POUGHKEEPSIE, NY 12601

RE: The tariff classification of White Bulgarian cheese (also known as Feta cheese) and "Balkan" and "Vitosha," which are yellow cheeses, from Bulgaria.

DEAR MR. PAPAZOV:

In your letter, dated February 10, 2003, you requested a tariff classification ruling on certain cheeses, which are the product of Bulgaria.

These cheeses include three kinds of White Bulgarian cheese (another name for Feta cheese) and two other cheeses, described as Yellow Bulgarian cheeses and designated as "Balkan" cheese and "Vitosha" cheese. The three White Bulgarian, or Feta, cheeses, are listed, as follows:

White Bulgarian cheese (feta cheese), in brine, made from sheep's milk

White Bulgarian cheese (feta cheese), in brine, made from cow's milk.

White Bulgarian cheese (feta cheese), in brine, made from sheep and cow's milk.

The ingredients in these cheeses are listed as enzymes (rennet), starter culture, calcium dichloride, and salt. These products contains 50–55 percent moisture (maximum), 45–48 percent fat in the dry matter, 20–22 percent total fat (minimum), 14–15 percent protein, and 3–4 percent salt. These cheeses have a white color and semi-hard texture, and are packed for export in plastic tubs or tins of 1, 4, 8, and 16 kilograms.

"Balkan" cheese, made from sheep's milk.

"Vitosha" cheese, made from cow's milk.

The ingredients in these cheeses are listed as enzymes (rennet), starter culture, calcium dichloride, and salt. Both products contain 38–41 percent moisture, 30–35 percent fat in the dry matter, and 2.5–3.5 percent salt. These cheeses have a yellow interior color and semi-hard texture, and are packaged in vacuum-packed molds of 0.5, 1, 2, 4, and 9 kilograms.

The applicable subheading for White Bulgarian cheese (Feta cheese), item 1, and "Balkan" cheese, item 4, both made from sheep's milk, will be *0406.90.5700*, Harmonized Tariff Schedule of the United States (HTS), which provides for cheese and curd, other cheese, other cheeses, and substitutes for cheese, including mixtures of the above, cheeses made from sheep's milk, Pecorino, in original loaves, not suitable for grating. The rate of duty will be free.

The applicable subheading for White Bulgarian cheese (Feta cheese) item 2), and "Vitosha" cheese, item 5, both made from cow's milk, and White Bulgarian cheese (Feta cheese), item 3, made from a mixture of sheep and

cow's milk, if entered under quota, will be *0406.90.9500*, HTS, which provides for cheese and curd, other cheese, other cheeses, and substitutes for cheese, including mixtures of the above, other, including mixtures of the above (excluding goods containing mixtures of subheadings 0406.90.61 or 0406.90.63), other, other, containing cow's milk (except soft-ripened cow's milk cheese) described in additional U.S. note 16 to chapter 4 and entered pursuant to its provisions. The rate of duty will be 10 percent ad valorem.

The applicable subheading for White Bulgarian cheese (Feta cheese), item 2, and "Vitosha" cheese, item 5, both made from cow's milk, and White Bulgarian cheese (Feta cheese), item 3, made from a mixture of sheep and cow's milk, if entered outside the quota, will be *0406.90.9700*, HTS, which provides for cheese and curd, other cheese, other cheeses, and substitutes for cheese, including mixtures of the above, other, including mixtures of the above (excluding goods containing mixtures of subheadings 0406.90.61 or 0406.90.63), other, other, other. The rate of duty will be $1.509 per kilogram. In addition, products classified in subheading *0406.90.9700*, HTS, will be subject to additional safeguard duties based on their value, as described in subheadings 9904.06.38 – 9904.06.49.

For goods classified in subheading *0406.90.9500*, an import license, issued to the importer by the United States Department of Agriculture, will be required at the time that such merchandise is entered for consumption into the United States.

Questions regarding licensing procedures and applications for licenses to import cheese subject to quota should be addressed to:

Import Quota Manager for Dairy Products
STOP 1029/Room 5531-S
U.S. Department of Agriculture
1400 Independence Avenue, S.W.
Washington, DC 20250–1029

Importations of these products are subject to import regulations administered by various U.S. agencies. Requests for information regarding applicable regulations administered by the U.S. Department of Agriculture may be addressed to that agency at the following location:

A.P.H.I.S., Veterinary Services
Federal Building, Room 756
6505 Belcrest Road
Hyattsville, MD 20782

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Thomas Brady at (646) 733–3030.

Sincerely,

ROBERT B. SWIERUPSKI
Director
National Commodity
Specialist Division

ATTACHMENT O

N094196

March 9, 2010
CLA-2–04:OT:RR:NC:2:231
CATEGORY: Classification
TARIFF NO.: *0406.90.9500*; *0406.90.9700*; *0406.90.5700*; *0406.90.9900*

MR. MICHAEL K. DUGANDZIC
GRAND PRIX TRADING CORP.
8100 WATER STREET
ST. LOUIS, MO 63111

RE: The tariff classification of canned feta-type cheeses from Germany.

DEAR MR. DUGANDZIC:

In your letter dated February 9, 2010, you requested a tariff classification ruling.

Samples and technical data pertaining to six varieties of Turkish-style feta-type cheese, made in Germany, were submitted for our review. All are put up for retail sale in brine within sealed metal cans.

Item "A", "Gazi® White Cheese in Brine 60%," is made from cow's milk, salt, microbial rennet, and lactic acid culture. It has a total fat content of 28%-31% (60%-64% of the dry matter), a moisture content of 49%-54%, and a salt content of 2.5%-3%. You state that during the manufacturing process, fresh whole cow's milk is pasteurized at 72 degrees Centigrade for more than 15 seconds. Rennet and lactic acid culture are added. The curds are drained and molded into a cylindrical-shaped loaf measuring 84 mm in diameter by 45 mm in height, having a net weight of 250g. The resulting cylinder-shaped loaves are packaged, together with a brine solution, into a tin can featuring a protective coating, ring-pull lid and recloseable plastic slip lid.

Item "B", "Gazi® White Cheese in Brine 55%," is made from cow's milk, salt, microbial rennet, and lactic acid culture. It has a total fat content of 26%-29% (55%-59% of the dry matter), a moisture content of 51%-55%, and a salt content of 2.5%-3.2%. The manufacturing and packaging methods are the same as for item "A".

Item "C", "Gazi® White Cheese in Brine 45%," is made from cow's milk, salt, microbial rennet, and lactic acid culture. It has a total fat content of 18%-21% (45%-49% of the dry matter), a moisture content of 56%-60%, and a salt content of 2.6%-3.5%. The manufacturing and packaging methods are the same as for item "A".

Item "D", "Gazi® Cow & Sheep's Milk Tulum Peyniri Cheese 45%," is made from cow's milk, sheep's milk, salt, microbial rennet, and lactic acid culture. It is said to have a total fat content of 19%-22% (45%-49% of the dry matter), a moisture content of 54%-58%, and a salt content of 2.8%-3.5%. The cheese is manufactured by coagulating pasteurized cow's milk and pasteurized sheep's milk with rennet and lactic acid culture. The resulting curds are drained and processed with brine in such manner that the final mass attains a crumbly texture. The cheese is packaged in brine in printed tin cans featuring an inside protective coating, ring-pull lid and recloseable plastic slip lid.

The applicable subheading for the above-described items "A", "B", "C" and "D", if entered under quota, will be *0406.90.9500*, Harmonized Tariff Schedule of the United States (HTSUS), which provides for cheese and curd: other cheese: other cheeses, and substitutes for cheese, including mixtures of the above: other, including mixtures of the above (excluding goods containing mixtures of subheadings 0406.90.61 or 0406.90.63): other: other: containing cow's milk (except soft-ripened cow's milk cheese): described in additional U.S. note 16 to chapter 4 and entered pursuant to its provisions. The rate of duty will be 10% ad valorem.

Imports under subheading *0406.90.9500*, HTSUS, require an import license, in accordance with terms and conditions provided in regulations issued by the Secretary of Agriculture, subject to the approval of the United States Trade Representative (USTR). The regulations may provide for the reallocation among supplying countries or areas of unfilled quantities, subject to USTR approval.

Questions regarding licensing procedures and applications for licenses to import cheese subject to quota should be addressed to:

Import Quota Manager for Dairy Products
U.S. Department of Agriculture
Stop 1029
1400 Independence Avenue, SW
Washington, DC 20250–1029
Tel: (202) 720–1344

The applicable subheading for items "A", "B", "C" and "D", if entered outside the quota, will be *0406.90.9700*, HTSUS, which provides for cheese and curd: other cheese: other cheeses, and substitutes for cheese, including mixtures of the above: other, including mixtures of the above (excluding goods containing mixtures of subheadings 0406.90.61 or 0406.90.63): other: other: containing cow's milk (except soft-ripened cow's milk cheese): other. The rate of duty will be $1.509 per kilogram. Also, products classified in subheading *0406.90.9700*, HTSUS, will be subject to additional safeguard duties based on their value, as described in subheadings 9904.06.38—9904.06.48.

Item "E", "Gazi® White Sheep's Milk Cheese in Brine 50%," is made from sheep's milk, salt, microbial rennet and lactic acid culture. It has a total fat content of 23%-28% (50%-54% of the dry matter), a moisture content of 52%-55%, and a salt content of 1.8%-3%. You state that during the manufacturing process, fresh whole sheep's milk is pasteurized at 72 degrees Centigrade for more than 15 seconds. Rennet and lactic acid culture are added. The curds are drained and molded into a cylindrical-shaped loaf measuring 84 mm in diameter by 45 mm in height, having a net weight of 250g. The resulting cylinder-shaped loaves are packaged, together with a brine solution, into a tin can featuring a protective coating, ring-pull lid and recloseable plastic slip lid. You state that the original loaves do not undergo any cutting or shaping before being packed in the tins.

The applicable subheading for item "E", "Gazi® White Sheep's Milk Cheese in Brine 50%," will be *0406.90.5700*, HTSUS, which provides for cheese and curd: other cheese: other cheeses, and substitutes for cheese, including mixtures of the above: cheeses made from sheep's milk: pecorino, in original loaves, not suitable for grating. The rate of duty will be free.

Item "F", "Gazi® White Goat's Milk Cheese in Brine 50%," is made from goat's milk, salt, microbial rennet and lactic acid culture. It has a total fat content of 22%-25% (50%-54% of the dry matter), a moisture content of

52%-58%, and a salt content of 1.8%-3%. The manufacturing and packaging methods are the same as for item "E".

The applicable subheading for item "F", "Gazi® White Goat's Milk Cheese in Brine 50%," will be *0406.90.9900*, HTSUS, which provides for cheese and curd: other cheese: other cheeses, and substitutes for cheese, including mixtures of the above: other, including mixtures of the above (excluding goods containing mixtures of subheadings 0406.90.61 or 0406.90.63): other: other: other. The rate of duty will be 8.5%.

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

Importations of this merchandise are subject to regulations administered by various U.S. agencies. Requests for information regarding applicable regulations administered by the U.S. Department of Agriculture (USDA) may be addressed to that agency at the following location:

USDA
APHIS, VS, NCIE
Products Program
4700 River Road, Unit 40
Riverdale, MD 20737–1231
Tel: (301) 734–3277

This merchandise is subject to The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (The Bioterrorism Act), which is regulated by the Food and Drug Administration (FDA). Information on the Bioterrorism Act can be obtained by calling the FDA at 301–575–0156, or at the Web site www.fda.gov/oc/bioterrorism/bioact.html.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Nathan Rosenstein at (646) 733–3030.

Sincerely,

ROBERT B. SWIERUPSKI
Director
National Commodity Specialist Division

ATTACHMENT P

N099535

April 9, 2010
CLA-2–04:OT:RR:NC:2:231
CATEGORY: Classification
TARIFF NO.: *0406.90.5700*; *0406.90.5900*

MR. PIERRE MEUNIER
FROMAGES CDA
11760 4TH AVE.
RIVIERE-DES-PRAIRIES, QUEBEC H1E 5Y2
CANADA

RE: The tariff classification of sheep's-milk cheese from Canada.

DEAR MR. MEUNIER:

In your letter dated March 30, 2010, you requested a tariff classification ruling.

The item in question is "Allegretto" cheese, which is described as a firm cheese, ripened for 120 days, made from 100% ewe's milk. Based on a photo and accompanying information posted on your company's website, it is a yellow cheese having a subtle yet savory taste. It is said have a fat content of 29% and a moisture content of 40%.

The applicable subheading for the "Allegretto" cheese, if imported in original loaves, will be *0406.90.5700*, Harmonized Tariff Schedule of the United States (HTSUS), which provides for cheese and curd: other cheese: other cheeses, and substitutes for cheese, including mixtures of the above: cheeses made from sheep's milk: pecorino, in original loaves, not suitable for grating. The general rate of duty will be free.

The applicable subheading for the "Allegretto" cheese, if not in original loaves, will be *0406.90.5900*, HTSUS, which provides for cheese and curd: other cheese: other cheeses, and substitutes for cheese, including mixtures of the above: cheeses made from sheep's milk: other. The general rate of duty will be 9.6% ad valorem.

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

Importations of this merchandise are subject to regulations administered by various U.S. agencies. Requests for information regarding applicable regulations administered by the U.S. Department of Agriculture (USDA) may be addressed to that agency at the following location:

USDA
APHIS, VS, NCIE
Products Program
4700 River Road, Unit 40
Riverdale, MD 20737–1231
Tel: (301) 734–3277

This merchandise is subject to The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (The Bioterrorism Act), which is regulated by the Food and Drug Administration (FDA). Information on the Bioterrorism Act can be obtained by calling the FDA at 301–575–0156, or at the Web site www.fda.gov/oc/bioterrorism/bioact.html.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Nathan Rosenstein at (646) 733–3030.

Sincerely,

ROBERT B. SWIERUPSKI
Director
National Commodity Specialist Division

ATTACHMENT Q

HQ H287482
CLA-2 RR:CTF:TCM H287482 EGJ
CATEGORY: CLASSIFICATION
TARIFF NO.: 0406.90.59

MARINA THOMAS
SAVAL WEST, INC.
P.O. BOX 3073
FORT MYERS BEACH, FL 33932

RE: Revocation of NY C82288, NY D81251, NY D83014, NY I82452, NY I83887, NY J88309, NY M81478, NY N089415, NY N089417, NY N104824, and NY N236149, and Modification of NY 815281, NY G85117, NY J81192, NY N094196, and NY N099535: Classification of Certain Sheep's Milk Cheeses

DEAR MS. THOMAS:

This is in reference to New York Ruling Letter (NY) C82288, dated December 8, 1997, which was issued to you concerning the tariff classification of brined sheep's milk cheese under the Harmonized Tariff Schedule of the United States (HTSUS). In NY C82288, U.S. Customs and Border Protection (CBP) classified the brined sheep's milk cheese mozzarella under subheading 0406.90.57, HTSUS, which provides for sheep's milk pecorino cheese. We have reviewed NY C82288, and find it to be in error.

For the reasons set forth below, we hereby revoke NY C82288 and ten other rulings regarding sheep's milk cheese: NY D81251, dated September 3, 1998, NY D83014, dated October 2, 1998, NY I82452, dated May 22, 2002, NY I83887, dated July 16, 2002, NY J88309, dated October 10, 2003, NY M81478, dated April 11, 2006, NY N089415, dated January 20, 2010, NY N089417, dated January 20, 2010, NY N104824, dated May 24, 2010, and NY N236149, dated December 17, 2012. Also, we hereby modify the following five rulings regarding sheep's milk cheese: NY 815281, dated October 4, 1995 (Rocinante Manchego cheese and Mini-Rocinante Manchego cheese), NY G85117, dated December 7, 2000 ("Creamy Premium Bulgarian Feta" (from sheep's milk)), NY J81192, dated March 12, 2003 (White Bulgarian cheese (feta cheese – item 1) and Balkan cheese – item 4), NY N094196, dated March 9, 2010 (Item E - Gazi® White Sheep's Milk Cheese in Brine 50%), and NY N099535, dated April 9, 2010 ("Allegretto" cheese imported in original loaves),

FACTS:

In NY C82288, the subject merchandise was described as follows: "[t]he product is Bulgarian, white, brined sheep cheese. The ingredients are sheep cheese, water, and salt. It is packed in cans." We note that in NY I83887, the subject merchandise was also brined sheep's milk cheese. With regard to the merchandise in the other rulings, we note some of them related to the classification of sheep's milk feta (NY D83014, NY J88309, NY N236149, NY G85117, NY J81192, and NY N094196), and some of them related to the classification of sheep's milk manchego cheese: NY I82452, NY N089415, NY N089417, NY N104824, and NY 815281). NY D81251 involved canned white sheep's milk cheese, NY M81478 involved both aged and cured Spanish

cheese and NY N099535 involved sheep's milk allegretto cheese. None of the aforementioned rulings related to sheep's milk pecorino cheese.

ISSUE:

Is the subject merchandise classified under subheading 0406.90.57, HTSUS, as sheep's milk pecorino cheese, or under subheading 0406.90.59, HTSUS, as an "other" type of sheep's milk cheese?

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States (HTSUS) is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied. Under GRI 6, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to GRIs 1 through 5.

The HTSUS provisions at issue provide, in pertinent part, as follows:

0406	Cheese and curd:
0406.90	Other cheese:
	Other cheeses, and substitutes for cheese, including mixtures of the above:
	Cheeses made from sheep's milk:
0406.90.57	Pecorino, in original loaves, not suitable for grating.
0406.90.59	Other.

* * *

We note that the term "pecorino" is not defined in the HTSUS.[1] However, we are of the view that pecorino is a hard cheese of Italian origin. For support, we note the descriptions of pecorino which are provided below:

> Any of various Italian cheeses made from ewes' milk, *esp.* a hard, strongly flavoured variety made in central Italy and Sardinia. Frequently with distinguishing word. *Oxford English Dictionary* (Oxford University Press 2017) *available at* www.oed.com.
>
> **Pecorino.** Pecorino (Formaggio Pecorino) are Italian cheeses that are made from ewe's milk. There are numerous more or less clearly defined kinds. The most common is Pecorino Romano. Dairy Products Laboratory,

[1] When, as in this case, a tariff term is not defined by the HTSUS or its legislative history, "the term's correct meaning is its common meaning." *Mita Copystar Am. v. United States*, 21 F.3d 1079, 1082 (Fed. Cir. 1994). The common meaning of a term used in commerce is presumed to be the same as its commercial meaning. *Simod Am. Corp. v. United States*, 872 F.2d 1572, 1576 (Fed. Cir. 1989). To ascertain the common meaning of a term, a court may consult "dictionaries, scientific authorities, and other reliable information sources" and "lexicographic and other materials." *C.J. Tower & Sons v. United States*, 673 F.2d 1268, 1271 (CCPA 1982); *Simod*, 872 F.2d at 1576.

U.S. Dep't. of Agriculture, Agriculture Handbook No. 54, *Cheese Varieties and Descriptions* 89 (1969).

Pecorino Romano... is a very hard, 20 to 25 pound, round wheel, flat-sided cheese, obtained by cooking and stirring rennet curds at a relatively high temperature. The cheese is highly salted, 5 to 6 per cent, and ripened in a pressed form to a final moisture of about 32 per cent, and 38 percent fat, on a dry basis ...Curing occurs in six months to one year, at which time the "piquant flavor" develops. Frank Kosikowski, *Cheese and Fermented Milk Foods*, 185–186 (1966).

None of the aforementioned rulings pertain to pecorino cheese. Rather, they relate to brined cheese, feta cheese, manchego cheese, and others. Therefore, they cannot be classified as pecorino cheese under subheading 0406.90.57, HTSUS. As such, they fall to be classified under subheading 0406.90.59, HTSUS, as an "other" type of sheep's milk cheese.

HOLDING:

The sheep's milk cheeses in the aforementioned rulings are properly classified by application of GIRs 1 and 6 in subheading 0406.90.59, HTSUS, which provides for "Cheese and curd: other cheese: other cheeses, and substitutes for cheese, including mixtures of the above: cheeses made from sheep's milk: other." The 2018 column one general rate of duty is 9.6% *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY C82288, dated December 8, 1997, NY D81251, dated September 3, 1998, NY D83014, dated October 2, 1998, NY I82452, dated May 22, 2002, NY I83887, dated July 16, 2002, NY J88309, dated October 10, 2003, NY M81478, dated April 11, 2006, NY N089415, dated January 20, 2010, NY N089417, dated January 20, 2010, NY N104824, dated May 24, 2010, and NY N236149, dated December 17, 2012, are hereby revoked.

NY 815281, dated October 4, 1995 (Rocinante Manchego cheese and Mini-Rocinante Manchego cheese), NY G85117, dated December 7, 2000 ("Creamy Premium Bulgarian Feta" (from sheep's milk)), NY J81192, dated March 12, 2003 (White Bulgarian cheese (feta cheese – item 1) and Balkan cheese – item 4), NY N094196, dated March 9, 2010 (Item E - Gazi® White Sheep's Milk Cheese in Brine 50%), and NY N099535, dated April 9, 2010 ("Allegretto" cheese imported in original loaves), are hereby modified.

Sincerely,

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

MODIFICATION OF THREE RULING LETTERS, REVOCATION OF TWO RULING LETTERS, AND REVOCATION OF THE ELIGIBILITY OF CERTAIN SURGICAL MICROSCOPES FOR TREATMENT UNDER SUBHEADING 9817.00.96, HTSUS

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

ACTION: Notice of modification of five ruling letters and revocation of the eligibility of certain surgical microscopes for treatment under subheading 9817.00.96, Harmonized Tariff Schedule of the United States ("HTSUS").

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 three ruling letters and revoking two ruling letters, concerning the eligibility of certain surgical microscopes for treatment under subheading 9817.00.96, HTSUS. Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 51, No. 29, on July 19, 2017. Two (2) 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 November 26, 2018.

FOR FURTHER INFORMATION CONTACT: Joy Marie Virga, Valuation and Special Programs Branch, Regulations and Rulings, Office of Trade, at (202) 325–1511.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the public and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter,

classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether any other applicable legal requirement is met.

Pursuant to 19 U.S.C. § 1625(c)(1), a notice was published in the *Customs Bulletin*, Vol. 51, No. 29, on July 19, 2017, proposing to modify five ruling letters pertaining to the eligibility of certain surgical microscopes for treatment under subheading 9817.00.96, HTSUS. 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") N249825, NY N246385, Headquarters Ruling Letter ("HQ") 561801, HQ 561940, and HQ 961705, CBP determined, in relevant part, that dental; ear, nose, and throat ("ENT"); ophthalmic; and neurological surgical microscopes were eligible for duty-free treatment under subheading 9817.00.96, HTSUS. CBP has reviewed the five ruling letters and has determined that they have been made in error. It is now CBP's position that the subject microscopes are not eligible for duty free treatments under subheading 9817.00.96, HTSUS.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is modifying NY N249825, NY N246385, and HQ 961705; revoking HQ 561801 and HQ 561940; and revoking any other ruling not specifically identified to reflect the proper application of subheading 9817.00.96, HTSUS, with regard to such surgical microscopes, in accordance with the analysis contained in HQ H275827 and HQ H285358. 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: August 6, 2018

MONIKA R. BRENNER
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H275827

August 6, 2018

OT:RR:CTF:VS H275827 YAG/JMV

MR. JAMES REICHERT
IMPORT-EXPORT COMPLIANCE SPECIALIST
CARL ZEISS MEDITEC, INC.
5160 HACIENDA DR.
DUBLIN, CA 94568–7562

RE: Modification of NY N249825 and NY N246385, and Revocation of HQ 561801 and HQ 561940; Subheading 9817.00.96, HTSUS; Surgical Microscopes

DEAR MR. REICHERT:

This is in reference to New York Ruling Letter ("NY") N249825, dated February 19, 2014, issued to Carl Zeiss Meditec, Inc. (the "Company"), via the Company's counsel. In NY N249825, the U.S. Customs and Border Protection ("CBP") determined, in relevant part, that a surgical microscope was eligible for duty-free treatment under subheading 9817.00.96, Harmonized Tariff Schedule of the United States ("HTSUS").

We have reviewed NY N249825 and found that it is partially incorrect. We have additionally reviewed NY N246385, dated October 29, 2013; Headquarters Ruling Letter ("HQ") 561801, dated February 28, 2002; and, HQ 561940, dated February 7, 2001, which involved various types of the Company's surgical microscopes that were also found to be eligible for duty-free treatment under subheading 9817.00.96, HTSUS. As with NY N249825, we determined that NY N246385 was partially incorrect, and that HQ 561801 and HQ 561940 were incorrect. For the reasons set forth below, with respect to the eligibility of the subject surgical microscopes for duty-free treatment under subheading 9817.00.96, HTSUS, we hereby modify NY N249825 and NY N246385, and revoke HQ 561801 and HQ 561940.

The tariff classifications of the subject surgical microscopes under subheadings 9011.10.40 or 9011.10.80, HTSUS, as determined in NY N249825 and NY N246385, are unaffected.

On July 19, 2017, CBP published its proposed modification of NY N249825, NY N246385, and revocation of HQ 561801 and HQ 561940 in the *Customs Bulletin*, Volume 51, Number 29, 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, 2186 (1993). Two (2) comments were received in response to proposed modification and revocation of the above referenced rulings. Both comments disagreed with the proposed modification and revocation and the analysis of the proposed ruling letters. A discussion of the comments and CBP's reasoning are found in the "Law and Analysis" section below.

FACTS:

NY N249825 concerned the OPMI® PROergo ("PROergo"), a surgical microscope for dental microsurgery, used to perform a variety of treatments, including root canal surgeries, gum graft surgeries, and tooth extractions/implants. NY N246385 concerned four ENT (ear, nose, and throat) surgical microscopes (i.e., the OPMI® Movena/S7 ("Movena"); the OPMI® Sensera/S7

("Sensera"); the OPMI® 1 FC ("1 FC"); and, the OPMI® pico (ENT) ("pico ENT")) and a dental surgical microscope (i.e., the OPMI® pico (S100) ("pico S100")). NY N249825 and NY N246385 stated that the subject ENT and dental surgery microscopes: are capable of producing three-dimensional images through the use of double eyepiece and double objectives; are considered to be stereoscopic compound optical microscopes; and, may be imported with a means for photographing an image. NY N246385 explained that stereoscopic microscopes are used in ENT and dental microsurgery.

HQ 561801 concerned the OPMI® Neuro/NC 4 System ("Neuro"), a microscope for neurological microsurgery, used by surgeons in surgery on the brain and spine. HQ 561801 stated that while the Neuro could be used for different types of surgeries on the brain or spine, the principal use was for craniotomy procedures to resect brain tumors, which is a procedure intended to remove the tumor but not cure the underlying condition.

HQ 561940 concerned ophthalmic surgical microscopes used by surgeons in magnifying the area of the eye to be operated on in delicate and precise eye microsurgeries. HQ 561940 stated that these ophthalmic surgical microscopes are mainly used for cataract surgeries and internal occular lens implantations, but also for glaucoma surgery, keratoplastic, refractive surgery, vitreous surgery and retinal surgery.

In NY N249825, NY N246385, HQ 561801, and HQ 561940, CBP found that the subject surgical microscopes were all eligible for duty-free treatment under subheading 9817.00.96, HTSUS, because these surgical microscopes were considered specially designed or adapted for the use or benefit of the blind or other physically or mentally handicapped persons, and, without the ability to heal or cure the underlying respective conditions of the patient, such microscopes were not excluded as therapeutic articles.

ISSUE:

Whether the subject surgical microscopes are eligible for duty-free treatment under subheading 9817.00.96, HTSUS?

LAW AND ANALYSIS:

Subheading 9817.00.96, HTSUS, came into effect in the United States through a series of international agreements and acts of Congress. Its basis is in the Agreement on the Importation of Educational, Scientific and Cultural Materials, *opened for signature* Nov. 22, 1950, 17 U.S.T. 1835, 131 U.N.T.S. 25, or "Florence Agreement," drafted by the United Nations Educational, Scientific, and Cultural Materials ("UNESCO") in July of 1950. In 1976, UNESCO adopted the Nairobi Protocol to the Florence Agreement, which expanded the scope of products to include materials specially designed for handicapped persons. *See* Protocol to the Agreement on the Importation of Educational, Scientific, or Cultural Materials, *opened for signature* 1 Mar. 1977, 1259 U.N.T.S. 3.

Congress ratified the Nairobi Protocol and enacted it into law in 1983. Pub. L. 97–446, § 161, 96 Stat. 2329, 2346 (1983). The Senate stated in its Report that one of the goals of this law was to benefit the handicapped and show support by the United States for the rights of the handicapped. The Senate was concerned, however, that people would misuse this tariff provision to avoid paying duties on expensive products. As a result, it stated that it did not intend "that an insignificant adaptation would result in duty-free treatment for an entire relatively expansive article . . . the modification or adaptation

must be significant so as to clearly render the article for use by handicapped persons." S. Rep. (Finance Committee) No. 97–564, 97th Cong. 2nd Sess., Sept. 21, 1989.

Section 1121 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. No. 100–418, 102 Stat. 1107) and Presidential Proclamation 5978 implemented the Nairobi Protocol by inserting permanent provisions—specifically, subheadings 9817.00.92, 9817.00.94, and 9817.00.96—into the HTSUS. These tariff provisions provide that "[a]rticles specially designed or adapted for the use or benefit of the blind or other physically or mentally handicapped persons" are eligible for duty-free treatment.

Notes in subchapter XVII of Chapter 98 of the HTSUS define the terms "blind or other physically or mentally handicapped persons" and limit the classification of certain products under subheadings 9817.00.92, 9817.00.94, and 9817.00.96, HTSUS. U.S. Note 4(a), subchapter XVII, Chapter 98, HTSUS, defines the term "blind or other physically or mentally handicapped persons" as "any person suffering from a permanent or chronic physical or mental impairment which substantially limits one or more major life activities, such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, or working." U.S. Note 4(b), subchapter XVII, Chapter 98, HTSUS, excludes four categories of goods from subheadings 9817.00.92, 9817.00.94, and 9817.00.96, HTSUS: (1) articles for acute or transient disability; (2) spectacles, dentures, and cosmetic articles for individuals not substantially disabled; (3) therapeutic and diagnostic articles; and, (4) medicine or drugs.

To summarize, for the subject surgical microscopes to qualify for duty-free treatment under subheading 9817.00.96, HTSUS, the following must be true:

(1) Patients undergoing surgery or other treatments with the subject surgical microscopes are considered blind or other physically or mentally handicapped persons for purposes of Chapter 98, HTSUS;

(2) The subject surgical microscopes are specially designed or adapted for the use or benefit of such patients considered blind or other physically or mentally handicapped persons for purposes of Chapter 98, HTSUS; and,

(3) The subject surgical microscopes are not articles within the excluded categories listed in U.S. Note 4(b), subchapter XVII, Chapter 98, HTSUS (e.g., therapeutic articles, etc.).

In NY N249825, NY N246385, HQ 561801, and HQ 561940, CBP found that the subject surgical microscopes were not therapeutic articles because the microscopes did not heal or cure the underlying condition of the patient. To support this position, all four rulings cited to HQ 961705, dated August 25, 1999, which stated that "that therapeutic articles within the context of this provision are those articles that heal or cure a condition." *See also Travenol Laboratories, Inc. v. U.S.*, 17 CIT 69 (1993); T.D. 92–77, 26 Cust. B. 240 1992 (implementing the duty-free provisions of the Nairobi Protocol); and, HQ 952465, dated January 27, 1993.

The evidence for the claims that the subject surgical microscopes were not therapeutic articles is mostly limited to the Company's statements that the types of surgeries that the microscopes are used for concern permanent and

chronic conditions. From these facts alone, it is not entirely clear whether these articles are not considered therapeutic. However, we note that merely because an article is not considered therapeutic does not mean it is not an article for an acute or transient disability or another article within the excluded categories. Similarly, demonstrating that an article is not within the excluded categories alone does not equate to qualification for duty-free treatment under subheading 9817.00.96, HTSUS. These issues were never addressed in NY N249825, NY N246385, HQ 561801, and HQ 561940, and, thus, it was not clear whether the requirements for eligibility under subheading 9817.00.96, HTSUS, were satisfied.

In the proposed modification of NY N249825, NY N246385, and revocation of HQ 561801 and HQ 561940, CBP addressed the issues pertaining to the eligibility of the subject microscopes under subheading 9817.00.96, HTSUS. In response to the proposed notice, CBP received two (2) comments disagreeing with the proposed modification and revocation (and the analysis of the proposed HQ H275827). Both commenters argue that the surgical microscopes in issue are specifically designed, marketed, and used to perform microsurgeries to treat conditions that render individuals physically handicapped. We disagree.

(1) Whether patients undergoing surgery or other treatments with the subject surgical microscopes are considered blind or other physically or mentally handicapped persons for purposes of Chapter 98, HTSUS?

As noted above, U.S. Note 4(a), subchapter XVII, Chapter 98, HTSUS, defines the term "blind or other physically or mentally handicapped persons" as "any person suffering from a permanent or chronic physical or mental impairment which substantially limits one or more major life activities, such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, or working." T.D. 92–77 provides further guidance for interpreting this term as follows:

> The only ruling by Customs on the issue of what constitutes a "handicapped" person under this statute was HQ 556090, dated November 8, 1991. In this ruling, Customs held that individuals who suffer from chronic arthritis, scoliosis, severe hernia problems and post-polio syndrome and who need heavy-duty support corsets, are "handicapped" within the meaning of the Nairobi Protocol, and therefore, the corsets are eligible for duty-free treatment. However, Customs also held in this ruling that brassieres designed for women who have mastectomies are not eligible for duty-free treatment. Customs determined that women with mastectomies are not substantially limited in any major life activity. The focus of post-operative therapy for women who have had mastectomies is the reassurance that they are fully capable of leading full, productive lives after the operation.

Other physical ailments that CBP has considered to be physical handicaps that limit one or more major life activities include: people who cannot walk (*see* HQ H024976, dated March 23, 2009 (concerning a wheel chair securement system for motor vehicles)); diabetes (*see* HQ 561020, dated October 14, 1998 (concerning a diabetes organizer)); hearing loss/impairment (*see* HQ 563415, dated January 25, 2006 (concerning a carrying case for a hearing aid and its components)); chronic incontinence (*see* HQ 560278, dated April 7,

1997 (concerning adult pull-on pants)); permanent or chronic pain (*see* HQ 563002, dated May 26, 2004 (concerning a pouch for holding a pump that would be implanted into the body and deliver medication)); arrhythmia and other heart problems (*see* HQ 563125, dated December 27, 2004, and HQ 557302, dated March 17, 1993 (concerning pacemakers, defibrillators, and accessories to such medical equipment)); and, people with speech defects (*see* HQ 088503, dated May 3, 1991 (concerning a speech synthesizer that converted typed words into a synthesized voice)).

On the other hand, CBP has noted that certain conditions are not physical handicaps for purposes of Chapter 98, HTSUS. For instance, in HQ H121544, dated October 6, 2014, CBP held that metabolic disorders or severe food allergies, which limit the capacity to digest, metabolize, or ingest certain foods, requiring avoidance of such foods, do not impair the actual physical act of eating. HQ H121544 noted that in the other CBP rulings regarding classification under heading 9817, HTSUS, the conditions or diseases directly impaired one's physical ability to perform one or more major life activities. Similarly in HQ H131516, dated March 1, 2011, CBP differentiated the pain from swollen, itchy, or aching feet that may render an individual "unable to stand on their feet for an entire shift or too tired to stop at the grocery store on their way home from work" from those individuals with little or no mobility "unable to perform one or more major life activities." *See also* HQ H092454, dated April 28, 2010 (differentiating light incontinence from a condition that CBP considers a physical handicap, chronic incontinence). *See generally* HQ 559916, dated May 8, 1997; and, HQ 087669, dated November 16, 1990 (holding that broadly used medical supplies (e.g., hospital gowns and medical bed pads) did not qualify for treatment under subheading 9817.00.96, HTSUS, because the evidence showed that various conditions requiring use of the supplies were not chronic or permanent conditions and no evidence specifically showed that the conditions were physical handicaps).

Both commenters state that the term "handicapped" is broad and encompasses a number of conditions. Both submissions argue that the definition of handicapped persons should be interpreted liberally and that a condition qualifies as a handicap under 9817.00.96, HTSUS, as long as some individuals with the condition are physically impaired to such a degree that their ability to perform a major life activity is substantially limited. However, both commenters failed to grasp the difference between the actual physical handicap and the transient impairment that might render the person handicapped. In order to qualify for treatment under 9817.00.96, the impairment must be actual and not theoretical or potential. The subchapter note specifies that the subheading does not cover ". . . articles for acute or transient disability . . ." U.S. Note 4(b), Subchapter XVII, Chapter 98, HTSUS. Therefore, the impairment must be permanent as opposed to transient, and chronic as opposed to acute.

The subject surgical microscopes are used for patients undergoing various types of dental, ENT, neurological, and ophthalmic microsurgeries. It is indicated that the dental surgical microscopes (i.e., the PROergo and the pico S100) are used to perform a variety of treatments, including root canal surgeries, gum graft surgeries, and tooth extractions/implants. In NY N249825 and NY N246385, the Company stated that these dental surgical microscopes are "an important and indispensable aid to medical personnel in treating/alleviating predominantly permanent or chronic conditions, which, if left untreated, would substantially limit a major life activity." Other than

NY N249825 and NY N246385, CBP has no other ruling on whether conditions requiring "root canal surgeries, gum graft surgeries, and tooth extractions/implants" are considered a physical handicap for purposes of Chapter 98, HTSUS. To this extent, we find the analysis in these rulings for eligibility under subheading 9817.00.96, HTSUS, erroneous because there is no evidence to corroborate the validity of the Company's statements about the types of permanent and chronic conditions requiring these dental surgeries. Particularly, there is no evidence that the patients undergoing these dental surgeries are physically handicapped.

In this instance, surgical tooth extraction is one of the most common surgical procedures provided in the United States, and wisdom teeth are often removed through surgical extraction.[1] It is also approximated that 85 percent of adults have or will have their wisdom teeth removed.[2] The commonality of this procedure (tooth extractions) to a condition that would be difficult to consider a physical handicap (wisdom teeth) indicate that various patients undergoing dental surgery are not physically handicapped.

Similarly, we find no evidence in NY N246385 and HQ 561801 that patients undergoing surgery with ENT (i.e., the Movena, the Sensera, the 1 FC, and the pico ENT) and the ophthalmic surgical microscopes are physically handicapped. ENT surgery is practiced by otorlaryngologists, which are medical doctors specializing in the ear, nose, throat, and related structures of the head and neck, which includes certain cosmetic surgeries.[3] Cosmetic surgery is an elective surgery for purposes of enhancing appearance.[4] To this extent, the cosmetic purpose for undergoing ENT surgery is not a condition that would be considered a physical handicap. Likewise, ophthalmic surgical microscopes are used for refractive surgeries, and the most widely performed type of refractive surgery is laser-assisted in situ keratomileusis surgery, commonly referred to as LASIK.[5] The American Academy of Ophthalmology states that LASIK and other types of refractive surgery may be a good option for patients that want to decrease their dependence on glasses or contact lenses and are free of eye disease.[6] It is difficult to consider a condition that is not an eye disease, but merely wanting less dependence on glasses, to be a physical handicap for purposes of Chapter 98, HTSUS.

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[1] *See* Colgate Oral Center Care, "When Surgical Extraction of Teeth is Necessary" at www.colgate.com/en/us/oc/oral-health/procedures/tooth-removal/article/when-surgical-extraction-of-teeth-is-necessary-0215 (citing Doctors Uekert and Bradley, "Surgical Extraction" at www.drueckert.com/advanced-dentistry/extraction/surgical-extraction/?ga=1.65604077.2121490374.1491856233).

[2] *See* Crest General Oral Hygiene, "Wisdom Teeth Surgery: What You Should Know" at www.crest.com/en-us/oral-care-topics/general-oral-hygiene/wisdom-teeth-sugery- what-you-should-know; Advanced Dental Care, "Do You Need Your Wisdom Teeth Removed?" at www.brandondentistry.com/blog/do-you-need-your-wisdom-teeth/removed; and, Pointe Dental Group, "Is it Wise to Get Wisdom Teeth Removed?" at www.pointedentalgroup.com/blog/is-it-wise-to-get-wisdom-teeth-removed.

[3] *See* American Academy of Otolaryngology – Head and Neck Surgery, "What is an Otolaryngologist?" at www.entnet.org/content/what- otorlaryngologist.

[4] *See* American Board of Cosmetic Surgery, "Cosmetic Surgery vs. Plastic Surgery" at www.americanboardcosmeticsurgery.org/patient-resources/cosmetic-surgery-vs-plastic-surgery/.

[5] *See* American Academy of Ophthalmology, "What is Refractive Surgery?" at www.aao.org/eye-health/treatment/what-is-refractive-surgery.

[6] *See* American Academy of Ophthalmology, *supra* note 5.

As noted in HQ H121544, HQ 559916, and HQ 087669, along with the dental, ENT, and ophthalmic surgical microscopes, these instruments treat various conditions that do not directly impair one's physical ability to perform one or more major life activities. In contrast, with the rulings where CBP has considered physical ailments to be a physical handicap limiting one more major life activity, there has been evidence directly connecting the use of the product with a specific condition (e.g., diabetes, chronic incontinence, arrhythmia, etc.) that is considered a physical handicap. Even when certain products could treat physical handicaps such as chronic incontinence, the fact that evidence showed otherwise without persuasively showing use for conditions considered physical handicaps, weighed against finding that the product qualified for treatment under subheading 9817.00.96, HTSUS. Similarly, we find no persuasive evidence in HQ 561801 directly connecting the use of the Neuro to a specific condition that is considered a physical handicap. Rather, HQ 561801 notes the various and broad neurological microsurgery uses for the Neuro. To this extent, it is not clear which of the various types of surgeries on the brain and spine would be considered physical handicaps, and which would not. Accordingly, we do not have enough evidence in HQ 561801 to substantiate the claim that all, most, many, or any of the patients undergoing surgery or other treatments with the Neuro are considered physically handicapped for purposes of Chapter 98, HTSUS.

(2) Whether the subject surgical microscopes are specially designed or adapted for the use or benefit of such patients considered blind or other physically or mentally handicapped persons for purposes of Chapter 98, HTSUS?

The meaning of the phrase "specially designed or adapted" with regard to imported articles has been decided on a case-by-case basis. In HQ 556449, dated May 5, 1992, CBP set forth five factors it would consider in making this case-by-case determination. The same factors are relevant in determining whether a part is "specially designed or adapted" for an article for the use or benefit of handicapped persons. These factors include: (1) the physical properties of the article itself (i.e., whether the article is easily distinguishable by properties of the design, form, and the corresponding use specific to this unique design, from articles useful to non-handicapped persons); (2) whether any characteristics are present that create a substantial probability of use by the chronically handicapped so that the article is easily distinguishable from articles useful to the general public and any use thereof by the general public is so improbable that it would be fugitive; (3) whether articles are imported by manufacturers or distributors recognized or proven to be involved in this class or kind of articles for the handicapped; (4) whether the articles are sold in specialty stores which serve handicapped individuals; and, (5) whether the condition of the articles at the time of importation indicates that these articles are for the handicapped.

With regard to the first factor, a product's compliance with the ADA has been an important consideration in CBP's determination under this factor. For example, in HQ H230457, dated July 19, 2013, CBP found that certain bathroom fixtures satisfied this factor because they were "easily distinguishable as designed for the handicapped since they met or exceeded the standards under the ADA and were prominently marked as ADA-compliant." In this case, there is no indication that the surgical microscopes are ADA-compliant or designed to a certain standard that specifically benefits physi-

cally handicapped individuals. Furthermore, the subject surgical microscopes have physical properties that permit them to be used for various conditions, many of which would not be considered a physical handicap per Chapter 98, HTSUS. Therefore, we do not find that the physical properties of the subject surgical microscopes are readily distinguishable from articles useful to non-handicapped individuals.

With regard to the second factor, CBP ruled in HQ 556449, dated May 5, 1992, that duty-free treatment under subheading 9817.00.96, HTSUS, was precluded for a two-handed mug, which was designed with a low center of gravity and a corresponding top to help reduce spillage, since this article was commonly used by children and the design was common in traveling mugs used by the general public. In HQ 560114, dated October 9, 1997, CBP held that a reading assistance machine that magnifies an image from 5 to 25 times was specially designed and adapted for the use or benefit of handicapped persons. The machine displayed magnified written and pictorial material on a large television screen transmitted by a video camera. CBP concluded that while the machine "may be used to magnify images for non-handicapped persons, Customs believes such a use would be an atypical use" due to its special design features, which included its capacity to magnify images, yellow oversize control knobs, and the product's dark color used to minimize glare and maximize contrast. However, in HQ 562329, dated April 26, 2002, CBP noted that while lenses incorporated into video magnifiers were similar to the product involved in HQ 560115, there was no evidence presented to show that lenses were specially designed or adapted for the use or benefit of physically handicapped individuals. Absent evidence that the lenses were specially designed or adapted for the use or benefit of physically handicapped individuals and that the lenses were not suited for many general uses, CBP was unable to conclude that the lenses in HQ 562329 were eligible for duty-free treatment under subheading 9817.00.96, HTSUS.

The commenters state that the physical properties of surgical microscopes indicate that they are designed to benefit the handicapped because the microscopes generally possess several features that make them invaluable aids for microsurgeries that treat conditions affecting teeth, inner ear structures, eyes, and brain tissue. The commenters cite high-definition optics that magnify very small, delicate tissues; bright illumination that provide focused visualization of very small structures with increased depth of field; ergonomic and adjustable arms and binocular tubes that provide proper line of sight during inner ear or brain surgeries; and automatic focus and adjustment features that avoid interruptions to the surgical procedure. These physical characteristics, according to the commenters, indicate that surgical microscopes are designed for and are intended to be used to perform microsurgeries that treat conditions that render individuals handicapped, and not for purposes of general exams or procedures that do not treat conditions that substantially limit one or more major life activities. The commenters also cite the cost of the surgical microscopes, which, according to them, make it economically impractical for medical professionals to invest in these microscopes to perform primarily routine examinations and procedures that do not require powerful magnification and illumination, particularly where less costly options would suffice. However, none of this information suggests that surgical microscopes could not be used for procedures that would appeal to the general population. While one commenter provided affidavits from two marketing executives stating that the subject microscopes are used in procedures used

to treat conditions that would leave a person handicapped if left untreated, they did not state that these microscopes would likely not be used in procedures that would appeal to the general population.

In this case, the subject surgical microscopes are used for a variety of conditions, many of which would benefit the general public (e.g., wisdom tooth extraction, cosmetic surgery, LASIK, etc.). Furthermore, no evidence has been presented to show that these surgical microscopes were specially designed or adapted for the use or benefit of physically handicapped individuals and that they were not suited for many general uses. Therefore, we do not find that the subject surgical microscopes have characteristics that create a substantial probability of use by the chronically handicapped.

The commenters assert that these surgical microscopes would not be used in surgeries for the general population such as wisdom tooth extraction, cosmetic surgery or Lasik. Instead, the commenters cite surgical root canals, dental implants, and tonsillectomies as common surgeries for which the microscopes would be used. All of these procedures, the commenter notes, treat conditions that may lead to a handicap if left untreated. However, if we follow this line of reasoning, the microscopes would be considered therapeutic articles, which are excluded from 9817.00.96 treatment. For example, surgical root canal saves the natural tooth from infection so that the tooth is restored and able to function like any other tooth.[7] Tonsillectomies, another procedure the commenters cite and commonly performed by the subject microscopes, may be performed to treat difficulty of breathing during sleep, which causes snoring, or to prevent the reoccurrence of tonsillitis.[8] Thus, according to the commenters' submissions, the purpose of these procedures is to eliminate infection or treat an underlying condition. The courts and CBP have consistently held that therapeutic articles are articles whose purpose is the "complete or partial elimination of disease." Since the microscopes are, as the commenter notes, used to eliminate various conditions, they are therapeutic articles, and thus excluded from 9817.00.96 treatment.

With regard to the remaining factors, the subject surgical microscopes are manufactured and sold by the Company, which is an entity that has established itself as a manufacturer of microscopes in the medical field. However, microscopes for the medical field are not necessarily articles for the handicapped, as there are many medical needs for the general population. Furthermore, no evidence is found showing that the condition of these surgical microscopes upon importation to the United States indicates that they are for the benefit of physically handicapped individuals. Therefore, these factors were not satisfied based on the evidence provided for the subject rulings.

Given the foregoing, we find that the subject surgical microscopes do not qualify for duty-free treatment under subheading 9817.00.96, HTSUS.

HOLDING:

Based on the information presented, the subject surgical microscopes described in NY N249825, NY N246385, HQ 561801, and HQ 561940 are not eligible for duty-free treatment under subheading 9817.00.96, HTSUS.

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[7] *See* American Association of Endodontists, "Root Canal Treatment" at https://www.aae.org/patients/root-canal-treatment/what-is-a-root-canal/.

[8] *See* Cleveland Clinic, "Tonsillectomy Overview" at https://my.clevelandclinic.org/health/treatments/15605-tonsillectomy-overview.

EFFECT ON OTHER RULINGS:

NY N24982, dated February 19, 2014, and NY N246385, dated October 29, 2013, are hereby **MODIFIED** in accordance with the above analysis.

HQ 561801, dated February 28, 2002, and HQ 561940, dated February 7, 2001, are hereby **REVOKED**.

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

Sincerely,

MONIKA R. BRENNER
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

HQ H285358
OT:RR:CTF:VS H285358 YAG/JMV

PORT DIRECTOR
U.S. CUSTOMS AND BORDER PROTECTION
JFK AIRPORT, BUILDING 77
JAMAICA, NEW YORK 11430

RE: Modification of HQ 961705; Subheading 817.00.96, HTSUS; Ophthalmic Surgical Microscopes

DEAR PORT DIRECTOR:

This is in reference to Headquarters Ruling Letter ("HQ") 961705, dated August 25, 1999, issued with regard to a protest filed by counsel, on behalf of Topcon American Corporation ("Topcon"). In HQ 961705, U.S. Customs and Border Protection ("CBP") determined, in relevant part, that ophthalmic surgical microscopes were eligible for duty-free treatment under subheading 9817.00.96, Harmonized Tariff Schedule of the United States ("HTSUS"). We have reviewed HQ 961705 and found it was partially incorrect. For the reasons set forth below, with respect to the eligibility of the subject surgical microscopes for duty-free treatment under subheading 9817.00.96, HTSUS, we hereby modify HQ 961705.

On July 19, 2017, CBP published its proposed modification of HQ 961705 in the Customs Bulletin, Volume 51, Number 29, 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, 2186 (1993). One comment was received in response to the proposed modification and revocation of the above referenced ruling. The comment disagreed with the proposed modification and revocation and the analysis of the proposed ruling letter. A discussion of the comment and CBP's reasoning are found in the "Law and Analysis" section below.

The tariff classifications of the other products imported by Topcon under heading 9018, HTSUS, as found in HQ 961705, are unaffected.

FACTS:

HQ 961705 stated, in relevant part:

> The merchandise is a variety of ophthalmic apparatus produced by Topcon in Japan. Specifically, they are: slit lamps, tonometers; retinal cameras, ophthalmometers (also known as keratometers); screenscopes, lensmeters, vision testers, auto chart projectors; operation microscopes; and parts thereof.
>
> Customs classified the subject merchandise at entry in subheading 9018.50.0000, Harmonized Tariff Schedule of the United States ("HTSUS"), which provides for other ophthalmic instruments and appliances. With one exception, the protestant advocates classification of the subject merchandise in subheading 9018.19 .9550, HTSUS, which provides fur other electro-diagnostic apparatus. Protestant contend that the ophthalmic surgical microscopes are classifiable in subheading 9817.00.96, as other articles specially designed or adapted for the use or benefit of the handicapped.

> [...]
>
> Counsel advises that the ophthalmic operation microscopes at issue are compound optical microscopes, stereoscopic and without a means for photographing an image, classifiable in subheading 9011.10.8000.
>
> [...]
>
> In particular, the Topcon sales literature indicates that the microscope is designed to facilitate ophthalmic microsurgery. It delivers three dimensional images using a coaxial illumination standard, and aids in the observation of red reflex. The unit is capable of fine focusing adjustment within a range of 36mm, at a speed of 2.2mm per second. There are five different magnification lens settings. The unit is capable of five different field of view settings. The supporting arms have a range of motion more limited than other surgical microscopes. The axis of the optical path remains fixed over the eye, resulting in an observation angle set at a limited operating rate (generally 45 degrees to the optical axis).
>
> Counsel states that Topcon only produces and distributes to the ophthalmic market, representing them as designed specifically for ophthalmic microsurgery. They are in most cases used for cataract surgery or posterior vitrectomy

The only product at issue in this case is the ophthalmic surgical microscope produced by Topcon in Japan.

ISSUE:

Whether the subject surgical microscopes are eligible for duty-free treatment under subheading 9817.00.96, HTSUS?

LAW AND ANALYSIS:

Subheading 9817.00.96, HTSUS, came into effect in the United States through a series of international agreements and acts of Congress. Its basis is in the Agreement on the Importation of Educational, Scientific and Cultural Materials, opened for signature Nov. 22, 1950, 17 U.S.T. 1835, 131 U.N.T.S. 25, or "Florence Agreement," drafted by the Cnited Nations Educational, Scientific, and Cultural Materials ("lJNESCO") in July of 1950. In 1976, UNESCO adopted the Nairobi Protocol to the Florence Agreement, which expanded the scope of products to include materials specially designed for handicapped persons. See Protocol to the Agreement on the Importation of Educational, Scientific, or Cultural Materials, opened for signature l Mar. 1977, 1259 U.N.T.S. 3.

Congress ratified the Nairobi Protocol and enacted it into law in 1983. Pub. L. 97–446, § 161, 96 Stat. 2329, 2346 (1983). The Senate stated in its Report that one of the goals of this law was to benefit the handicapped and show support by the United States for the rights of the handicapped. The Senate was concerned, however, that people would misuse this tariff provision to avoid paying duties on expensive products. As a result, it stated that it did not intend "that an insignificant adaptation would result in duty free treatment for an entire relatively expansive article . . . the modification or adaptation must be significant so as to clearly render the article for use by handicapped persons." S. Rep. (Finance Committee) No. 97–564, 97th Cong. 2nd Sess., Sept. 21, 1989.

Section 1121 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. No. 100- 418, 102 Stat. 1107) and Presidential Proclamation 5978 implemented the Nairobi Protocol by inserting permanent provisions- specifically, subheadings 9817.00.92, 9817.00.94, and 9817.00.96-into the HTSUS. These tariff provisions provide that "[a]rticles specially designed or adapted for the use or benefit of the blind or other physically or mentally handicapped persons" are eligible for duty-free treatment.

Notes in subchapter XVII of Chapter 98 of the HTSUS define the terms "blind or other physically or mentally handicapped persons" and limit the classification of certain products under subheadings 9817.00.92, 9817.00.94, and 9817.00.96, HTSUS. U.S. Note 4(a), subchapter XVII, Chapter 98, HTSUS, defines the term "blind or other physically or mentally handicapped persons" as "any person suffering from a permanent or chronic physical or mental impairment which substantially limits one or more major life activities, such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, or working."

U.S. Note 4(b), subchapter XVII, Chapter 98, HTSUS, excludes four categories of goods from subheadings 9817.00.92, 9817.00.94, and 9817.00.96, HTSUS: (1) articles for acute or transient disability; (2) spectacles, dentures, and cosmetic articles for individuals not substantially disabled; (3) therapeutic and diagnostic articles; and (4) medicine or drugs.

To summarize, for the subject surgical microscopes to qualify for duty-free treatment under subheading 9817.00.96, HTSUS, the following must be true:

(1) Patients undergoing surgery or other treatments with the subject surgical microscopes are considered blind or other physically or mentally handicapped persons for purposes of Chapter 98, HTSUS;

(2) The subject surgical microscopes are specially designed or adapted for the use or benefit of such patients considered blind or other physically or mentally handicapped persons for purposes of Chapter 98, HTSUS; and,

(3) The subject surgical microscopes are not articles within the excluded categories listed in U.S. Note 4(b), subchapter XVII, Chapter 98, HTSUS (e.g., therapeutic articles, etc.).

In HQ 961705, CBP found that the subject surgical microscopes were not therapeutic articles because the microscopes did not heal or cure the underlying condition of the patient. To support this position, it cited Travenol Laboratories, Inc. v. U S., 17 CIT 69 (1993), stating that therapeutic articles within the context of this provision arc those articles that heal or cure a condition. See also T.D. 92–77, 26 Cust. B. 240 1992 (implementing the duty-free provisions of the Nairobi Protocol); and, HQ 952465, dated January 27, 1993.

From the facts provided in HQ 961705, it is not entirely clear whether the subject surgical microscopes are not considered therapeutic. However, we note that merely because an article is not considered therapeutic does not mean it is not an article for an acute or transient disability or another article within the excluded categories. Similarly, demonstrating that an article is not within the excluded categories alone does not equate to qualification for duty-free treatment under subheading 9817.00.96, HTSUS. These issues

were never thoroughly addressed in HQ 961705, and thus it is not clear whether the requirements for eligibility under subheading 9817.00.96, HTSUS, were satisfied.

In the proposed modification of HQ 961705, CBP addressed the issues pertaining to the eligibility of the subject microscopes under subheading 9817.00.96, HTSUS. In response to the proposed notice, CBP received one (l) comment disagreeing with the proposed modification and revocation (and the analysis of the proposed HQ H285358). The comment argues that the surgical microscopes in issue are specifically designed, marketed, and used to perform microsurgeries to treat conditions that render individuals physically handicapped. We disagree.

(1) Whether patients undergoing surgery or other treatments with the subject surgical microscopes are considered blind or other physically or mentally handicapped persons for purposes of Chapter 98, HTSUS?

As noted above, U.S. Note 4(a), subchapter XVII, Chapter 98, HTSUS, defines the term "blind or other physically or mentally handicapped persons" as "any person suffering from a permanent or chronic physical or mental impairment which substantially limits one or more major life activities, such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, or working." T.D. 92–77 provides further guidance for interpreting this term as follows:

> The only ruling by Customs on the issue of what constitutes a "handicapped" person under this statute was HQ 556090, dated November 8, 1991. In this ruling, Customs held that individuals who suffer from chronic arthritis, scoliosis, severe hernia problems and post-:Polio syndrome and who need heavy-duty support corsets, are "handicapped" within the meaning of the Nairobi Protocol, and therefore, the corsets are eligible for duty-free treatment. However, Customs also held in this ruling that brassieres designed for women who have mastectomies are not eligible for duty-free treatment. Customs determined. that women with mastectomies are not substantially limited in any major life activity.
>
> The focus of post-operative therapy for women who have had mastectomies is the reassurance that they are fully capable of leading full, productive lives after the operation.

Other physical ailments that CBP has considered to be physical handicaps that limit one or more major life activities include: people who cannot walk (see HQ H024976, dated March 23, 2009 (concerning a wheel chair securcment system for motor vehicles)); diabetes (see HQ 561020, dated October 14, 1998 (concerning a diabetes organizer)); hearing loss/impairment (see HQ 563415, dated January 25, 2006 (concerning a carrying case for a hearing aid and its components)); chronic incontinence (see HQ 560278, dated April 7, 1997 (concerning adult pull-on pants)); permanent or chronic pain (see HQ 563002, dated May 26, 2004 (concerning a pouch for holding a pump that would be implanted into the body and deliver medication)); arrhythmia and other heart problems (see HQ 563125, dated December 27, 2004, and HQ 557302, dated March 17, 1993 (concerning pacemakers, defibrillators, and accessories to such medical equipment)); and, people with speech defects (see HQ 088503, dated May 3, 1991 (concerning a speech synthesizer that converted typed words into a synthesized voice)).

On the other hand, CBP has noted that certain conditions are not physical handicaps for purposes of Chapter 98, HTSUS. For instance, in HQ H121544, dated October 6, 2014, CBP held that metabolic disorders or severe food allergies, which limit the capacity to digest, metabolize, or ingest certain foods, requiring avoidance of such foods, do not impair the actual physical act of eating. HQ H l 21544 noted that in other CBP rulings regarding classification under heading 9817, HTSUS, the conditions or diseases directly impaired one's physical ability to perform one or more major life activities. Similarly in HQ Hl31516, dated March 1, 2011, CBP differentiated the pain from swollen, itchy, or aching feet that may render an individual "unable to stand on their feet for an entire shift or too tired to stop at the grocery store on their way home from work" from those individuals with little or no mobility "unable to perform one or more major life activities." See also HQ H092454, dated April 28, 2010 (differentiating light incontinence from a condition that CBP considers a physical handicap, chronic incontinence).

See generally HQ 559916, dated May 8, 1997; and, HQ 087669, dated November 16, 1990 (holding that broadly used medical supplies (e.g., hospital gowns and medical bed pads) did not qualify for treatment under subheading 9817.00.96, HTSUS, because the evidence showed that various conditions requiring use of the supplies were not chronic or permanent conditions and no evidence specifically showed that the conditions were physical handicaps).

The commenter states that surgical microscopes with premium optics, superior illumination and other features are uniquely adapted to treat ailments that cause physical handicaps. The commenter asserts that the surgical microscopes treat conditions that frequently, although not always, substantially limit an individual's ability to perform a major life activity, which is sufficient for a condition to qualify as a handicap under the definition in U.S. Note 4(a). However, the commenter failed to grasp the difference between the actual physical handicap and the transient impairment that might render the person handicapped. In order to qualify for treatment under 9817.00.96, the impairment must be actual and not theoretical or potential.

Additionally, the subchapter note specifies that the subheading does not cover ". . . articles for acute or transient disability . . ." U.S. Note 4(b), Subchapter XVII, Chapter 98, HTSUS. Therefore, the impairment must be permanent as opposed to transient, and chronic as opposed to acute.

The subject surgical microscopes are used for patients undergoing various types of ophthalmic microsurgeries, including surgeries that do not treat a handicap. It is noted that Topcon's ophthalmic surgical microscopes are an important and indispensable aid to the surgeon in magnifying the area to be operated on and in performing delicate and precise microsurgeries on the eye. In support of Topcon's position, Topcon cited HQ 952465. In HQ 952465, instruments for cataract surgery, vitrectomy, glaucoma filtration procedures, corneal transplantation, and retinal attachment were determined to be for the benefit of the handicap because they were used to improve a visually handicapped person's ability to see. However, in reviewing Topcon's literature on their ophthalmic surgical microscopes, it is noted that use of these microscopes is not limited to the treatments described in HQ 952465, but extends to other surgeries, such as refractive surgeries.[9] The most widely performed

[9] See TOCPON CSR Report 20 I 0, "Relationship between TOPCON products and Society" at http:/ global.topcon.com/csr/pdf/en _csr20 l 0_03.pdf.

type of refractive surgery is laser-assisted in situ keratomileusis surgery, commonly referred to as LASIK.[10] The American Academy of Ophthalmology states that LASIK and other types of refractive surgery may be a good option for patients that want to decrease their dependence on glasses or contact lenses and are free of eye disease.[11] While HQ 961705 states that persons requiring ophthalmic surgery are physically handicapped, it is difficult to consider a condition that is not an eye disease, but merely wanting less dependence on glasses, to be a physical handicap for purposes of Chapter 98, HTSUS.

Furthermore, as noted in HQ H l 21544, HQ 559916, and HQ 087669, the subject surgical microscopes treat various conditions that do not directly impair one's physical ability to perform one or more major life activities. In contrast, with the rulings where CBP has considered physical ailments to be a physical handicap limiting one more major life activity, there has been evidence directly connecting the use of the product with a specific condition (e.g., diabetes, chronic incontinence, arrhythmia, etc.) that is considered a physical handicap. Even when certain products could treat physical handicaps such as chronic incontinence, the fact that evidence showed otherwise without persuasively showing use for conditions considered physical handicaps, weighed against finding that the product qualified for treatment under subheading 9817.00.96, HTSUS. Similarly, we find no persuasive evidence in HQ 961705 directly connecting the use of the subject surgical microscopes to a specific condition that is considered a physical handicap. Rather, there are various and broad ophthalmic microsurgery uses for the subject surgical microscopes. To this extent, it is not clear which of the various types of ophthalmic surgeries would be considered physical handicaps, and which would not.

Accordingly, we do not have enough evidence in HQ 961705 to substantiate the claim that all, most, many, or any of the patients undergoing surgery or other treatments with the subject surgical microscopes are considered physically handicapped for purposes of Chapter 98, HTSUS.

(2) Whether the subject surgical microscopes are specially designed or adapted for the use or benefit of such patients considered blind or other physically or mentally handicapped persons for purposes of Chapter 98, HTSUS?

The meaning of the phrase "specially designed or adapted" with regard to imported articles has been deeided on a case-by-case basis. In HQ 556449, dated May 5, 1992. CBP set forth five factors it would consider in making this case-by-case determination. The same factors are relevant in determining whether a part is "specially designed or adapted" for an article for the use or benefit of handicapped persons. These factors include: (1) the physical properties of the article itself (i.e., whether the article is easily distinguishable by properties of the design, form, and the corresponding use specific to this unique design, from articles useful to non-handicapped persons); (2) whether any characteristics are present that create a substantial probability of use by the chronically handicapped so that the article is easily distinguishable from articles useful to the general public and any use thereof by the general public

[10] See American Academy of Ophthalmology, 'What is Refractive Surgery?" at www.aao.orgieye- health/treatments/what-is-refractive-surgery.

[11] See American Academy of Ophthalmology, supra note

is so improbable that it would be fugitive; (3) whether articles are imported by manufacturers or distributors recognized or proven to be involved in this class or kind of articles for the handicapped; (4) whether the articles are sold in specialty stores which serve handicapped individuals; and, (5) whether the condition of the articles at the time of importation indicates that these articles are for the handicapped.

With regard to the first factor, a product's compliance with the ADA has been an important consideration in CBP's determination under this factor. For example, in HQ H230457, dated July 19, 2013, CBP found that certain bathroom fixtures satisfied this factor because they were "easily distinguishable as designed for the handicapped since they met or exceeded the standards under the ADA and were prominently marked as ADA-compliant." In this case, there is no indication that the surgical microscopes are ADA-compliant or designed to a certain standard that specifically benefits physically handicapped individuals. Furthermore, the subject surgical microscopes have physical properties that permit them to be used for various conditions, many of which would not be considered a physical handicap per Chapter 98, HTSUS. Therefore, we do not find that the physical properties of the subject surgical microscopes are readily distinguishable from articles useful to non-handicapped individuals.

With regard to the second factor, CBP ruled in HRL 556449, dated May 5, 1992, that duty-free treatment under subheading 9817.00.96, HTSUS, was precluded for a two-handed mug, which was designed with a low center of gravity and a corresponding top to help reduce spillage, since this article was commonly used by children and the design was common in traveling mugs used by the general public. In HRL 560114, dated October 9, 1997, CBP held that a reading assistance machine that magnifies an image from 5 to 25 times was specially designed and adapted for the use or benefit of handicapped persons. The machine displayed magnified written and pictorial material on a large television screen transmitted by a video camera. CBP concluded that while the machine "may be used to magnify images for non-handicapped persons, Customs believes such a use would be an atypical use" due to its special design features, which included its capacity to magnify images, yellow oversize control knobs, and the product's dark color used to minimize glare and maximize contrast. However, in HRL 562329, dated April 26, 2002, CBP noted that while lenses incorporated into video magnifiers were similar to the product involved in HRL 560115, there was no evidence presented to show that lenses were specially designed or adapted for the use or benefit of physically handicapped individuals. Absent evidence that the lenses were specially designed or adapted for the use or benefit of physically handicapped individuals and that the lenses were not suited for many general uses, CBP was unable to conclude that the lenses in HRL 562329 were eligible for duty-free treatment under subheading 9817.00.96, HTSUS.

In this case, the subject surgical microscopes are used for a variety of conditions, many of which would benefit the general public (e.g., wisdom tooth extraction, cosmetic surgery, LASIK, etc.). Furthermore, no evidence has been presented to show that these surgical microscopes were specially designed or adapted for the use or benefit of physically handicapped individuals and that they were not suited for many general uses. Therefore, we do not find that the subject surgical microscopes have characteristics that create a substantial probability of use by the chronically handicapped.

With regard to the remaining factors, the subject surgical microscopes are manufactured and sold by the Company, which is an entity that has established itself as a manufacturer of microscopes in the medical field. However, microscopes for the medical field are not necessarily articles for the handicapped, as there are many medical needs for the general population. Furthermore, no evidence is found showing that the condition of these surgical microscopes upon importation to the United States indicates that they are for the benefit of physically handicapped individuals. Therefore, these factors were not satisfied based on the evidence provided for the subject rulings.

Given the foregoing, we find that the subject surgical microscopes do not qualify for duty-free treatment under subheading 9817.00.96, HTSUS

HOLDING:

Based on the information presented, the subject surgical microscopes described in HQ 961705 are not eligible for duty-free treatment under subheading 9817.00.96, HTSUS.

EFFECT ON OTHER RULINGS:

HQ 961705, dated August 25, 1999, is hereby MODIFIED in accordance with the above analysis.

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

Sincerely,

MONIKA R. BRENNER
for

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

PROPOSED REVOCATION OF ONE RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF A SMARTPHONE ACCESSORY CONSISTING OF A KEYBOARD, LCD AND TRACKPAD

ACTION: Notice of proposed revocation of one ruling letter and revocation of treatment relating to the tariff classification of a smartphone accessory consisting of a keyboard, LCD and trackpad.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke one ruling letter concerning tariff classification of a smartphone accessory consisting of a keyboard, LCD and trackpad 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 October 26, 2018.

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

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the public and CBP share responsibility in carrying out import requirements. For example, under section

484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether any other applicable legal requirement is met.

Pursuant to 19 U.S.C. § 1625(c)(1), this notice advises interested parties that CBP is proposing to revoke one ruling letter pertaining to the tariff classification of a smartphone accessory consisting of a keyboard, LCD and trackpad. Although in this notice, CBP is specifically referring to New York Ruling Letter ("NY") N282589, dated February 3, 2017, this notice also covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the comment period.

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

In NY N282589, CBP classified a smartphone accessory consisting of a keyboard, LCD and trackpad in heading 8543, HTSUS, specifically in subheading 8543.70.99, HTSUS, which provides for "[E]lectrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter: Other machines and apparatus: Other." CBP has reviewed NY N282589 and has determined the ruling letter to be in error. It is now CBP's position that the smartphone accessory consisting of keyboard, LCD and trackpad is properly classified, in heading 8543, HTSUS, specifically in subheading 8543.70.60, HTSUS, which provides for "[E]lectrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; Other machines and apparatus: Articles designed for connection to telegraphic or telephonic apparatus or instruments or to telegraphic or telephonic networks."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY N282589 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed H286666, set forth as Attachment B to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: July 31, 2018

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

Attachments

ATTACHMENT A

N282589

February 3, 2017
CLA-2–85:OT:RR:NC:N4:112
CATEGORY: Classification
TARIFF NO.: *8543.70.9960*

JIMMY TING
GREAT WORLD CUSTOMS SERVICE
518 ECCLES AVENUE
SOUTH SAN FRANCISCO, CA 94080

RE: The tariff classification of the Superbook from an undisclosed country

DEAR MR. TING:

In your letter dated January 16, 2017 you requested a tariff classification ruling on behalf of your client, Andromium, Inc. DBA Sentio.

The merchandise under consideration is referred to as the Superbook, which you describe as a "smartphone accessory/laptop dock" measuring 29 cm by 19.5 cm and consisting of a liquid crystal display (LCD), a multi-touch track pad, a battery, and a full QWERTY keyboard within a plastic folding enclosure. The Superbook closely resembles a traditional laptop personal computer (PC), however unlike a laptop, the Superbook does not contain a processor, program storage, a speaker, or a microphone. The Superbook is said to be imported packaged with a USB cable and a charging adapter.

In use, the user is required to download and install the Sentio application from the GooglePlay Store onto their Android smartphone and connect to the Superbook via a USB cable. Once the devices are connected and the application is started, the user's phone display is presented on the Superbook LCD and the user may interact with the smartphone's applications directly from the Superbook's trackpad and keyboard. In doing so, the Sentio application allows users to interact with their smartphone in a manner similar to an automatic data processing (ADP) machine, such as a laptop or desktop PC. We would note that the processing and storage of all applications is performed from and stored onto the user's smartphone.

In your request you suggest that the Superbook is correctly classified under 8471.60.1050, Harmonized Tariff Schedule of the United States, (HTSUS), which provides for: Input or output units, whether or not containing storage units in the same housing: Combined input/output units. However, the Superbook does not connect to an ADP machine and does not meet the requirements set forth in Chapter 84 Note 5. As such, classification in heading 8471 is not appropriate.

The applicable subheading for the Superbook will be *8543.70.9960*, HTSUS, which provides for "Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter...: Other machines and apparatus: Other: Other: Other: Other." The rate of duty will be 2.6% ad valorem.

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

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

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

Sincerely,

STEVEN A. MACK
Director
National Commodity Specialist Division

ATTACHMENT B

HQ H286666
CLA-2 OT:RR:CTF:CPM H286666 SKK
CATEGORY: Classification
TARIFF NO.: 8543.70.60

MATT NAKACHI, ESQ.
JUNKER & NAKACHI
ONE MARKET SPEAR TOWER, STE. 3600
SAN FRANCISCO, CA 94105

RE: Reconsideration of NY N282589; Tariff classification of the "Superbook"

DEAR MR. NAKACHI:

This ruling is in response to your request for reconsideration of New York Ruling Letter (NY) N282589, issued on February 3, 2017, to Great World Customs Service on behalf of Andromium, Inc. DBA Sentio, regarding the classification under the Harmonized Tariff System of the United States (HTSUS) of an article identified as the "Superbook." In NY N282589, U.S. Customs and Border Protection (CBP) classified the subject article under subheading 8543.70.99, HTSUS, as "[E]lectrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter: Other machines and apparatus: Other: Other: Other." Upon review of NY N282589, CBP has determined that the subheading classification is in error. Pursuant to the analysis set forth below, CBP is revoking NY N282589.

FACTS:

The merchandise under consideration is referred to as the Sentio Superbook. The subject article measures 29 centimeters (cm) by 19.5 cm and consists of a 1366 x 768 liquid crystal display (LCD), multi-touch track pad, battery, and a full QWERTY keyboard within a plastic folding enclosure. The Superbook closely resembles a traditional laptop personal computer (PC). However, unlike a traditional laptop, the Superbook does not contain a processor, program storage, a speaker, or a microphone. The Superbook is imported packaged with a USB cable and a charging adapter. The Superbook can be used with any device, such as smartphones and tablet computers, running an Android operating system. Counsel submits that desktop computers and laptops can also be loaded with an Android-compatible emulator. An Android powered operating system must have software installed that allows it to recognize and interact with the Superbook. This software, the Sentio app, can be downloaded and installed onto an Android smartphone or other Android device and the Superbook is connected to the device via a USB cable. Once the devices are connected and the app is started, the user's phone display is presented on the Superbook LCD and the user may interact with the smartphone's applications directly from the Superbook's trackpad and keyboard. The Sentio app allows the user to interact with their smartphone in a manner similar to an automatic data processing (ADP) machine, such as a laptop or desktop PC. The processing and storage of all applications is performed from and stored onto the user's smartphone.

ISSUE:

Whether the subject article is classifiable under heading 8471, HTSUS, which provides for "[A]utomatic data processing machines and units thereof," under subheading 8543.70.60, which provides for "[E]lectrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; Other machines and apparatus: Articles designed for connection to telegraphic or telephonic apparatus or instruments or to telegraphic or telephonic networks," or under subheading 8543.70.99, HTSUS, in a residual sub-category of a residual provision.

LAW AND ANALYSIS:

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

The following headings and subheadings of the HTSUS are under consideration:

8471	Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included:
	* * *
8543	Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof:
8543.70	Other machines and apparatus:
8543.70.60	Articles designed for connection to telegraphic or telephonic apparatus or instruments or to telegraphic or telephonic networks
8543.70.99	Other

In NY N282589, CBP classified the Superbook under subheading 8543.70.99, HTSUS. In your request for reconsideration of NY N282589, you posit that based upon additional information provided, the Superbook is properly classifiable under a number of different HTSUS provisions, including subheading 8471.60.20, HTSUS, and subheading 8543.70.60, HTSUS. Specifically, you state that the Superbook is not designed for sole use with a smartphone and the device is:

> [C]apable of use with any number of other android compatible devices, including (a) the automatic data processing ('ADP') component of an android smartphone (a composite machine consisting of an ADP and a phone); (b) a computer (itself an ADP machines); or (c) a laptop computer; or (d) an android tablet computer.

Regarding your assertion that the Superbook is classifiable under heading 8471, HTSUS, as a unit of an ADP system, we note that Note 5 to Chapter 84 provides:

(A) For the purposes of heading 8471, the expression "automatic data processing machines" means machines capable of:

(i) Storing the processing program or programs and at least the data immediately necessary for the execution of the program;

(ii) Being freely programmed in accordance with the requirements of the user;

(iii) Performing arithmetical computations specified by the user; and

(iv) Executing, without human intervention, a processing program which requires them to modify their execution, by logical decision during the processing run.

(B) Automatic data processing machines may be in the form of systems consisting of a variable number of separate units.

(C) Subject to paragraphs (D) and (E) below, a unit is to be regarded as being part of an automatic data processing system if it meets all of the following conditions:

(i) It is of a kind solely or principally used in an automatic data processing system;

(ii) It is connectable to the central processing unit either directly or through one or more other units; and

(iii) It is able to accept or deliver data in a form (codes or signals) which can be used by the system.

Separately presented units of an automatic data processing machine are to be classified in heading 8471.

However, keyboards, X-Y co-ordinate input devices and disk storage units which satisfy the conditions of paragraphs (C) (ii) and (C) (iii) above, are in all cases to be classified as units of heading 8471.

(Emphasis added).

Although the Superbook may be used with Android-compatible devices installed with the Sentio app, its utility in this context is limited. The Superbook's keyboard, display, and trackpad functions duplicate what most PCs, laptops and tablets already offer – with the exception that perhaps some users may prefer to type on the Superbook's QWERTY keyboard rather than a tablet touch screen. We further note that no substantiating evidence was provided by counsel regarding the Superbook's use with Android-compatible devices other than Android smartphones. In this regard it is noted that Sentio's website, as well as Sentio's Kickstarter Fund website, describes the Superbook's primary purpose as enabling a smartphone to be used in the manner of a laptop by providing a keyboard, LCD, and trackpad. Sentio's website markets the Superbook as follows:

Your Phone Doubles As Your Laptop. Get things done anywhere with Superbook, the "Laptop Body" that transforms your phone into a laptop.

* * *

With Superbook, your Android phone is finally your laptop.

* * *

> New Phone, New Laptop. Superbook is compatible with all modern Android devices. Get a new phone? It's like getting a new laptop free.
>
> See https://www.sentio.com/https: [site last visited November 21, 2017].

The Kickstarter website for this device states:

> What is the Superbook?
>
> At its core, the Superbook is a smart laptop shell that provides a large screen, keyboard and multi-touch trackpad, 8+ hours of battery, and phone charging capabilities. When plugged into your Android smartphone, it launches our app to deliver the full laptop experience. Think of it as the ultimate accessory for your smartphone.
>
> See *https://www.kickstarter.com/projects/andromium/the-superbook-turn-your-smartphone-into-a-laptop-f [site last visited November 17, 2017].*

As the Superbook is designed primarily to interface with smartphones and its operation would be superfluous with respect to ADP machines, we find that it is not of a kind solely or principally used in an ADP system, and thus does not satisfy the requirements set forth in Note 5(C)(i) to Chapter 84. Therefore, classification under heading 8471, HTSUS, is precluded.

One of your other classification theories is partially in agreement with NY N282589 inasmuch as the subject Superbook is provided for under heading 8543, HTSUS, but properly classified pursuant to GRI 6 under subheading 8543.70.60, HTSUS, as an article "...designed for connection to telegraphic or telephonic apparatus or instruments or to telegraphic or telephonic networks" rather than subheading 8543.70.99, HTSUS.

In this regard, we note that EN 85.43, provides, in pertinent part:

> This heading covers all electrical appliances and apparatus, not falling in any other heading of this Chapter, nor covered more specifically by a heading of any other Chapter of the Nomenclature, nor excluded by the operation of a Legal Note to Section XVI or to this Chapter. The principal electrical goods covered more specifically by other Chapters are electrical machinery of Chapter 84 and certain instruments and apparatus of Chapter 90.
>
> The electrical appliances and apparatus of this heading must have individual functions. The introductory provisions of Explanatory Note to heading 84.79 concerning machines and mechanical appliances having individual functions apply, mutatis mutandis, to the appliances and apparatus of this heading.

Based on the foregoing, we find that the Superbook performs the individual function of enabling a smartphone to emulate the capabilities of a laptop or tablet computer. The Superbook is not covered by any other heading in Chapter 85 or elsewhere in the Nomenclature, and therefore is properly classified under heading 8543, HTSUS. As the Superbook is an electrical machine designed for connection to telephonic apparatus (i.e. a smartphone), is it properly classifiable under subheading 8543.70.60, HTSUS, pursuant to GRI 6. Furthermore, we note that this conclusion is consistent with a previous decision in which CBP classified a substantially similar device, identified

as the Redfly Mobile Companion, in NY N024935, dated April 7, 2008. In that ruling, CBP determined that the subject article, described as an accessory to select models of Windows Mobile Smart Phones and consisting of a QWERTY keyboard, display screen and track pad, was classifiable under subheading 8543.70.60, HTSUS.

HOLDING:

By application of GRIs 1 and 6, the Superbook is classified in heading 8543, HTSUS, and specifically in subheading 8453.70.60, HTSUS, which provides for "[E]lectrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; Other machines and apparatus: Articles designed for connection to telegraphic or telephonic apparatus or instruments or to telegraphic or telephonic networks... ." The applicable rate of duty is free.

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

EFFECT ON OTHER RULINGS:

NY N282589, dated February 3, 2017, is hereby REVOKED in accordance with the above analysis.

Sincerely,

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

PROPOSED REVOCATION OF ONE RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF GREEK YOGURT DIPS

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 Greek yogurt dips.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke one ruling letter concerning tariff classification of Greek yogurt dips 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 October 26, 2018.

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

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the public and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter,

classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether any other applicable legal requirement is met.

Pursuant to 19 U.S.C. §1625(c)(1), this notice advises interested parties that CBP is proposing to revoke one ruling letter pertaining to the tariff classification of Greek yogurt dips. Although in this notice, CBP is specifically referring to New York Ruling Letter ("NY") N283364, dated March 13, 2017 (Attachment A), this notice also covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the comment period.

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

In NY N283364, CBP classified Greek yogurt dips in heading 0406, HTSUS, specifically in subheading 0406.10.84, HTSUS, which provides for "[c]heese and curd: Fresh (unripened or uncured) cheese, including whey cheese, and curd: Other: Other: Other: Other cheese and substitutes for cheese (except cheese not containing cow's milk, and soft ripened cow's milk cheese): Described in additional U.S. note 16 to this chapter and entered pursuant to its provisions." CBP has reviewed NY N283364 and has determined the ruling letter to be in error. It is now CBP's position that the Greek yogurt dips are properly classified, in heading 2103, HTSUS, specifically in subheading 2103.90.90, HTSUS, which provides for "[s]auces and preparations therefore; mixed condiments and mixed seasonings; mustard flour and meal and prepared mustard: Other: Other: Other."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke NY N283364 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter ("HQ") H285620, set forth as Attachment B to this

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

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

Dated: July 19, 2018

IEVA K. O'ROURKE
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachments

ATTACHMENT A

N283364

March 13, 2017
CLA-2–04:OT:RR:NC:N4:231
CATEGORY: Classification
TARIFF NO.: *0406.10.8400*, *0406.10.8800*

MR. DAVID PENTLAND
CARSON CUSTOMS BROKERS LTD
925 BOBLETT STREET
BUILDING B
BLAINE, WA 98230

RE: The tariff classification of Greek Yogurt Dip from Canada

DEAR MR. PENTLAND:

In your letter dated February 9, 2017 you requested a tariff classification ruling on behalf of your client, Parmalat Canada Inc. (Etobicoke, Ontario).

The subject merchandise is four various flavors of Sabra® brand Greek Yogurt Dip.

Farmer's Ranch is composed of yogurt (cultured skim milk, cream, milk protein), carrot, cucumber, celery, canola oil, onions, salt, onion powder, spices, chives, parsley, garlic powder, sugar, pectin, cultured dextrose, cultured skim milk, potassium sorbate (added to maintain freshness), natural flavors, sodium citrate, and citric acid.

Tzatziki is composed of yogurt (cultured skim milk, cream, milk protein), cucumber, garlic, canola oil, onions, parsley, dill, spices, salt, sugar, pectin, cultured dextrose, cultured skim milk, potassium sorbate (added to maintain freshness), natural flavors, sodium citrate, and citric acid.

French Onion is composed of yogurt (cultured skim milk, cream, milk protein), canola oil, onions, garlic powder, salt, sugar, brown sugar, pectin, cultured dextrose, cultured skim milk, potassium sorbate (added to maintain freshness), natural flavors, sodium citrate, and citric acid.

Spinach Parmesan is composed of yogurt (cultured skim milk, cream, milk protein), spinach, onions, canola oil, salt, garlic, sugar, parmesan cheese, pectin, cultured dextrose, cultured skim milk, natural flavors, potassium sorbate (added to maintain freshness), sodium citrate, and citric acid.

Each of the products contain 18 percent milk fat and will be packed in plastic containers (six per case) with a net weight of 283 grams and 680 grams, respectively.

The applicable subheading for both of the above-described four flavors of Greek Yogurt Dip, if entered under quota, will be *0406.10.8400*, Harmonized Tariff Schedule of the United States (HTSUS), which provides for cheese and curd: fresh (unripened or uncured) cheese, including whey cheese, and curd: other: other: other: other cheese and substitutes for cheese (except cheese not containing cow's milk, and soft ripened cow's milk cheese): described in additional U.S. note 16 to chapter 4 and entered pursuant to its provisions. The rate of duty will be 10 percent ad valorem

Imports under subheading *0406.10.8400*, HTSUS, require an import license, in accordance with terms and conditions provided in regulations issued by the Secretary of Agriculture, subject to the approval of the United States

Trade Representative (USTR). The regulations may provide for the reallocation among supplying countries or areas of unfilled quantities, subject to USTR approval.

Questions regarding licensing procedures and applications for licenses to import cheese subject to quota should be addressed to:

Import Quota Manager for Dairy Products
U.S. Department of Agriculture (USDA)
Stop 1029
1400 Independence Avenue, SW
Washington, DC 20250–1029
Tel: (202) 720–1344

The applicable subheading for the above-described four flavors of Greek Yogurt Dip, if imported outside the quota (i.e., without a USDA cheese-import license), will be *0406.10.8800*, HTSUS, which provides for cheese and curd: fresh (unripened or uncured) cheese, including whey cheese, and curd: other: other: other: other cheese and substitutes for cheese (except cheese not containing cow's milk, and soft ripened cow's milk cheese): other. The rate of duty will be $1.509 per kilogram. Also, products classified in subheading *0406.10.8800*, HTSUS, will be subject to additional safeguard duties based on their value, as described in subheadings 9904.06.38—9904.06.48.

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

Importations of this merchandise are subject to regulations administered by various U.S. agencies. Requests for information regarding applicable regulations administered by the U.S. Department of Agriculture (USDA) may be addressed to that agency at the following location:

USDA
APHIS, VS, NCIE
Products Program
4700 River Road, Unit 40
Riverdale, MD 20737–1231
Tel: (301) 851–3300
Email: AskNCIE.Products@aphis.usda.gov

This merchandise is subject to The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (The Bioterrorism Act), which is regulated by the Food and Drug Administration (FDA). Information on the Bioterrorism Act can be obtained by calling the FDA at 301–575–0156, or at the Web site www.fda.gov/oc/bioterrorism/bioact.html.

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

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

Sincerely,

STEVEN A. MACK
Director
National Commodity Specialist Division

ATTACHMENT B

HQ H285620
CLA-2 OT:RR:CTF:FTM H285620 GaK
CATEGORY: Classification
TARIFF NO: 2103.90.90

DAVE PENTLAND
CARSON CUSTOMS BROKERS (USA) INC.
925 BOBLETT STREET, BLDG. B
BLAINE, WA 98230

RE: Revocation of NY N283364; Classification of Greek yogurt dips from Canada

DEAR MR. PENTLAND:

This letter is to inform you that U.S. Customs and Border Protection ("CBP") has reconsidered New York Ruling Letter ("NY") N283364, which was issued to Carson Customs Brokers on March 13, 2017. In NY N283364, CBP classified four[1] various flavors of Sabra® brand Greek Yogurt Dips ("merchandise") under subheading 0406.10.84, Harmonized Tariff Schedule of the United States ("HTSUS"), which provides for: "[c]heese and curd: Fresh (unripened or uncured) cheese, including whey cheese, and curd: Other: Other: Other: Other cheese and substitutes for cheese (except cheese not containing cow's milk, and soft ripened cow's milk cheese): Described in additional U.S. note 16 to this chapter and entered pursuant to its provisions."[2] We have reviewed NY N283364 and found it to be incorrect. For the reasons set forth below, we are revoking this ruling.

FACTS:

In NY N283364, the merchandise was described as follows:

> The subject merchandise is [three] various flavors of Sabra® brand Greek Yogurt Dip. Farmer's Ranch is composed of yogurt (cultured skim milk, cream, milk protein), carrot, cucumber, celery, canola oil, onions, salt, onion powder, spices, chives, parsley, garlic powder, sugar, pectin, cultured dextrose, cultured skim milk, potassium sorbate (added to maintain freshness), natural flavors, sodium citrate, and citric acid.
>
> Tzatziki is composed of yogurt (cultured skim milk, cream, milk protein), cucumber, garlic, canola oil, onions, parsley, dill, spices, salt, sugar, pectin, cultured dextrose, cultured skim milk, potassium sorbate (added to maintain freshness), natural flavors, sodium citrate, and citric acid.
>
> Spinach Parmesan is composed of yogurt (cultured skim milk, cream, milk protein), spinach, onions, canola oil, salt, garlic, sugar, parmesan

[1] NY N283364 also classified a French Onion flavor of merchandise, which has since been discontinued. This ruling will address the classification of the remaining three flavors of merchandise.

[2] NY N283364 notes that the merchandise will be classified under subheading 0406.10.88, HTSUS, if imported outside the quota (i.e., without a United States Department of Agriculture ("USDA") cheese-import license, which provides for "[c]heese and curd: Fresh (unripened or uncured) cheese, including whey cheese, and curd: Other: Other: Other: Other cheese and substitutes for cheese (except cheese not containing cow's milk, and soft ripened cow's milk cheese): Other."

cheese, pectin, cultured dextrose, cultured skim milk, natural flavors, potassium sorbate (added to maintain freshness), sodium citrate, and citric acid.

Each of the products contain 18 percent milk fat and will be packed in plastic containers (six per case) with a net weight of 283 grams and 680 grams, respectively.

You also submitted, at our request, a flowchart of the manufacturing process of the Greek Yogurt, which serves as the base for the merchandise prior to addition of the other ingredients, such as vegetables, herbs, and spices.

ISSUE:

Whether the merchandise is classified under heading 0406, HTSUS, as "[c]heese and curd," or heading 2103, HTSUS, as "[s]auces and preparations therefore; mixed condiments and mixed seasonings; mustard flour and meal and prepared mustard"?

LAW AND ANALYSIS:

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

The 2018 HTSUS headings at issue are as follows:

0406 Cheese and curd

* * *

2103 Sauces and preparations therefore; mixed condiments and mixed seasonings; mustard flour and meal and prepared mustard

Heading 0406, HTSUS, provides for cheese and curd. Fresh cheese is produced with pasteurized milk, whereas for the production of yogurt, the milk is subjected to higher-temperature heat treatment to ensure the retention of whey. During cheese production, milk-clotting enzyme is added to coagulate the milk and separate the liquid (whey) from the milk solids (curds).[3] The production of the merchandise at issue does not involve a straining process and all of the dairy ingredients, including the whey, are stated to remain in the formula. Therefore, the merchandise cannot be classified as cheese under heading 0406, HTSUS.

The Explanatory Notes ("EN"s) to the Harmonized Commodity Description and Coding System constitute the official interpretation of the Harmonized System at the international level. Though not dispositive, the ENs provide a

[3] http://www.eatwisconsincheese.com/cheeses/how-cheese-is-made (last visited June 2, 2017).

commentary on the scope of each heading of the HTSUS. Customs believes the ENs should always be consulted. See T.D. 89–80, 54 Fed. Reg. 35127–28 (Aug. 23, 1989).

Heading 2103, HTSUS, provides for sauces and preparations therefore.

ENs to 21.03(A) provides as follows:

> ...
>
> The heading also includes certain preparations, based on vegetables or fruit, which are mainly liquids, emulsions or suspensions, and sometimes contain visible pieces of vegetables or fruit. These preparations differ from prepared or preserved vegetables and fruit of Chapter 20 in that they are used as sauces, i.e., as an accompaniment to food or in the preparation of certain food dishes, but are not intended to be eaten by themselves.

* * *

In Nestle Refrigerated Food Co v. United States, 18 C.I.T. 661, 668 (1994), the court concluded that the common meaning of "other tomato sauces" is based on the common meaning of the term "sauce." The Nestle court stated "[i]n 1894, the U.S. Supreme Court reviewed the common meaning of the term "sauce" and determined that: '[t]he word "sauce," as commonly used, designates a condiment, generally but not always of liquid form, eaten as an addition to and together with a dish of food, to give it flavor and make it more palatable; and is not applied to anything which is eaten, alone or with a bit of bread, either for its own sake only, or to stimulate the appetite for other food to be eaten afterwards." Id. at 668 (citations omitted).

The court in Nestle, following the seminal Bogle v. Magone, 152 U.S. 623, 625–26 (1894) (subsequently followed by Del Gaizo Distrib. Corp. v. United States, 24 C.C.P.A. 64, T.D. 48,376 (1936)) and its progeny, determined that in ascertaining whether a product fits within the common meaning of sauce, the court will "examine a variety of key features, including its ingredients, flavor, aroma, texture, consistency, actual and intended use, and marketing." See, e.g., Neuman & Schwiers Co., 18 C.C.P.A. at 3. "Whether a product is fit for use as a sauce depends upon more than the mere possibility of use; rather, substantial actual use as a sauce must be demonstrated." See Wah Shang Co. v. United States, 44 C.C.P.A. 155, 159, C.A.D. 654 (1957). Also, according to Nestle, a product's physical features are also considered in light of their effect on the product's ability to be used as a sauce.

The merchandise at issue mainly consist of cream (18% milk fat and 25% total solids). Ranch product formula consists of 45% cream, 33% ultra-filtered milk with 85 percent moisture level ("UF 85"), 7% carrots, 5% cucumber, 2% non-fat dried milk ("NFDM"), 2% celery, 2% canola oil, 1% yellow onions, 1% salt, and less than 1% of ranch flavor, onion powder, umami powder, black pepper, pectin, xanthan, citric acid, dried chives, parsley flakes, garlic powder, sorbate, and culture. Tzatziki formula consists of 48% cream, 34% UF 85, 11% cucumber, 2% NFDM, 1% garlic paste, less than 1% of canola oil, yellow onions, garlic, salt, dill weed, cucumber flavor blend, dry dill weed, parsley, pectin, citric acid, white pepper, sugar, and potassium sorbate. Spinach Parmesan formula consists of 38% cream, 27% UF 85, 18% spinach, 6% yellow onions, 5% parmesan cheese, 2% NFDM, 2% canola oil, less than 1% of salt, water, garlic, feta cheese, citric acid, pectin, sorbate, and culture.

In this instance, we find that in its condition as imported, the merchandise is materially similar to products previous found to be classified in heading

2103 and is within the class or kind of goods used as a sauce. In accordance with the ENs to 21.03, the merchandise mainly consists of cream and milk and has liquid character, although with visible pieces of vegetables. See HQ W968353, dated August 1, 2007 (Tzatziki garlic dip consisted of 85% cream, 10% cucumber, and 4% vegetable oil); NY H81014, dated May 29, 2001 (garlic dip consisted of 89% margarine, 7% garlic, 1% whey powder, and less than 1% each of salt, skim milk powder, "Butter Buds," Worcestershire sauce, "N Lite D," black pepper, parsley flakes, and chicken base); and NY J81714, dated March 20, 2003 (blue cheese dressing consisted of 50% vegetable oil, 27% water, 9.8% vinegar, 3.2% blue cheese, 2.4% whey powder, 1.9% egg yolk, 1.7% each of modified corn starch and salt, one percent sugar, and less than one percent flavoring, citric acid, pepper, and preservatives).

Therefore, we find that under GRI 1, the Sabra® brand Greek Yogurt Dips are described by heading 2103, HTSUS, specifically subheading 2103.90.90, which provides for "[s]auces and preparations therefore; mixed condiments and mixed seasonings; mustard flour and meal and prepared mustard: Other: Other: Other."

HOLDING:

Under the authority of GRIs 1 and 6, the Sabra® brand Greek Yogurt Dips are provided for in heading 2103, HTSUS, specifically in subheading 2103.90.90, HTSUS, which provides for, "[s]auces and preparations therefore; mixed condiments and mixed seasonings; mustard flour and meal and prepared mustard: Other: Other: Other." The 2018 column one general rate of duty is 6.4% ad valorem.

EFFECT ON OTHER RULINGS:

NY N283364, dated March 13, 2017, is hereby REVOKED.

Sincerely,

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

19 CFR PART 177

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

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

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

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking one ruling letter concerning tariff classification of a Radiator/Charge Air Cooler Assembly 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 November 26, 2018.

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the public and CBP share responsibility in carrying out import requirements. For example, under section

484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether any other applicable legal requirement is met.

Pursuant to 19 U.S.C. § 1625(c)(1), 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 a Radiator/Charge Air Cooler Assembly. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

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

In NY R04029, dated June 12, 2006, CBP classified the Radiator/Charge Air Cooler Assembly at issue in subheading 8708.99, HTSUS, which provides for "Parts and accessories of the motor vehicles of headings 8701 to 8705: Other parts and accessories: Other...." CBP has reviewed NY R04029, and has determined the ruling letter to be in error. It is now CBP's position that the Radiator/Charge Air Cooler Assembly is properly classified in subheading 8708.91, HTSUS, specifically, in subheading 8708.91.50, which provides for "Parts and accessories of the motor vehicles of headings 8701 to 8705: Other parts and accessories: Radiators and parts thereof: Radiators: For other vehicles...."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY R04029 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in HQ H275146, set forth as an attachment to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: September 6, 2018

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

Attachment

HQ H275146
September 6, 2018
CLA-2 OT:RR:CTF:TCM H275146 ALS
CATEGORY: Classification
TARIFF NO.: 8708.91.50

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

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

DEAR MR. FORHART:

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke NY R04029 was published on July 11, 2018, in Volume 52, Number 28 of the Customs Bulletin. No comments were received in response to this notice.

FACTS:

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

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

ISSUE:

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

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States (HTSUS) is determined in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative

Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied. GRI 6 provides the following:

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

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

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

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

> The expressions "parts" and "parts and accessories" do not apply to the following articles, whether or not they are identifiable as for the goods of this section:
>
> (e) Machines or apparatus of headings 8401 to 8479, or parts thereof, *other than the radiators for the articles of this section*; articles of heading 8481 or 8482 or, provided they constitute integral parts of engines or motors, articles of heading 8483;...
>
> [*Emphasis* added.]

Note 3 to Section XVII provides the following:

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

There is no dispute that the subject Assembly is a part of a vehicle of heading 8704, thereby making it classifiable under heading 8708. Taken as a whole, its function is to cool the air expelled from the turbo of the truck's engine. While a radiator is specifically provided for under subheading 8708.91, it is

not defined therein or in the Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System. The ENs represent the official interpretation of the tariff at the international level.

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

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

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

HOLDING:

By application of GRI 1 (Note 3 to Section XVII), the subject Radiator/Charge Air Assembly is classified under heading 8708, HTSUS. Specifically, by application of GRI 6, the Assembly is properly classified under subheading 8708.91, HTSUS.

Specifically, the Assembly is properly classified under subheading 8708.91.50, which provides for "Parts and accessories of the motor vehicles of headings 8701 to 8705: Other parts and accessories: Radiators and parts thereof: Radiators: For other vehicles...." The 2018 column one, general rate of duty for merchandise classified in this subheading is 2.5% ad valorem.

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

EFFECT ON OTHER RULINGS:

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

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

Sincerely,

GREG CONNOR
for

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

19 CFR PART 177

MODIFICATION OF ONE RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF A MINE PERSONNEL CARRIER

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 a mine personnel carrier.

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 (CSP) is modifying one ruling letter concerning tariff classification of a mine personnel carrier under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CSP is revoking any treatment previously accorded by CSP to substantially identical transactions. Notice of the proposed action was published in the *Customs* Bulletin, Vol. 52, No. 27, on July 5, 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 November 26, 2018.

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CSP 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 CSP 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 *B*ulletin, Vol. 52, No. 27, on July 5, 2018, proposing to modify one ruling letter pertaining to the tariff classification of a mine personnel carrier. 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 CSP 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") N106796, dated June 2, 2010, CSP classified a mine personnel carrier in heading 8703, HTSUS, specifically in subheading 8703.33.00, HTSUS, which provides for "Motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading 8702), including station wagons and racing cars: Other vehicles, with only compression-ignition internal combustion piston engine (diesel or semi-diesel): Of a cylinder capacity exceeding 2,500 cc." CBP has reviewed NY N106796 and has determined the ruling letter to be in error. It is now CBP's position that the mine personnel carrier is properly classified, in heading 8703, HTSUS, specifically in subheading 8703.33.01, HTSUS, which provides for "Motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading 8702), including station wagons and racing cars: Other vehicles, with only compression-ignition internal combustion piston engine (diesel or semi-diesel): Of a cylinder capacity exceeding 2,500 cc."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is modifying NY N106796 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter ("HQ") H269330, 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: August 29, 2018

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

Attachment

HQ H269330
August 29, 2018
CLA-2 OT:RR:CTF:EMAIN H269330 PF
CATEGORY: Classification
TARIFF NO.: 8703.33.01

MR. KENNETH M. CARMON, PRESIDENT
BAY BROKERAGE, INC.
44951 COUNTRY ROUTE 191, SUITE 201
WELLESLEY ISLAND, NEW YORK 13640

RE: Modification of NY N106796; tariff classification of a Mine Personnel Carrier

DEAR MR. CARMON:

On June 2, 2010, U.S. Customs and Border Protection ("CBP") issued to you New York Ruling Letter ("NY") N106796. It concerned the tariff classification of a Mine Personnel Carrier under the Harmonized Tariff Schedule of the United States ("HTSUS"). We have reconsidered NY N106796 and have determined that the Law and Analysis section should be modified to reflect that sufficient evidence was not provided to support the assertion regarding the number of seats in the vehicle.

FACTS:

In NY N106796, the subject Mine Personnel Carrier was described as follows:

> It consists of the chassis and cab of a Toyota Land Cruiser modified with a rear passenger seating.
>
> The Carrier features power steering, tilt steering wheel, seatbelts in the two (2) front seats, air conditioning, heating, stereo system, 4.2-litre compression-ignition engine, 3200 kg. (7055 lbs.) GVW suspension and 5-speed manual transmission. The rear passenger portion is equipped with non-removable upholstered bench seats, parallel to each other. You state in your ruling request that the bench seats accommodate from six to eight miners dressed in underground safety equipment. Entry is through the rear by means of a step-up bumper. The rear compartment has no lockers, tool boxes or other visible storage capability. Though open at the bottom, the bench seats are built low to the floor which makes storage of tools or other equipment impractical.
>
> You state in your ruling request that at the time of import the vehicle is equipped with an exhaust purifier and, although not equipped with governor to restrict speed, the gearing of the vehicle only allows a top speed of 20 miles per hour.

In NY N106796, CBP classified the merchandise in heading 8703, HTSUS, and specifically under subheading 8703.33.0045, HTSUSA, which in the 2010 Basic Edition of the HTSUS provided for "Motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading 8702), including station wagons and racing cars: Other vehicles with compression-ignition internal combustion piston engine (diesel or semi-diesel): Of a cylinder capacity exceeding 2,500 cc: Other: New." We note that

in one place, CBP inadvertently referred to the article as a "Hydraulic Boom Lift Truck" rather than as a "Mine Personnel Carrier."[1]

ISSUE:

Whether the subject Mine Personnel Carrier is classifiable in heading 8702, HTSUS, which provides for "Motor vehicles for the transport of ten or more persons, including the driver," or in heading 8703, HTSUS, which provides for "Motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading 8702), including station wagons and racing cars."

LAW AND ANALYSIS:

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

The HTSUS provisions under consideration are as follows:

8702	Motor vehicles for the transport of ten or more persons, including the driver:
8703	Motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading 8702), including station wagons and racing cars:
	Other vehicles, with only compression-ignition internal combustion piston engine (diesel or semi-diesel):
8703.33.01	Of a cylinder capacity exceeding 2,500 cc:

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

EN to 87.03 states, in pertinent part:

* * *

> The classification of certain motor vehicles in this heading is determined by certain features which indicate that the vehicles are principally designed for the transport of persons rather than for the transport of goods (heading *87.04*). These features are especially helpful in determining the classification of motor vehicles which generally have a gross vehicle weight rating of less than 5 tonnes and which have a single enclosed interior space comprising an area for the driver and passengers and another area that may be used for the transport of both persons and goods. Included in this category of motor vehicles are those commonly known as "multipurpose" vehicles (e.g., van-type vehicles, sports utility

[1] On June 2, 2010, in NY 106798, CBP also issued a ruling classifying a Hydraulic Boom Lift Truck in heading 8705, HTSUS.

vehicles, certain pick-up type vehicles). The following features are indicative of the design characteristics generally applicable to the vehicles which fall in this heading:

(a) Presence of permanent seats with safety equipment (e.g., safety seat belts or anchor points and fittings for installing safety seat belts) for each person or the presence of permanent anchor points and fittings for installing seats and safety equipment in the rear area behind the area for the driver and front passengers; such seats may be fixed, fold-away, removable from anchor points or collapsible;

(b) Presence of rear windows along the two side panels;

(c) Presence of sliding, swing-out or lift-up door or doors, with windows, on the side panels or in the rear;

(d) Absence of a permanent panel or barrier between the area for the driver and front passengers and the rear area that may be used for the transport of both persons and goods;

(e) Presence of comfort features and interior finish and fittings throughout the vehicle interior that are associated with the passenger areas of vehicles (e.g., floor carpeting, ventilation, interior lighting, ashtrays).

* * *

In HQ 962540, dated March 31, 1999, CBP classified two customized Toyota Land Cruiser mine vehicles, specifically, a covered mine personnel carrier and a hydraulic lift or boom vehicle. With regard to the covered mine personnel carrier, CBP stated the following:

> [B]eyond stating [in its] submission that the personnel carrier 'contains bench seats that accommodate six to eight miners,' Mac makes no argument that the vehicle is 'designed' for the transport of ten or more persons. Neither submitted literature nor Federal mine safety and health regulations specify the vehicle's seating capacity. There is no evidence from which we can conclude the personnel carrier is described by heading 8702.

Similarly, in the instant case, you stated in your ruling request that the "open rear passenger compartment" has "bench seats [that] accommodate from six to eight miners dressed in underground safety equipment." No further evidence was submitted to support this assertion. Moreover, in response to questions raised by CBP, you stated that the "vehicle is equipped with six (6) sets of seat belts for passengers sitting in the rear seats." You did not explain the absence of the additional two seat belts in the rear passenger seating area. NY N106796 is being modified to reflect that sufficient evidence was not submitted to support the assertion that ten people could be seated in the vehicle and, therefore, the subject mine personnel carrier is not described by heading 8702, which provides for "Motor vehicles for the transport of ten or more persons, including the driver." NY N106796 is also being modified by changing the reference to the "Hydraulic Boom Lift Truck" to the "Mine Personnel Carrier."

We find that the remainder of the justification provided for in NY N106796 concerning the classification of the subject merchandise is correct and should remain unchanged. Therefore, the subject Mine Personnel Carrier is properly classified under heading 8703, HTSUS. The subheading number, however,

must be adjusted to reflect the corresponding subheading in the Revision 4 Edition of the 2018 HTSUS. Therefore, the appropriate classification for the subject merchandise is 8703.33.01, HTSUS, which provides for "Motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading 8702), including station wagons and racing cars: Other vehicles, with only compression-ignition internal combustion piston engine (diesel or semi-diesel): Of a cylinder capacity exceeding 2,500 cc."

HOLDING:

Under the authority of GRIs 1 and 6, the subject Mine Personnel Carrier is classified in heading 8703, HTSUS, specifically under subheading 8703.33.01, HTSUS, which provides for "Motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading 8702), including station wagons and racing cars: Other vehicles, with only compression-ignition internal combustion piston engine (diesel or semi-diesel): Of a cylinder capacity exceeding 2,500 cc." The 2018 column one, general rate of duty is 2.5 percent *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY N106796, dated June 2, 2010, is 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,

GREG CONNOR
for

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

ACCREDITATION AND APPROVAL OF INTERTEK USA, INC. (GONZALEZ, LA) AS A COMMERCIAL GAUGER AND LABORATORY

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

ACTION: Notice of accreditation and approval of Intertek USA, Inc. (Gonzalez, LA), as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Intertek USA, Inc. (Gonzalez, LA), has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of May 25, 2017.

DATES: Intertek USA, Inc. (Gonzalez, LA) was approved and accredited as a commercial gauger and laboratory as of May 25, 2017. The next triennial inspection date will be scheduled for May 2020.

FOR FURTHER INFORMATION CONTACT: Christopher J. Mocella, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Intertek USA, Inc., 2632 Ruby Ave., Gonzalez, LA 70737, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Intertek USA, Inc. (Gonzalez, LA), is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

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

Intertek USA, Inc. (Gonzalez, LA), is accredited for the following laboratory analysis procedures and methods for petroleum and cer-

tain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27–03	D4006	Standard Test Method for Water in Crude Oil by Distillation.
27–04	D95	Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation.
27–05	D4928	Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration.
27–06	D473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27–08	D86	Standard Test Method for Distillation of Petroleum Products.
27–11	D445	Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids.
27–13	D4294	Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry.
27–46	D5002	Standard Test Method for Density and Relative Density of Crude Oils by Digital Density Analyzer.
27–48	D4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.
27–50	D93	Standard Test Methods for Flash-Point by Pensky-Martens Closed Cup Tester.
27–54	D1796	Standard Test Method for Water and Sediment in Fuel Oils by the Centrifuge Method.
27–58	D5191	Standard Test Method For Vapor Pressure of Petroleum Products (Mini Method).

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov*. Please reference the website listed below for a complete

listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.*

Dated: August 29, 2018.

DAVE FLUTY,
Executive Director,
Laboratories and Scientific Services.

[Published in the Federal Register, September 10, 2018 (83 FR 45646)]

ACCREDITATION AND APPROVAL OF INSPECTORATE AMERICA CORPORATION (SAVANNAH, GA), AS A COMMERCIAL GAUGER AND LABORATORY

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

ACTION: Notice of accreditation and approval of Inspectorate America Corporation (Savannah, GA), as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Inspectorate America Corporation (Savannah, GA), has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of October 11, 2017.

DATES: Inspectorate America Corporation (Savannah, GA) was accredited and approved, as a commercial gauger and laboratory as of October 11, 2017. The next triennial inspection date will be scheduled for October 2020.

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

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Inspectorate America Corporation, 151 E Lathrop Ave., Savannah, GA 31415 has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Inspectorate America Corporation is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

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

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

CBPL No.	ASTM	Title
27–03	D 4006	Standard Test Method for Water in Crude Oil by Distillation.
27–04	D 95	Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation.
27–06	D 473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27–08	D 86	Standard Test Method for Distillation of Petroleum Products.
27–11	D 445	Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and Calculation of Dynamic Viscosity).
27–13	D 4294	Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy Dispersive X-ray Fluorescence Spectrometry.
27–48	D 4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.
27–54	D 1796	Standard Test Method for Water and Sediment in Fuel Oils by the Centrifuge Method.
27–58	D 5191	Standard Test Method For Vapor Pressure of Petroleum Products (Mini Method).

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the

specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *CBP GaugersLabs@cbp.dhs.gov*. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories*.

Dated: August 29, 2018.

DAVE FLUTY,
Executive Director,
Laboratories and Scientific
Services Directorate.

[Published in the Federal Register, September 10, 2018 (83 FR 45647)]

ACCREDITATION AND APPROVAL OF BENNETT TESTING SERVICE, INC. (RAHWAY, NJ), AS A COMMERCIAL GAUGER AND LABORATORY

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

ACTION: Notice of accreditation and approval of Bennett Testing Service, Inc. (Rahway, NJ), as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Bennett Testing Service, Inc. (Rahway, NJ), has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of May 22, 2018.

DATES: Bennett Testing Service, Inc. (Rahway, NJ) was accredited and approved, as a commercial gauger and laboratory as of May 22, 2018. The next triennial inspection date will be scheduled for May 2021.

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

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Bennett Testing Service, Inc., 1045 E Hazelwood Ave., Rahway, NJ 07065 has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of

19 CFR 151.12 and 19 CFR 151.13. Bennett Testing Service, Inc. is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

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

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

CBPL No.	ASTM	Title
27–48	D 4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.

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

Dated: August 29, 2018.

DAVE FLUTY,
Executive Director,
Laboratories and Scientific
Services Directorate.

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COMMERCIAL CUSTOMS OPERATIONS ADVISORY COMMITTEE (COAC)

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

ACTION: Committee management; Notice of Federal Advisory Committee meeting.

SUMMARY: The Commercial Customs Operations Advisory Committee (COAC) will hold its quarterly meeting on Wednesday, October 3, 2018 in Washington, DC. The meeting will be open to the public.

DATES: The COAC will meet on Wednesday, October 3, 2018 from 1:00 p.m. to 5:00 p.m. EDT. Please note that the meeting may close early if the committee has completed its business.

ADDRESSES: The meeting will be held at the Dirksen Senate Office Building, 50 Constitution Avenue NE, Room SD–G50, Washington, DC 20002. For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Ms. Florence Constant-Gibson, Office of Trade Relations, U.S. Customs & Border Protection, at (202) 344–1440 as soon as possible.

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

For members of the public who plan to attend the meeting in person, please register by 5:00 p.m. EDT October 2, 2018 either online at *https://teregistration.cbp.gov/index.asp?w=140;* by email to *tradeevents@dhs.gov;* or by fax to (202) 325–4290. You must register prior to the meeting in order to attend the meeting in person.

For members of the public who plan to participate via webinar, please register online at *https://teregistration.cbp.gov/index.asp?w=139* by 5:00 p.m. EDT on October 2, 2018.

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

Members of the public who are pre-registered to attend via webinar and later need to cancel, please do so by October 2, 2018 utilizing the following links: *https://teregistration.cbp.gov/cancel.asp?w=139* to cancel an in person registration or *https://teregistration.cbp.gov/cancel.asp?w=140* to cancel a webinar registration.

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

Comments must be submitted in writing no later than October 2, 2018, and must be identified by Docket No. USCBP–2018–0034, and may be submitted by *one (1)* of the following methods:

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

Instructions: All submissions received must include the words "Department of Homeland Security" and the docket number (USCBP–2018–0034) for this action. Comments received will be posted without alteration at *http://www.regulations.gov.* Please do not submit personal information to this docket.

Docket: For access to the docket or to read background documents or comments, go to *http://www.regulations.gov* and search for Docket Number USCBP–2018–0034. To submit a comment, click the "Comment Now!" button located on the top-right hand side of the docket page.

There will be multiple public comment periods held during the meeting on October 3, 2018. Speakers are requested to limit their comments to two (2) minutes or less to facilitate greater participation. Contact the individual listed below to register as a speaker. Please note that the public comment period for speakers may end before the time indicated on the schedule that is posted on the CBP web page, *http://www.cbp.gov/trade/stakeholder-engagement/coac.*

FOR FURTHER INFORMATION CONTACT: Ms. Florence Constant-Gibson, Office of Trade Relations, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.5A, Washington, DC 20229; telephone (202) 344–1440; facsimile (202) 325–4290; or Mr. Bradley Hayes, Executive Director and Designated Federal Officer at (202) 344–1440.

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

of CBP and related functions within the Department of Homeland Security and the Department of the Treasury.

Agenda

The Designated Federal Officer will announce how the COAC subcommittees will be re-organized to align with CBP's trade strategic priorities and outline how the current and future COAC activities will be structured within each subcommittee. The COAC will hear from the current subcommittees on the topics listed below and then will review, deliberate, provide observations, and formulate recommendations on how to proceed:

1. The Trusted Trader Subcommittee will present an update on CTPAT Minimum Security Criteria work and its socialization period. The subcommittee will also provide an update on the Forced Labor Strategy for CTPAT Trade Compliance and the CBP lead will report on the progress of the Trusted Trader Pilot.

2. The Trade Enforcement & Revenue Collection (TERC) Subcommittee will provide necessary updates from the Anti-Dumping and Countervailing Duty, Bond, Forced Labor and Intellectual Property Rights Working Groups.

3. The COAC Trade Modernization Subcommittee will discuss the E-Commerce Working Group's progress in addressing CBP's strategic plan regarding e-commerce threats and opportunities to both the government and trade and in light of the World Customs Organization's global framework. The Regulatory Reform Working Group will provide an overview of work accomplished in reviewing the regulations contained in Title 19 of the Code of Federal Regulations to reduce regulatory burdens and costs. The Foreign Trade Zone Working Group will present recommendations regarding the updating of 19 CFR part 146, the Foreign Trade Zone Regulations. They will also discuss a proposed revision to 19 CFR part 146 that began in 2015 and was referred to the working group for further input.

4. The Global Supply Chain Subcommittee will provide a status update on the following work group activities: Piloting the use of the Automated Commercial Environment (ACE) to electronically report and manage petroleum moving in-bond via pipeline; the Emerging Technologies Working Group's work on NAFTA/ CAFTA and the Intellectual Property Rights Blockchain Proof of Concept projects; and the In-bond Working Group's review of the draft Automated In-Bond Business Process document; as well as potential automation, visibility, system issues and policy/regulatory updates.

Meeting materials will be available by October 1, 2018 at: *http://www.cbp.gov/trade/stakeholder-engagement/coac/coac-public-meetings.*

Dated: September 5, 2018.

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

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