

U.S. Customs and Border Protection



PROPOSED REVOCATION OF ONE RULING LETTER AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF THREE STYLES OF WOMEN'S SANDALS

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

ACTION: Notice of proposed revocation of one ruling letter, and proposed revocation of treatment relating to the tariff classification of three styles of women's sandals.

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 three styles of women's sandals 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 May 3, 2019.

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

FOR FURTHER INFORMATION CONTACT: Parisa J. Ghazi, Food, Textiles, and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325-0272.

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 three styles of women's sandals. Although in this notice, CBP is specifically referring to New York Ruling Letter ("NY") N270791, dated December 8, 2015 (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 N270791, CBP classified the "Faith" and "Lu" styles of sandals in heading 6402, HTSUS. The "Faith" style sandal was specifically classified in subheading 6402.99.4960, HTSUSA, which provides for "Other footwear with outer soles and uppers of rubber or plastics: Other footwear: Other: Other: Other: Footwear with open toes or open heels; footwear of the slip-on type, that is held to the foot

without the use of laces or buckles or other fasteners, the foregoing except footwear of subheading 6402.99.33 and except footwear having a foxing or a foxing-like band wholly or almost wholly of rubber or plastics applied or molded at the sole and overlapping the upper: Other: Other: For women.” The “Lu” style sandal was specifically classified in subheading 6402.99.8061, HTSUSA, which provides for “Other footwear with outer soles and uppers of rubber or plastics: Other footwear: Other: Other: Other: Other: Valued over \$6.50 but not over \$12/pair: Other: For women.” CBP determined that additional information was necessary in order to classify the “Cruel” style sandal.

CBP has reviewed NY N270791 and has determined the ruling letter to be in error. It is now CBP’s position that the three women’s sandals are properly classified, in heading 6402, HTSUS, specifically in subheading 6402.99.31, HTSUS, which provides for “Other footwear with outer soles and uppers of rubber or plastics: Other footwear: Other: Other: Having uppers of which over 90 percent of the external surface area (including any accessories or reinforcements such as those mentioned in note 4(a) to this chapter) is rubber or plastics (except footwear having a foxing or a foxing-like band applied or molded at the sole and overlapping the upper and except footwear designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather): Other: Other.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY N270791 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H278605, 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: February 7, 2019

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachments

ATTACHMENT A

N270791

December 8, 2015

CLA-2-64:OT:RR:NC:N3:447

CATEGORY: Classification

TARIFF NO.: 6402.99.4960, 6402.99.8061

Ms. TINA FANG
STEVE MADDEN, LTD
52-16 BARNETT AVENUE
LONG ISLAND CITY, NY 11104

RE: The tariff classification of footwear from China

DEAR Ms. FANG:

In your letter dated November 13, 2015, you requested a tariff classification ruling. The samples will be returned at your request. The submitted samples are identified as style names "Lu," "Cruel" and "Faith."

"Faith" is an open toe/open high heel, sandal with an upper consisting of three straps at the forefoot, mid-foot and ankle. All of the straps have attached loops which allow a thin strap measuring approximately 4mm to pass through and be tied/wrapped around the ankle and calf. The straps do not cover the ankle. According to your letter the thin straps account for 40 percent of the external surface area of the upper (esau) and the wider rubber and plastics straps account for less than 90 percent of the external surface area of the upper. The shoes have no foxing or foxing-like band.

The applicable subheading for the style name "Faith" will be *6402.99.4960*, Harmonized Tariff Schedule of the United States (HTSUS), which provides for footwear with outer soles and uppers of rubber or plastics: other footwear: other: other: footwear with open toes or open heels: other: other: for women. The rate of duty will be 37.5 percent ad valorem.

"Lu" is women's, below-the-ankle, closed toe/closed heel sandal with an outer sole of rubber or plastics. The external surface area of the upper is a combination of plaited textile strips measuring less than 4mm and rubber/plastics at the forefoot, heel and ankle. The rubber or plastics predominates as the constituent material but accounts for less than 90 percent of the external surface area of the upper. The ankle strap has a metal buckle closure at the lateral side of the sandal. You provided an F.O.B. value of over \$6.50 but under \$12 per pair.

The applicable subheading for the style name "Lu" will be *6402.99.8061*, HTSUS, which provides for footwear with outer soles and uppers of rubber or plastics: other footwear: other: other: other: footwear of the slip-on type, except footwear having a foxing or a foxing-like band: valued over \$6.50 but not over \$12.00/pair: other: for women. The rate of duty will be 90 cents/pair + 20% ad valorem.

We need additional information in order to issue a ruling on style name "Cruel." As parts of the shoe measuring less 5mm are considered textile, please provide the textile versus the rubber/plastics percentages of the external surface area of the upper. In addition, please provide an F.O.B. value per pair.

Please note the submitted samples do not meet the country of origin marking requirements of 19 U.S.C. 1304. Accordingly, the footwear would be considered not legally marked under the provisions of 19 C.F.R. 134.11 which

states, “every article of foreign origin (or its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit, in such manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article.”

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 Stacey Kalkines at: STACEY.KALKINES@CBP.DHS.GOV.

Sincerely,

GWENN KLEIN KIRSCHNER

Director

National Commodity Specialist Division

ATTACHMENT B

HQ H278605

CLA-2 OT:RR:CTF:FTM H278605 PJG

CATEGORY: Classification

TARIFF NO.: 6402.99.31

MR. ROGER CRAIN
CUSTOMS LABORATORY SERVICES LLC
11901 REYNOLDS AVENUE
POTOMAC, MARYLAND 20854-3334

RE: Revocation of NY N270791; tariff classification of three styles of women's sandals

DEAR MR. CRAIN:

On December 8, 2015, U.S. Customs and Border Protection ("CBP") issued to you New York Ruling Letter ("NY") N270791. The ruling pertains to the tariff classification under the Harmonized Tariff Schedule of the United States Annotated ("HTSUSA") of three styles of women's sandals identified as style names "Faith", "Lu", and "Cruel." We have since reviewed NY N270791 and determined it to be in error. Accordingly, NY N270791 is revoked.

FACTS:

In NY N270791, the women's sandal identified as style name "Faith" was described as follows:

"Faith" is an open toe/open high heel, sandal with an upper consisting of three straps at the forefoot, mid-foot and ankle. All of the straps have attached loops which allow a thin strap measuring approximately 4mm to pass through and be tied/wrapped around the ankle and calf. The straps do not cover the ankle. According to your letter the thin straps account for 40 percent of the external surface area of the upper (esau) and the wider rubber and plastics straps account for less than 90 percent of the external surface area of the upper. The shoes have no foxing or foxing-like band.

In NY N270791, the women's sandal identified as style name "Lu" was described as follows:

"Lu" is women's, below-the-ankle, closed toe/closed heel sandal with an outer sole of rubber or plastics. The external surface area of the upper is a combination of plaited textile strips measuring less than 4mm and rubber/plastics at the forefoot, heel and ankle. The rubber or plastics predominates as the constituent material but accounts for less than 90 percent of the external surface area of the upper. The ankle strap has a metal buckle closure at the lateral side of the sandal. You provided an F.O.B. value of over \$6.50 but under \$12 per pair.

In NY N270791, CBP classified the "Faith" style sandal in subheading 6402.99.4960, HTSUSA, which provides for "Other footwear with outer soles and uppers of rubber or plastics: Other footwear: Other: Other: Other: Footwear with open toes or open heels; footwear of the slip-on type, that is held to the foot without the use of laces or buckles or other fasteners, the foregoing except footwear of subheading 6402.99.33 and except footwear having a foxing or a foxing-like band wholly or almost wholly of rubber or plastics applied or molded at the sole and overlapping the upper: Other: Other: For women" and classified the "Lu" style sandal in subheading 6402.99.8061,

HTSUSA, which provides for “Other footwear with outer soles and uppers of rubber or plastics: Other footwear: Other: Other: Other: Other: Valued over \$6.50 but not over \$12/pair: Other: For women.”

CBP determined that additional information was necessary in order to classify the “Cruel” style sandal. Specifically, CBP indicated that parts of the shoe measuring less than 5mm are considered textile and therefore, requested additional information concerning the textile versus the rubber/plastics percentages of the external surface area of the upper. CBP also requested the Free On Board (“F.O.B.”) value per pair.

Along with your request for reconsideration, you submitted one sample of each pair of sandals at issue.

ISSUE:

Whether the subject three styles of women’s sandals are classified under subheading 6402.99.3165, HTSUSA, as footwear the uppers of which over 90 percent of the external surface area is plastics, in subheading 6402.99.4960, HTSUSA, as other footwear with open toes and open heels, or in subheading 6402.99.8061, HTSUSA, as other footwear valued over \$6.50 but not over \$12/pair.

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States Annotated (“HTSUSA”) 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 2018 HTSUSA provisions under consideration are as follows:

6402 Other footwear with outer soles and uppers of rubber or plastics:

* * *

Other footwear:

6402.99 Other:

Other:

Having uppers of which over 90 percent of the external surface area (including any accessories or reinforcements such as those mentioned in note 4(a) to this chapter) is rubber or plastics (except footwear having a foxing or a foxing-like band applied or molded at the sole and overlapping the upper and except footwear designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather):

Other:

* * *

6402.99.31

Other

* * *

Other:

Footwear with open toes or open heels; footwear of the slip-on type, that is held to the foot without the use of laces or buckles or other fasteners, the foregoing except footwear of subheading 6402.99.33 and except footwear having a foxing or a foxing-like band wholly or almost wholly of rubber or plastics applied or molded at the sole and overlapping the upper:

* * *

6402.99.49

Other

* * *

Other:

* * *

6402.99.4960

For women

* * *

Other:

6402.99.80

Valued over \$6.50 but not over \$12/pair

* * *

Other:

* * *

6402.99.8061

For women

Note 3(a) to Chapter 64, HTSUS, states as follows:

[t]he terms “rubber” and “plastics” include woven fabrics or other textile products with an external layer of rubber or plastics being visible to the naked eye; for the purpose of this provision, no account should be taken of any resulting change of color;

Note 4 to Chapter 64, HTSUS, states as follows:

Subject to note 3 to this chapter:

(a) The material of the upper shall be taken to be the constituent material having the greatest external surface area, no account being taken of accessories or reinforcements such as ankle patches, edging, ornamentation, buckles, tabs, eyelet stays or similar attachments;

(b) The constituent material of the outer sole shall be taken to be the material having the greatest surface area in contact with the ground, no account being taken of accessories or reinforcements such as spikes, bars, nails, protectors or similar attachments.

You argue that, based on the material composition of the subject three women’s sandals, they should be classified in subheading 6402.99.3165, HTSUSA, which provides for “Other footwear with outer soles and uppers of rubber or plastics: Other footwear: Other: Other: Having uppers of which over 90 percent of the external surface area (including any accessories or reinforcements such as those mentioned in note 4(a) to this chapter) is rubber or plastics (except footwear having a foxing or a foxing-like band applied or molded at the sole and overlapping the upper and except footwear designed

to be worn over, or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather): Other: Other: Other: For women: Other.”

Samples of the three style sandals were sent to the CBP Laboratories and Scientific Services Directorate (“CBP laboratory”) in Newark, New Jersey for their analysis. The CBP laboratory analyzed the left foot “Faith” style sandal and determined that “the upper of the sandal consists of a thin strap measuring approximately 4 millimeters wide and four pieces of wider straps measuring on average approximately 12, 25, 12, and 13 millimeters wide respectively.”

The CBP laboratory analyzed the left foot “Lu” style sandal and determined that “the upper of the sandal is constructed of a Y shaped strap measuring on average approximately 77 millimeters wide, a T shaped strap measuring on average approximately 54 millimeters wide, straps with even width measuring approximately 9 millimeters, and braided straps measuring approximately 8 millimeters wide consisting [of] three thin straps of approximately 4 millimeters wide each.”

The CBP laboratory analyzed the right foot “Cruel” style sandal and determined that “the upper of the sandal consists of thin straps measuring approximately 5 millimeters wide and two pieces of wider straps measuring approximately 19 and 24 millimeters wide respectively.”

With respect to the “Faith”, “Lu”, and “Cruel” style sandals, the CBP laboratory stated that “the upper material is composed of a knit fabric coated, covered, or laminated with an external layer of rubber/plastic and the rubber/plastic is visible to the naked eye.”

Note 4 to Chapter 64, HTSUS, defines “the material of the upper” as “the constituent material having the greatest external surface area.” Note 3(a) to Chapter 64, HTSUS, defines the terms “rubber” and “plastics” to include, in relevant part, “textile products with an external layer of rubber or plastics being visible to the naked eye.”

In accordance with the CBP laboratory’s determination, the materials of the upper for the three styles of women’s sandals consist of rubber or plastics within the definition provided for those terms in Note 3(a) to Chapter 64, HTSUS, because they are composed of textiles that are coated, covered, or laminated with an external layer of rubber/plastic that are visible to the naked eye. Moreover, this description accounts for over 90 percent of the uppers of these style sandals, because the uppers in both of these styles are comprised of straps, and accessories, which Note 4 to Chapter 64, HTSUS, instructs us to disregard when classifying the merchandise.

Accordingly, we find that the three subject women’s sandals are classified under heading 6402, HTSUS, and specifically in subheading 6402.99.31, HTSUSA, which provides for “Other footwear with outer soles and uppers of rubber or plastics: Other footwear: Other: Other: Having uppers of which over 90 percent of the external surface area (including any accessories or reinforcements such as those mentioned in note 4(a) to this chapter) is rubber or plastics (except footwear having a foxing or a foxing-like band applied or molded at the sole and overlapping the upper and except footwear designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather): Other: Other.”

HOLDING:

Under the authority of GRIs 1 and 6 the three subject women's sandals are classified under heading 6402, HTSUS, and specifically in subheading 6402.99.31, HTSUS, which provides for "Other footwear with outer soles and uppers of rubber or plastics: Other footwear: Other: Other: Having uppers of which over 90 percent of the external surface area (including any accessories or reinforcements such as those mentioned in note 4(a) to this chapter) is rubber or plastics (except footwear having a foxing or a foxing-like band applied or molded at the sole and overlapping the upper and except footwear designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather): Other: Other." The 2018 column one, general rate of duty is 6 percent *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY N270791, dated December 8, 2015, is REVOKED.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

19 CFR PART 177

REVOCATION OF ONE RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF GREEK YOGURT DIPS

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 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) is revoking one ruling letter concerning tariff classification of Greek yogurt dips 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. 39, on September 26, 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 June 3, 2019.

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), a notice was published in the *Customs Bulletin*, Vol. 52, No. 39, on September 26, 2018, proposing to revoke one ruling letter pertaining to the tariff classification of Greek yogurt dips. 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") N283364, dated March 13, 2017, 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 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 revoking NY N283364 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter ("HQ") H285620, 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: December 17, 2018

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H285620

December 17, 2018

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 four¹ 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.

On September 26, 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. 52, No. 39. No comments were received in response to this notice.

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, pec-

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.”

tin, 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.

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

³ <https://www.thedailymeal.com/travel/wisconsin-cheese-101-how-cheese-made> (last visited July 30, 2018).

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 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 decision *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). The 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. The 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. The 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.”

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**REVOCAION OF ONE RULING LETTER AND
REVOCAION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF WALLPAPER STRIPPERS**

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 wallpaper strippers.

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 wallpaper strippers 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. 46, on November 14, 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 June 3, 2019.

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

SUPPLEMENTARY INFORMATION:**BACKGROUND**

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

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

Pursuant to 19 U.S.C. § 1625(c)(1), a notice was published in the *Customs Bulletin*, Vol. 52, No. 46, on November 14, 2018, proposing to revoke one ruling letter pertaining to the tariff classification of wallpaper strippers. 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") 898469, dated June 10, 1994, CBP classified wallpaper strippers in heading 8516, HTSUS, specifically in subheading 8516.10.00, HTSUS, which provides for "Electric instantaneous or storage water heaters and immersion heaters; electric space heating apparatus and soil heating apparatus; electrothermic hairdressing apparatus (for example, hair dryers, hair curlers, curling tong heaters) and hand dryers; electric flatirons; other electrothermic appliances of a kind used for domestic purposes; electric heating resistors, other than those of heading 8545; parts thereof: Electric instantaneous or storage water heaters and immersion heaters." CBP has reviewed NY 898469 and has determined the ruling letter to be in error. It is now CBP's position that the wallpaper strippers are properly classified, in heading 8516, HTSUS, specifically in subheading 8516.79.00, HTSUS, which provides for "Electric instantaneous or storage water heaters and immersion heaters; electric space heating apparatus and soil heating apparatus; electrothermic hairdressing apparatus (for example, hair dryers, hair curlers, curling tong heaters) and hand dryers; electric flatirons; other electrothermic appliances of a kind used for domestic purposes; electric heating resistors, other than those of heading 8545; parts thereof: Other electrothermic appliances: Other."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY 898469 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter ("HQ") H297833, 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: December 20, 2018

GREG CONNOR

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachment

HQ H297833

December 20, 2018

CLA-2 OT:RR:CTF:EMAIN H297833 PF

CATEGORY: Classification

TARIFF NO.: 8516.79.00

MAERSK LOGISTICS USA INC.

180 PARK AVENUE

BUILDING 105

PO BOX 950

FLORHAM PARK, NJ 07932

RE: Revocation of NY 898469; tariff classification of wallpaper strippers

DEAR MR. SOREN SKU:

This is in reference to New York Ruling Letter (“NY”) 898469, issued to O’Neill & Whitaker, Inc., which was acquired by your firm. On June 10, 1994, U.S. Customs and Border Protection (“CBP”) issued a classification ruling, which involved classification of wallpaper strippers under the Harmonized Tariff Schedule of the United States (“HTSUS”). We have reviewed NY 898469 and determined that it is incorrect. For the reasons set forth below, we are revoking that ruling.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice of the proposed action was published in the Customs Bulletin, Vol. 52, No. 46, on November 14, 2018. No comments were received in response to the proposed action.

FACTS:

In NY 898469, the subject wallpaper strippers were described as follows:

The merchandise consists of two portable steam wallpaper strippers. Model SS100 is the Earlex Steam Wallpaper Stripper. Model PWS150 is the Earlex Pro-Steam 2 Heavy Duty Steam Wallpaper Stripper. A sample of model SS100 was included with your request. Both wallpaper strippers are basically electric immersion heaters contained inside a water tank that is connected by a hose to a steam plate. Water is heated in the reservoir, thereby producing steam through the steam plate. The steam plate is applied to the wall, section by section. Heat and moisture are distributed, enabling the wallpaper to be removed easily with a knife. Model SS100 holds 4.0 liters of water, has an 8 inch by 11 inch steam plate, and a 12 foot hose. Model PWS150 features a 6.5 liter capacity, a 10 inch by 13 inch steam plate, a 16 foot hose, and a storage compartment. The wallpaper strippers can also be used in the home to steam iron hanging curtains, sterilize soil, and kill weeds on paths and patios. Accessories are available to adapt model PWS150 to perform additional household tasks such as cleaning upholstery, carpet, tile, and windows. Both units are guaranteed for domestic use for 12 months. The guarantee specifically excludes coverage for rental purposes.

In that ruling, CBP classified the subject wallpaper strippers in subheading 8516.10.00, HTSUS, which provides for “Electric instantaneous or storage water heaters and immersion heaters; electric space heating apparatus and soil heating apparatus; electrothermic hairdressing apparatus (for example, hair dryers, hair curlers, curling tong heaters) and hand dryers;

electric flatirons; other electrothermic appliances of a kind used for domestic purposes; electric heating resistors, other than those of heading 8545; parts thereof. Electric instantaneous or storage water heaters and immersion heaters.”

Online marketing materials for similar Earlex Steam Wallpaper Strippers describe the devices as the “fastest and easiest ways to remove all types of wall coverings.” In addition, a website featuring the Earlex Steam Wallpaper Strippers notes that they make light work of big wallpaper stripping jobs and that some models contain large and small steam plates for areas that are difficult to access.

ISSUE:

Whether the subject wallpaper strippers are classified in subheading 8516.10.00, HTSUS, as immersion heaters or in subheading 8516.79.00, HTSUS, as other electrothermic appliances of a kind used for domestic purposes.

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:

8516	Electric instantaneous or storage water heaters and immersion heaters; electric space heating apparatus and soil heating apparatus; electrothermic hairdressing apparatus (for example, hair dryers, hair curlers, curling tong heaters) and hand dryers; electric flatirons; other electrothermic appliances of a kind used for domestic purposes; electric heating resistors, other than those of heading 8545; parts thereof:
8516.10	Electric instantaneous or storage water heaters and immersion heaters
	Other electrothermic appliances:
8516.79	Other.

Additional U.S. Rules of Interpretation 1 (“AUSR1”), HTSUS, provides, in part:

In the absence of special language or context which otherwise requires:

- (a) a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use[.]

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

The EN to heading 8516, HTSUS, state, in relevant part:

(A) ELECTRIC INSTANTANEOUS OR STORAGE WATER HEATERS AND IMMERSION HEATERS

This group includes:

(5) **Immersion heaters** of of different shapes and forms depending on their use, are generally used in tanks, vats, etc., for heating liquids, semi-fluid (other than solid) substances or gases. They are also designed to be used in pots, pans, tumblers, cups, baths, beakers, etc., usually with a heat-insulated handle and a hook for hanging the heater in the vessel.

They have a reinforced protective sheath which is highly resistant to mechanical stress and to seepage from liquids, semi-fluid (other than solid) substances and gases. A powder (usually magnesium oxide) with good dielectric and thermal properties holds the wire resistor (resistance) in place within the sheath and insulates it electrically.

Assemblies consisting of immersion heaters permanently incorporated in a tank, vat or other vessel are classified in **heading 84.19 unless** they are designed for water heating only or for domestic use, in which case they remain in this heading. Solar water heaters are also classified in heading 84.19.

* * *

(E) OTHER ELECTRO-THERMIC APPLIANCES OF A KIND USED FOR DOMESTIC PURPOSES

This group includes all electro-thermic machines and appliances **provided** they are **normally used in the household**.

* * *

Within Chapter 85, HTSUS, heading 8516, in pertinent part, provides for other electrothermic appliances of a kind used for domestic purposes. The Section and Chapter Notes and the ENs do not provide a clear definition of the term “electro-thermic appliances of the kind used for domestic purposes.” However, CBP has previously defined the term “electrothermal” as “[o]f or relating to the production of heat by electricity.” See HQ 965863, dated December 3, 2002 (citing the *Webster’s II New Riverside Dictionary* 423 (1988)). CBP has also defined the term “domestic” as “of or pertaining to the family or household.” See HQ 965861, dated January 7, 2003 (citing the *Merriam-Webster Collegiate Dictionary*, 10th ed., pg. 344 (1999)). Accordingly, goods of the heading must be the kind of electrically-heated good that are used in the household.

Our initial determination that the subject wallpaper strippers were classified in heading 8516, HTSUS, was correct because these devices are electrothermic appliances used for domestic purposes. Specifically, they are used in the household and powered by electricity to heat water and produce steam, which is then applied to a wall for wallpaper removal, on curtains for steam ironing, on soil for sterilization and on paths and patio for killing weeds. See *United States v. Carborundum Co.*, 63 C.C.P.A. 98, 102, 536 F.2d 373, 377 (1976). Therefore, the issue in this case is the proper classification at the subheading level. As a result, GRI 6 applies.

We originally determined that the subject wallpaper strippers were classified in subheading 8516.10.00, HTSUS, which provides for, *inter alia*, “Electric instantaneous or storage water heaters and immersion heaters,” because they contained an immersion heater. While the wallpaper strippers contain an immersion element that heats water to produce steam, we are of the view that the electric fabric steamers as a whole are not within the scope of subheading 8516.10, HTSUS, because they are not used as a water or immersion heater.

The wallpaper strippers are appliances that produce steam by heating water in a tank and directing that steam to a specific, useful and separate purpose. The wallpaper strippers feature a number of components, including a water tank, steam plate, and hose, that together produce and direct steam for the purpose of removing wallpaper. In addition, the wallpaper strippers use steam to iron hanging curtains, sterilize soil, and kill weeds on paths and patios. Accessories can also be added to the wallpaper strippers to perform additional household tasks such as cleaning upholstery, carpet, tile, and windows. Therefore, since the primary function of the wallpaper strippers is the application of steam to fabric, materials, and articles and not the heating of water, we find that the wallpaper strippers are not water or immersion heaters, and cannot be classified in subheading 8516.10.00, HTSUS.

Because the function and design of the wallpaper strippers is not fully described by the terms of subheading 8516.10.00, HTSUS, they are properly classified as another electrothermic appliance in 8516.79.00, HTSUS, which provides for in relevant part, “[O]ther electrothermic appliances of a kind used for domestic purposes; . . . Other electrothermic appliances: Other.”

CBP has classified electric steam cleaners under subheading 8516.79.00, HTSUS, in NY K84905 (April 23, 2004), NY L82254 (February 16, 2005) and NY 168881 (June 24, 2011). In NY K84905, CBP described the merchandise as a clothes steamer with a water reservoir with a plastic cap or nozzle with five steam outlet holes whose function was to steam wrinkles from hanging fabrics, such as clothing or curtains. In NY L82254, CBP described the subject merchandise as a hand-held, pressurized steam cleaner with attachments that was designed to steam clean surfaces. The attachments included a jet nozzle, scrub brush, squeegee, angled head, fabric steamer and cloth, flexible extension hose, and a measuring cup for water. Moreover, in NY N168881, CBP classified a steam cleaner which had a boiler that heated water from the reservoir to create steam to clean and sanitize surfaces, windows, and clothing under subheading 8516.79.00, HTSUS. While we note that the wallpaper strippers are not clothing steamers, they have the same operating principle of applying steam to fabric, materials, and articles. As a result, we find that wallpaper strippers are properly classified in subheading 8516.79.00, HTSUS.

HOLDING:

By application of GRIs 1 (U.S. Additional Rule of Interpretation 1(a)) and 6 and, the wallpaper strippers are classified in heading 8516, specifically subheading 8516.79.00, HTSUS, which provides, in relevant part, for: “Other electrothermic appliances of a kind used for domestic purposes; . . . : Other electrothermic appliances: Other.” The 2018 column one, general rate of duty is 2.7 percent *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY 898469, dated June 10, 1994, is REVOKED.

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

Sincerely,

GREG CONNOR

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**PROPOSED MODIFICATION OF ONE RULING LETTER
AND REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF A SURGICAL TRAY**

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

ACTION: Notice of proposed modification of one ruling letter, and revocation of treatment relating to the tariff classification of a surgical tray.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to modify one ruling letter concerning tariff classification of a surgical tray 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 May 3, 2019.

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the public and CBP share responsibility in carrying out import requirements. For example, under section

484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether any other applicable legal requirement is met.

Pursuant to 19 U.S.C. § 1625(c)(1), this notice advises interested parties that CBP is proposing to modify one ruling letter pertaining to the tariff classification of a surgical tray. Although in this notice, CBP is specifically referring to New York Ruling Letter (“NY”) N177676, dated August 25, 2011 (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 N177676, CBP classified a surgical tray in heading 9018, HTSUS, specifically in subheading 9018.49.80, HTSUS, which provides for “Instruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electro-medical apparatus and sight-testing instruments; parts and accessories thereof: Other instruments and appliances, used in dental sciences, and parts and accessories thereof: Other: Other.” CBP has reviewed NY N177676 and has determined the ruling letter to be in error. It is now CBP’s position that the surgical tray is properly classified, in heading 7326, HTSUS, specifically in subheading 7326.90.86, HTSUS, which provides for “Other articles of iron or steel: Other: Other: Other: Other.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to modify NY N177676 and to revoke or modify any other ruling not specifically

identified to reflect the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H277654, 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: February 12, 2019

GREG CONNOR

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachments

ATTACHMENT A

N177676

August 25, 2011

CLA-2-90:OT:RR:NC:N4:405

CATEGORY: Classification

TARIFF NO.: 9018.49.8080

PETER VANDEPUT

MATERIALISE DENTAL, NV

TECHNOLOGIELAAN 15 3001 LEUVEN - BELGIUM

RE: The tariff classification of dentistry items from Belgium

DEAR MR. VANDEPUT:

In your letter dated August 1, 2011, you requested a tariff classification ruling. No samples were provided.

You submitted a three page ruling request and a 60 page Summary of Technical Documentation. The larger system in which these are used is discussed in previous rulings issued to you by this office (in New York Ruling Letters R00766, dated September 27, 2004 and N073339, dated September 18, 2009).

The LongStop Drills, which come in various diameters and lengths, all color coded, are:

“(Dental drills for the creation of the osteotomy. Specific features of Long-Stop Drills include a flange that blocks the user from drilling deeper than virtually planned in a 3D dental software. Indeed, when the flange makes contact with the top of a drill key or the top of a guiding tube, deeper guided drilling is made impossible.”

The LongStop Drills are imported in individual plastic containers and are intended for multiple uses (after sterilization).

During the dental surgery, the LongStop drills are taken from a specialized, color coded, surgical tray. The surgical tray allows for easy selection of the components during surgery and for efficient replacement after the procedure by matching the color of the rings on the drill shank with the color of the silicone plugs in the tray.

The tray, made of metal, also has, inter alia, a notched section with millimeter lengths marked off so that the length of the drill can be double checked before use, a hinged top, spaces for additional drills which are not color coded, a relatively shallow subtray, and a hinged top. It has holes in it to also allow it to be used in sterilization. The drills will not be imported in the trays.

Harmonized System Explanatory Note III to 9018 includes:

(8) Dental burs, discs, drills and brushes, specially designed for use with a dental drill engine or handpiece.

The applicable subheading for the LongStop Drills and the specialized surgical trays, whether imported separately or together, will be 9018.49.8080, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “other” instruments and appliances, used in dental sciences, and parts and accessories thereof. 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/>.

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 J. Sheridan at (646) 733-3012.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

ATTACHMENT B

HQ H277654

CLA-2 OT:RR:CTF:EMAIN H277654 PF

CATEGORY: Classification

TARIFF NO.: 7326.90.86

PETER VANDEPUT
MATERIALISE DENTAL, NV
TECHNOLOGIELAAN 15
3001 LEUVEN - BELGIUM

RE: Modification of NY N177676; tariff classification of dentistry items from Belgium

DEAR MR. VANDEPUT:

This is to inform you that U.S. Customs and Border Protection (“CBP”) has reconsidered New York (“NY”) Ruling Letter N177676, dated August 25, 2011, regarding the classification under the Harmonized Tariff Schedule of the United States (“HTSUS”) of a surgical tray. The surgical tray was classified under subheading 9018.49.80, HTSUS, as “Instruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electro-medical apparatus and sight-testing instruments; parts and accessories thereof: Other instruments and appliances, used in dental sciences, and parts and accessories thereof: Other: Other.” After reviewing this ruling in its entirety, we believe that it is partially in error. For the reasons set forth below, we hereby modify NY N177676 with respect to the classification of the surgical tray. The remaining analysis of N177676 remains unchanged.

FACTS:

In NY N177676, we described the products as follows:

The LongStop Drills, which come in various diameters and lengths, all color coded, are: “(D)ental drills for the creation of the osteotomy. Specific features of LongStop Drills include a flange that blocks the user from drilling deeper than virtually planned in a 3D dental software. Indeed, when the flange makes contact with the top of a drill key or the top of a guiding tube, deeper guided drilling is made impossible.” The LongStop Drills are imported in individual plastic containers and are intended for multiple uses (after sterilization).

During the dental surgery, the LongStop drills are taken from a specialized, color coded, surgical tray. The surgical tray allows for easy selection of the components during surgery and for efficient replacement after the procedure by matching the color of the rings on the drill shank with the color of the silicone plugs in the tray.

The tray, made of metal, also has, inter alia, a notched section with millimeter lengths marked off so that the length of the drill can be double checked before use, a hinged top, spaces for additional drills which are not color coded, a relatively shallow subtray, and a hinged top. It has holes in it to also allow it to be used in sterilization. The drills will not be imported in the trays.

In addition, a Summary of Technical Documentation provided by you indicates that the surgical tray is made of stainless steel and depicts the surgical tray holding the drill shanks.

ISSUE:

Whether the subject surgical tray is classifiable in heading 7326, HTSUS, as other articles of iron or steel or in heading 9018, HTSUS, as other instruments and appliances used in dental sciences and parts and accessories thereof.

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:

7326 Other articles of iron or steel

9018 Instruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electro-medical apparatus and sight-testing instruments; parts and accessories thereof

* * *

Section XV, Note 1(h) states:

This section does not cover:

(h) Instruments or apparatus of section XVIII, including clock or watch springs:

Note 2 to Chapter 90, HTSUS, provides as follows:

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

- (a) Parts and accessories which are goods included in any of the headings of this chapter or of chapter 84, 85 or 91 (other than heading 8487, 8548 or 9033) are in all cases to be classified in their respective headings;
- (b) Other parts and accessories, if suitable for use solely or principally with a particular kind of machine, instrument or apparatus, or with a number of machines, instruments or apparatus of heading 9010, 9013 or 9031) are to be classified with the machines, instruments or apparatus of that kind.

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

The EN to heading 7326, states, in relevant part:

This heading covers all iron or steel articles obtained by forging or punching, by cutting or stamping or by other processes such as folding, assembling, welding, turning, milling, or perforating **other than** articles included in the preceding headings of this Chapter or covered by Note 1 to Section XV or included in **Chapter 82 or 83** or more specifically covered elsewhere in the Nomenclature.

The EN to heading 9018, states, in relevant part:

This heading covers a very wide range of instruments and appliances which, in the vast majority of cases, are used only in professional practice (e.g., by doctors, surgeons, dentists, veterinary surgeons, midwives), either to make a diagnosis, to prevent or treat an illness or to operate, etc.

Note 1(h) to section XV, states that this section does not cover the instruments or apparatus of section XVIII. Chapter 90, HTSUS, is in section XVIII. Chapter 73 is in section XV. As a result, instruments and apparatus of Section XVIII (chapter 90) are excluded from Section XV (chapter 73). If the surgical tray is classifiable under chapter 90, and specifically, under heading 9018, HTSUS, a section XVIII heading, it is not classifiable in heading 7326, HTSUS. Therefore, our analysis of the subject surgical tray begins with evaluating whether it is an article of heading 9018, HTSUS.

The subject surgical tray consists of stainless steel and functions as a tool holder for the drill shanks in order with different colors to make the selection of the tools easier during surgery. The surgical tray allows for efficient replacement after surgery by matching the color of the rings on the drill shank with the color of the silicone plugs in the tray. The surgical tray also has a notched section with millimeter lengths marked off so that the length of the drill can be double checked before use, a hinged top, and spaces for additional drill shanks which are not color coded.

Heading 9018, HTSUS, provides for, among other things, instruments and appliances used in the medical and surgical sciences and their parts and accessories. EN 90.18 explains that the heading “covers a very wide range of instruments and appliances, which, in the vast majority of cases, are used only in professional practice (e.g., by doctors, surgeons, dentists, veterinary surgeons, midwives), either to make a diagnosis, to prevent or treat an illness or to operate, etc.” EN 90.18 also provides that articles of heading 9018, HTSUS, include “dental burs, discs, drills and brushes, specifically designed for use with a dental drill engine or handpiece.” The subject surgical tray is not a dental burr, disc, drill or brush designed for use with a dental drill engine or handpiece nor is it an “other” article of heading 9018, HTSUS. Notably, the LongStop Drills are not imported with the surgical tray. The subject surgical tray is also not an instrument or appliance used by dentists to “make a diagnosis, to prevent or treat an illness or to operate.” See EN 90.18. Therefore, the surgical tray is not an “other” instrument or appliance used in the dental sciences of heading 9018, HTSUS.

We have also considered whether the subject surgical tray is a part or accessory of heading 9018, HTSUS. As the surgical tray is not covered by the terms of heading 9018, HTSUS, Note 2(a) to Chapter 90, HTSUS, is not applicable. However, since the LongStop Drills are classified in heading 9018,

HTSUS, our analysis begins with evaluating whether the surgical tray is a part or accessory of the LongStop Drills under Note 2(b) to Chapter 90.¹

The courts have considered the nature of “parts” under the HTSUS and two distinct, though not inconsistent, tests have resulted. See *Bauerhin Techs. Ltd. P’ship. v. United States* (“*Bauerhin*”), 110 F.3d 774 (Fed. Cir. 1997). The first, articulated in *United States v. Willoughby Camera Stores, Inc.* (“*Willoughby*”), 21 C.C.P.A. 322, 324 (1933), requires a determination of whether the imported item is an “integral, constituent, or component part, without which the article to which it is to be joined, could not function as such article.” *Bauerhin*, 110 F.3d at 778 (quoting *Willoughby*, 21 C.C.P.A. 322 at 324). The second, set forth in *United States v. Pompeo* (“*Pompeo*”), 43 C.C.P.A. 9, 14 (1955), states that an “imported item dedicated solely for use with another article is a ‘part’ of that article within the meaning of the HTSUS.” *Id.* at 779 (citing *Pompeo*, 43 C.C.P.A. 9 at 13). Under either line of cases, an imported item is not a part if it is “a separate and distinct commercial entity.” *Bauerhin*, 110 F.3d at 779.

The subject surgical tray is a separate and distinct commercial article that serves an independent function or purpose from the LongStop Drills. The function and purpose of the surgical tray is to hold the drill shanks during dental surgery. However, because a user would be able to operate the LongStop Drills without the surgical tray, it is not essential and necessary to the functioning and purpose of the LongStop Drills. To the extent that the surgical tray is not attached to the LongStop Drills, and that the LongStop Drills will continue to operate without them, it is not a part of the LongStop Drills. Accordingly, we find that the surgical tray is not a part as defined in *Willoughby* and *Pompeo*.

The courts have also considered the nature of “accessories,” and have found that although the HTSUS does not define the term “accessory,” the HTSUS “refers to accessories either in relation to articles and equipment . . . or to the specific article named.” *Rollerblade, Inc. v. United States* (“*Rollerblade*”), 116 F. Supp. 2d 1247, 1253 (Ct. Int’l Trade 2000), *aff’d* 282 F.3d 1349, (Fed. Cir. 2002). The terms of heading 9018, HTSUS, include, in relevant part, “Instruments and appliances used in medical, surgical, dental or veterinary sciences, . . . parts and accessories thereof.” The court in *Rollerblade* agreed that the common meaning of the term indicates that “accessories must serve a purpose subordinate to, but also in direct relationship to the thing they ‘accessorize.’” *Id.* at 1253. Applying this definition to the articles under consideration, we find that the surgical tray does not serve a purpose in direct relation to the LongStop Drills, in that it does not contribute to the LongStop Drills’ effectiveness in making a diagnosis, preventing or treating an illness or in surgery. Instead, the surgical tray’s purpose is to hold the drill shanks during surgery to make the selection of the tools easier during the surgery. For these reasons, we find that the surgical tray is not an accessory. Therefore, the surgical tray is not a part or accessory and cannot be classified as a part or accessory under the terms of heading 9018, HTSUS.

Because the surgical tray is not a part or accessory of the instruments of heading 9018, HTSUS, Note 2(b) to chapter 90 does not apply, and therefore, it cannot be classified under chapter 90. As the surgical tray is not classified in chapter 90, we do not reach the issue of whether it is a part of general use

¹ The classification of the LongStop Drills in subheading 9018.49.80, HTSUS, is not at issue in this case.

under Note 1(f) to chapter 90. Because the surgical tray is not classifiable in chapter 90, it is not excluded by Note 1(h) to Section XV, HTSUS (Chapter 73).

Heading 7326, HTSUS, provides for “Other articles of iron or steel.” The ENs to heading 7326, state, in relevant part, that this heading covers all iron or steel articles obtained by forging or punching, by cutting or stamping or by other processes such folding, assembling, welding, turning, milling or perforating other than articles included in the preceeding headings of this Chapter or covered by Note 1 to Section XV or included in Chapter 82 or 83 or more specifically covered elsewhere in the Nomenclature.” The subject surgical tray is an article made of stainless steel. Because the surgical tray is not more specifically covered elsewhere in the Nomenclature, we conclude, in accordance with GRI 1, that the surgical tray is properly classifiable under heading 7326, HTSUS, which provides for “Other articles of iron or steel.” Specifically, classification is under subheading 7326.90.86, HTSUS, the provision for “Other articles of iron or steel: Other: Other: Other: Other.” This is consistent with Headquarters Ruling H036115, dated November 19, 2008 (classifying a stainless steel metal basket and stainless steel metal cases used in the medical field for the sterilization of various electrical and hand-held medical instruments in heading 7326, HTSUS); NY N019480, dated November 21, 2007 (classifying a stainless steel tray with slots that would be “used for carrying medical devices in hospitals or medical offices” in heading 7326, HTSUS) and NY 873837, dated May 27, 1992 (tubular sterilization containers made of stainless steel with removable top and bottom lids and a tray with 9, 20, or 40 openings for catheters which suspends them when lowered into a pot of boiling water to effect sterilization were classified in heading 7326, HTSUS).

HOLDING:

Under the authority of GRI 1, the subject surgical tray is classified in heading 7326, HTSUS, specifically under subheading 7326.90.86, HTSUS, which provides for “Other articles of iron or steel: Other: Other: Other: Other.” 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 N177676, dated August 25, 2011, is MODIFIED.

Sincerely,

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

**REVOCAION OF NINE RULING LETTERS AND
REVOCAION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF ARTICLES OF SOAPSTONE
OR STEATITE**

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

ACTION: Notice of revocation of nine ruling letters, and of revocation of treatment relating to the tariff classification of articles of soapstone or steatite.

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 nine ruling letters concerning tariff classification of articles of soapstone or steatite 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. 46, on November 14, 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 June 3, 2019.

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

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

Pursuant to 19 U.S.C. § 1625(c)(1), a notice was published in the *Customs Bulletin*, Vol. 52, No. 46, on November 14, 2018, proposing to revoke nine ruling letters pertaining to the tariff classification of articles of soapstone or steatite. 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") N245635, dated September 24, 2013; Headquarters Ruling Letter ("HQ") 958353, dated November 2, 1995; NY 811379, dated June 26, 1995; NY 811779, dated July 5, 1995; NY B86726, dated July 3, 1997; NY H80981, dated July 11, 2001; NY N063856, dated July 9, 2009; NY N156155, dated April 5, 2011; and NY N156975, dated April 5, 2011. CBP classified articles of soapstone or steatite in heading 7116, HTSUS, specifically in subheading 7116.20.40, HTSUS, which provides for "articles of natural or cultured pearls, precious or semi-precious stones (natural, synthetic or reconstructed): Of precious or semiprecious stones (natural, synthetic or reconstructed): Other: Of semiprecious stones (except rock crystal): Other." CBP has reviewed NY N245635, HQ 958353, NY 811379, NY 811779, NY B86726, NY H80981, NY N063856, NY N156155, and NY N156975 and has determined the ruling letters to be in error. It is now CBP's position that articles of soapstone or steatite are properly classified, in heading 6802, HTSUS, specifically in subheading 6802.99.00, HTSUS, which provides for "worked monumental or building stone (except slate) and articles thereof, other than goods of heading 6801; mosaic cubes and the like, of natural stone (including slate), whether or not on a backing; artificially colored granules, chippings and powder, of natural stone (including slate): Other: Other stone."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY N245635, HQ 958353, NY 811379, NY 811779, NY B86726, NY H80981, NY

N063856, NY N156155, and NY N156975 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in HQ H250466, 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: February 19, 2019

ALLYSON MATTANAH
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachment

HQ H250466

February 19, 2019

OT:RR:CTF:CPMM H250466 RGR

CATEGORY: Classification

TARIFF NO.: 6802.99.00

MR. DAVE COLLINS
DIRECTOR, COMMERCIAL OPERATIONS
721 LOGISTICS, LLC
300 STEVENS DRIVE, SUITE 105
LESTER, PA 19113

RE: Revocation of NY N245635, HQ 958353, NY 811379, NY 811779,
NY B86726, NY H80981, NY N063856, NY N156155, NY N156975;
Tariff classification of articles of soapstone or steatite

DEAR MR. COLLINS:

This letter is in reference to one ruling letter issued by U.S. Customs and Border Protection (“CBP”) concerning the classification under the Harmonized Tariff Schedule of the United States (“HTSUS”) of certain articles of soapstone or steatite under subheading 7116, HTSUS. Specifically, in New York Ruling Letter (“NY”) N245635, dated September 24, 2013, CBP classified certain soapstone whisky cubes in subheading 7116.20.40, HTSUS. We have reviewed NY N245635 and find it to be incorrect. For the reasons set forth below, we are revoking that ruling.

For the reasons set forth below, we are also revoking eight other rulings on substantially similar merchandise: Headquarters Ruling Letter (“HQ”) 958353¹, dated November 2, 1995; NY 811379², dated June 26, 1995; NY 811779³, dated July 5, 1995; NY B86726⁴, dated July 3, 1997; NY H80981⁵, dated July 11, 2001; NY N063856⁶, dated July 1, 2009; NY N156155⁷, dated April 5, 2011; and NY N156975⁸, dated April 5, 2011.

Pursuant to 19 U.S.C. § 1625(c)(1), a notice was published in the *Customs Bulletin*, Volume 52, No. 46 on November 14, 2018, proposing to revoke NY N245635, HQ 958353, NY 811379, NY 811779, NY B86726, NY H80981, NY N063856, NY N156155, and NY N156975, and any treatment accorded to substantially similar transactions. No comments were received in response to this notice.

¹ HQ 959353 classified a soapstone wood-burning stove in subheading 7116.20.40, HTSUS.

² NY 811379 classified containers, decorative eggs, coasters, and decorative plates made of soapstone in subheading 7116.20.40, HTSUS. It also classified animal figurines made of soapstone in subheading 7116.20.35, HTSUS.

³ NY 811779 classified a wood-burning stove made of soapstone in subheading 7116.20.40, HTSUS.

⁴ NY B86726 classified a soapstone trinket box in subheading 7116.20.40, HTSUS.

⁵ NY H80981 classified a soapstone trinket box in subheading 7116.20.40, HTSUS.

⁶ NY N063856 classified an incense sticks gift set in subheading 7116.20.40, HTSUS, because the essential character of the retail set was imparted by the soapstone incense holder,

⁷ NY N156155 classified soapstone figurines in subheading 7116.20.35, HTSUS. It also classified a soapstone carved candle pillar holder in subheading 7116.20.40, HTSUS.

⁸ NY N156975 classified a soapstone elephant carving in subheading 7116.20.40, HTSUS.

FACTS:

In NY N245635, CBP described the merchandise as follows:

Whisky Rocks are soapstone cubes meant to be frozen and used instead of ice cubes to keep whisky, vodka and other spirits cold. Nine cubes are packaged per box. Unlike ice cubes, which melt, the soapstone cubes will not dilute the taste of drinks. Online advertising literature indicates that Scotch drinkers, who condemn drinking Scotch whisky with ice, can now enjoy their drink cold, without diluting it. These cubes are reusable, simply rinse with water, and re-freeze.

ISSUE:

Whether the subject soapstone⁹ articles are classifiable under heading 6802, HTSUS, as “worked monumental or building stone (except slate) and articles thereof” or under subheading 7116, HTSUS, as “articles of natural or cultured pearls, precious or semi-precious stones (natural, synthetic or reconstructed).”

LAW AND ANALYSIS:

The classification of merchandise 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 2018 HTSUS provisions under consideration are as follows:

6802 Worked monumental or building stone (except slate) and articles thereof, other than goods of heading 6801; mosaic cubes and the like, of natural stone (including slate), whether or not on a backing; artificially colored granules, chippings and powder, of natural stone (including slate):

* * *

7116 Articles of natural or cultured pearls, precious or semiprecious stones (natural, synthetic or reconstructed):

* * *

Pursuant to note 1 of chapter 71, HTSUS, all articles consisting wholly or partly of semiprecious stones (natural, synthetic or reconstructed) are to be classified in chapter 71. Pursuant to note 1(d) of chapter 68, HTSUS, chapter 68 does not cover articles of chapter 71, HTSUS. Therefore, if articles of soapstone or steatite are provided for in heading 7116, or in any other heading of chapter 71, they cannot be classified in heading 6802, HTSUS.

According to note 2 of chapter 68, “worked monumental or building stone” applies not only to the varieties of stone referred to in heading 2515 or 2516, but also to all other natural stone (for example, quartzite, flint, dolomite and steatite) similarly worked.”

In understanding the language of the HTSUS, the Explanatory Notes (“ENs”) of the Harmonized Commodity Description and Coding System may

⁹ The EN to heading 25.26, HTSUS, the provision for natural steatite, states that “Soapstone is a variety of natural steatite.”

be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the Harmonized System at the international level. See T.D. 89-90, 54 Fed. Reg. 35127 (Aug. 23, 1989).

The ENs to heading 6802 state, in relevant part, that heading 6802 “covers stone which has been further processed than mere shaping into blocks, sheets or slabs by splitting, roughly cutting or squaring, or squaring by sawing (square or rectangular faces).” The ENs to heading 6802 also state that the heading covers:

(b) Stone of any shape (including, blocks, slabs or sheets) whether or not in the form of finished articles. . . dressed with the pick, bushing hammer, or chisel, etc., furrowed with the drag-comb, etc., planed, sand dressed, ground, polished, chamfered, moulded, turned, ornamental, carved, etc.

The heading therefore includes not only construction stone (including facing slabs) worked as above, but also articles such as steps, cornices, pediments, balustrades, corbels and supports; door or window frames and lintels; thresholds; mantelpieces; window sills; doorsteps; tombstones; boundary stones and milestones, bollards; panoramic indicators (enamelled or not); guard posts and fenders; sinks, troughs, fountain basins; balls for crushing mills; flower pots; columns, bases and capitals for columns; statues, statuettes, pedestals; high or low reliefs; crosses; figures of animals; bowls, vases, cups; cachou boxes; writing-sets; ashtrays; paper weights; artificial fruit and foliage, etc. . . other ornamental goods essentially of stone are, in general, classified in this heading.

The EN to heading 71.03 states, in pertinent part, that the heading for precious and semi-precious stones excludes “Steatite (unworked, heading 25.26; worked, heading 68.02).” Steatite is a compact form of talc.¹⁰ The Merriam-Webster Dictionary defines “steatite” as “a massive talc having a grayish-green or brown color: soapstone.”¹¹ Accordingly, the EN to heading 71.03 also excludes articles of soapstone.

The EN to heading 71.16 states, in pertinent part, the following:

This heading covers all articles (**other than** those **excluded** by Notes 2 (B) and 3 to this Chapter), wholly of natural or cultured pearls, precious or semi-precious stones, or consisting partly of natural or cultured pearls or precious or semi-precious stones, but **not** containing precious metals or metals clad with precious metal (**except** as minor constituents) (see Note 2 (B) to this Chapter).

Soapstone is a variety of natural steatite. Like Talc, it is a mineral substance rich in hydrous magnesium silicate.¹² Its special properties make it suitable for various uses and as a building component in kitchens, laboratories, woodstoves, wall and floor tiles, molds for metal casting, ornamental carving and sculptures, and electrical panels, among other uses.¹³ It is not

¹⁰ <https://www.britannica.com/science/steatite> (last visited on January 16, 2018).

¹¹ <https://www.merriam-webster.com/dictionary/steatite> (last visited on January 16, 2018);

¹² See EN to heading 25.26.

¹³ <http://geology.com/rocks/soapstone.shtml> (last visited November 1, 2017).

particularly rare or valuable. It is not listed among the gemstones for sale on various websites.¹⁴

Prior to March 2012, the Annex to the ENs to chapter 71 listed soapstone and steatite as precious or semiprecious stone. Noting the discrepancy with the EN to heading 71.03 excluding steatite from the heading as a semiprecious stone in favor of heading 68.02 in accordance with note 2 to chapter 68, the Harmonized System Committee (“HSC”) deleted the terms “soapstone” and “steatite” from the Annex to the ENs to chapter 71 identifying precious or semiprecious stone. Accordingly, articles of soapstone or steatite are not specifically included in chapter 71 under note 1 to the chapter, or excluded from classification in chapter 68 under note 1(d) to that chapter. Furthermore, note 2 to chapter 68 specifically states that steatite stone is provided for as monumental building stone in the chapter. It follows, then, that an article of steatite is classified in heading 6802 under the legal terms and the EN thereto. This is the case even if the particular article is not being used as a building stone.

Since the soapstone whisky cubes in NY N245635 are articles of soapstone, we find that such merchandise, along with articles of soapstone or steatite in HQ 958353, NY 811379, NY 811779, NY B86726, NY H80981, NY N063856, NY N156155, and NY N156975 are classifiable in heading 6802, which provides for “Worked monumental or building stone (except slate) and articles thereof, other than goods of heading 6801; mosaic cubes and the like, of natural stone (including slate), whether or not on a backing; artificially colored granules, chippings and powder, of natural stone (including slate).” We further note that unlike the articles of soapstone or steatite in the above-mentioned rulings, the knife care kit containing an “Uchiko talc powder ball” in our recently issued ruling, HQ H293248, dated June 14, 2018, was classified in subheading 6815.99.20, HTSUS, as “[a]rticles of stone or of other mineral substances (including carbon fibers, articles of carbon fibers and articles of peat), not elsewhere specified or included: Other articles: Other: Talc, steatite and soapstone, cut or sawed, or in blanks, crayons, cubes, disks or other forms.” However, the articles at issue, which are made from carved stone, are distinguishable from the Uchiko powder ball, a textile filled with talc and other powder that does not resemble any of the exemplars in the ENs to heading 6802, HTSUS, such as “flower pots; columns, bases and capitals for columns; statues, statuettes, pedestals; high or low reliefs; crosses; figures of animals; bowls, vases, cups; cachou boxes; writing sets; ashtrays; paper weights; artificial fruit and foliage, etc. . . . [and] other ornamental goods.” Moreover, where the subject merchandise is not classifiable in heading 6815, HTSUS, under GRI 1, it cannot be classified in subheading 6815.99.20, HTSUS.

HOLDING:

Pursuant to GRIs 1 and 6, articles of soapstone or steatite are classified in heading 6802, HTSUS, specifically in subheading 6802.99.00, which provides for “Worked monumental or building stone (except slate) and articles thereof, other than goods of heading 6801; mosaic cubes and the like, of natural stone

¹⁴ <https://rocktumbler.com/tips/semiprecious-precious/>; <https://www.charlesandcolvard.com/blog/post/precious-vs-semiprecious-gems-whats-the-difference/>; <https://www.gemrockauctions.com/es/learn/additional-gemstone-information/a-list-of-precious-and-semi-precious-gemstones-and-their-treatments>; <https://www.gemselect.com/other-info/precious-gems.php>

(including slate), whether or not on a backing; artificially colored granules, chippings and powder, of natural stone (including slate): Other: Other stone.” The 2018 column one, general rate of duty is 6.5% *ad valorem*.

EFFECT ON OTHER RULINGS:

NY N259445, dated September 24, 2013; HQ 958353, dated November 2, 1995; NY 811379, dated June 26, 1995; NY 811779, dated July 5, 1995; NY B86726, dated July 3, 1997; NY H80981, dated July 11, 2001; NY N063856 dated July 1, 2009; NY N156155, dated April 5, 2011; and NY N156975, dated April 5, 2011, are revoked.

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

Sincerely,

ALLYSON MATTANAH

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

cc: Mr. Anuj Suri

Saimax

7737 Newhope West

Liverpool, NY 13090

Mr. Rolf Fredner

Rolf Fredner, Inc.

63 Melrose Drive

New Rochelle, NY 10804-4609

Ms. Joanne Balice

CBI Distributing Corp.

2400 West Central Rd.

Hoffman Estates, IL 60195-1930

Mr. Charles Parisi

Parisi Services, Inc.

P.O. Box 91217

Los Angeles, CA 90009

Ms. Kathleen Root

Barthco Trade Consultants

5101 South Broad Street

Philadelphia, PA 19112

Mr. Bruce Barshay

Atlantic City Bus Co.

7232 First Avenue

Mays Landing, NJ 08330

Dave Collins

781 Logistics, LLC

300 Stevens Drive, Suite 105

Lester, PA 19113

**PROPOSED REVOCATION OF SIX RULING LETTERS AND
REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF MEN’S SHORTS, MEN’S
SWEATERS, MEN’S SHIRTS, TUNIC-TYPE GARMENTS AND
DUST SKIRTS**

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

ACTION: Notice of proposed revocation of six ruling letters and revocation of treatment relating to the tariff classification of men’s shorts, men’s sweaters, men’s shirts, tunic-type garments and dust skirts.

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 six ruling letters concerning tariff classification of men’s shorts, men’s sweaters, men’s shirts, tunic-type garments and dust skirts 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 May 3, 2019.

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: Tatiana Salnik Matherne, Food, Textiles, and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325–0351.

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 six ruling letters pertaining to the tariff classification of men's shorts, men's sweaters, men's shirts, tunic-type garments and dust skirts. Although in this notice CBP is specifically referring to New York Ruling Letter (NY) H84223, dated August 9, 2001 (Attachment A); NY F89120, dated July 29, 2000 (Attachment B); NY H84975, dated August 9, 2001 (Attachment C); Headquarters Ruling Letter (HQ) 085998, dated December 28, 1989 (Attachment D); HQ 085150, dated September 22, 1989 (Attachment E); and HQ 088132, dated November 9, 1990 (Attachment F), 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 six 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 H84223, CBP classified men's shorts made of 50 percent linen and 50 percent viscose rayon fiber blend in heading 6203, HTSUS, specifically in subheading 6203.49.80, HTSUS, providing for "Men's or boys' suits, ensembles, suit-type jackets, blazers, trousers, bib and brace overalls, breeches and shorts (other than swimwear): Trousers, bib and brace overalls, breeches and shorts: Of other textile materials: Other." CBP has reviewed NY H84223 and has determined

that ruling letter to be in error. It is now CBP's position that the men's shorts at issue are properly classified in subheading 6203.43.90, HTSUS, which provides for "Men's or boys' suits, ensembles, suit-type jackets, blazers, trousers, bib and brace overalls, breeches and shorts (other than swimwear): Trousers, bib and brace overalls, breeches and shorts: Of synthetic fibers: Other: Other: Other: Other: Other: Other."

In NY H84975, CBP classified men's shirts made of 50 percent linen and 50 percent viscose rayon fiber blend in heading 6205, HTSUS, specifically subheading 6205.90.40, HTSUS, which provides for "Men's or boys' shirts: Of other textile materials: Other." CBP has reviewed NY H84975 and has determined that ruling letter to be in error. It is now CBP's position that the men's shirts at issue are properly classified in subheading 6205.30.20, HTSUS, which provides for "Men's or boys' shirts: Of man-made fibers: Other: Other."

In HQ 085150, CBP classified a dust skirt made of 50 percent polyester and 50 percent cotton in heading 6304, HTSUS, which provides for "Other furnishing articles, excluding those of heading 9404." This classification was later reconsidered in HQ 085998. Specifically, it was determined that the dust skirt at issue is classified in heading 6303, HTSUS, which provides for "Curtains (including drapes) and interior blinds; curtain or bed valances." Specifically, it was determined that if the dust skirt is composed of more than 50 percent cotton material, excluding the embroidery, it is classified under subheading 6303.91.00, HTSUS, which provides for "Curtains (including drapes) and interior blinds; curtain or bed valances: Other: Of cotton." Alternatively, if the dust skirt is composed of more than 50 percent polyester material, excluding the embroidery, it is classified under subheading 6303.92.00, HTSUS, which provides for "Curtains (including drapes) and interior blinds; Curtain or bed valances: Other: Of synthetic fibers." CBP has reviewed HQ 085998 and found these classifications to be in error. It is now CBP's position that the dust skirt at issue is properly classified in subheading 6303.92.20, HTSUS, which provides for "Curtains (including drapes) and interior blinds; curtain or bed valances: Other: Of synthetic fibers: Other."

In NY F89120, CBP classified men's knit sweater made of 50 percent cotton and 50 percent silk knit fabric in heading 6110, HTSUS, specifically subheading 6110.90.90, HTSUS, which provides for "Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: Of other textile materials: Other." CBP has reviewed NY F89120 and has determined that ruling letter to be in error. It is now CBP's position that the men's sweater at issue is properly classified in subheading 6110.20.20, HTSUS, which provides

for “Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: Of cotton: Other.”

In HQ 088132, CBP classified sleeveless, knit tunic-type garment made of 50 percent wool and 50 percent silk fabric in heading 6110, HTSUS, specifically in subheading 6110.90.00, HTSUS, which provides for “Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: Of other textile materials.” CBP has reviewed HQ 088132 and has determined that ruling letter to be in error. It is now CBP’s position that the knit-type garment at issue is properly classified in subheading 6110.11.00, HTSUS, which provides for “Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: Of wool or fine animal hair: Of wool.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke NY H84223, NY F89120, NY H84975, HQ 085998, HQ 085150 and HQ 088132, and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed HQ H293468, set forth as Attachment G 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: March 15, 2019

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachments

ATTACHMENT A

NY H84223

August 9, 2001
CLA-2-62:RR:NC:WA:355 H84223
CATEGORY: Classification
TARIFF NO.: 6203.49.8060

MR. TIM SAMMY
GFT (USA)
11 W 42ND STREET, 19TH FLOOR
NEW YORK, NY 10036

RE: The tariff classification of men's shorts from Hong Kong

DEAR MR. SAMMY:

In your letter dated August 1, 2001, you requested a classification ruling. You submitted a sample of a pair of men's shorts which will be returned as you have requested. The garment is stated to be made of a 50 percent linen and 50 percent viscose rayon fiber blend woven fabric. The garment features a pleated front, two side slash pockets, two rear welt pockets with button closures, a front zippered fly which is secured by a button at the waistband and six belt loops on the waistband.

The applicable subheading for the shorts will be 6203.49.8060, Harmonized Tariff Schedule of the United States (HTS), which provides for men's or boys' trousers, bib and brace overalls, breeches and shorts, of other textile materials, other, shorts. The duty rate will be 2.9 percent ad valorem.

The shorts fall within textile category designation 847. Based upon international textile trade agreements products of Hong Kong are subject to quota and the requirement of a visa.

The designated textile and apparel categories and their quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information, we suggest that you check, close to the time of shipment, the *U.S. Customs Service Textile Status Report*, an internal issuance of the U.S. Customs Service, which is available at the Customs Web site at www.customs.gov. In addition, the designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected and should also be verified at the time of shipment.

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 Camille Ferraro at 212-637-7082.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity
Specialist Division

ATTACHMENT B

NY F89120

July 29, 2000
CLA-2-61:RR:NC:TA:N3:356 F89120
CATEGORY: Classification
TARIFF NO.: 6110.90.9010

MR. TIM SAMMY
GFT (USA)
650 FIFTH AVENUE, 23RD FLOOR
NEW YORK, NY 10019

RE: The tariff classification of a men's knit sweaters from Hong Kong.

DEAR MR. SAMMY:

In your letter, dated June 27, 2000, you requested a tariff classification ruling. As requested, your sample will be returned.

Style S-311 is a men's sweater constructed from 50 percent cotton, 50 percent silk, knit fabric that measures 6 stitches per two centimeters counted in the horizontal direction. Style S-311 features a rib knit crew neckline; long sleeves with rib knit cuffs; and a rib knit bottom. At the time of entry, Customs may verify the actual fiber content of Style S-311. If the fiber content varies from the weight breakdown indicated in your letter, the HTS classification may differ from the information indicated below.

The applicable subheading for Style S-311 will be 6110.90.9010, Harmonized Tariff Schedule of the United States, (HTS), which provides for: sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: of other textile materials: other: sweaters for men or boys: subject to cotton restraints. The duty rate will be 6 percent ad valorem.

Style S-311 falls within textile category designation 345. Based upon international textile trade agreements, products of Hong Kong are subject to visa requirements and quota restraints. The designated textile and apparel categories and their quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information, we suggest that you check, close to the time of shipment, the *U.S. Customs Service Textile Status Report*, an internal issuance of the U.S. Customs Service, which is available at the Customs Web site at www.customs.gov. In addition, the designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected and should also be verified at the time of shipment.

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

A copy of this ruling letter or the control number listed above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding this ruling, contact National Import Specialist Mary Ryan at 212-637-7081.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity
Specialist Division

ATTACHMENT C

NY H84975

August 9, 2001
CLA-2-62:RR:NC:WA:355 H84975
CATEGORY: Classification
TARIFF NO.: 6205.90.4040

MR. TIM SAMMY
GFT (USA)
11 W 42ND STREET, 19TH FLOOR
NEW YORK, NY 10036

RE: The tariff classification of a men's shirt from Hong Kong

DEAR MR. SAMMY:

In your letter dated August 6, 2001, you requested a classification ruling. You submitted a sample of a men's shirt which will be returned as you have requested. The garment is stated to be made of a 50 percent linen and 50 percent viscose rayon fiber blend woven fabric. The shirt features a button down collar, a seven button full frontal opening, a curved hemmed bottom, a chest pocket and long sleeves with buttoned cuffs.

The applicable subheading for the shirt will be 6205.90.4040, Harmonized Tariff Schedule of the United States (HTS), which provides for men's or boys' shirts, of other textile materials, other, other. The duty rate will be 2.9 percent ad valorem.

The shirts falls within textile category designation 840. Based upon international textile trade agreements products of Hong Kong are subject to quota and the requirement of a visa.

The designated textile and apparel categories and their quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information, we suggest that you check, close to the time of shipment, the *U.S. Customs Service Textile Status Report*, an internal issuance of the U.S. Customs Service, which is available at the Customs Web site at www.customs.gov. In addition, the designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected and should also be verified at the time of shipment.

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 Camille Ferraro at 212-637-7082.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity
Specialist Division

ATTACHMENT D

HQ 085998

December 28, 1989

CLA-2 CO:R:C:G 085998 JS

CATEGORY: Classification

TARIFF NO: 6303.91.0000, 6303.92.0000

PAUL R. ANDREWS
DISTRICT DIRECTOR
555 BATTERY STREET
P.O. BOX 2450
SAN FRANCISCO, CA. 94126

RE: Dust Skirt - Modification of HRL 085150

DEAR MR. ANDREWS:

This is in reply to your memorandum of November 9, 1989, requesting a reconsideration of HRL 085150 issued September 22, 1989, in which a dust skirt was classified as a bed spread under Heading 6304, HTSUSA. On October 12, 1989, the ruling was further modified with respect to the applicable subheading and the dust skirt was classified under the provision for other furnishing articles. After a complete review of the matter, the classification in both instances is determined to be in error.

FACTS:

The sample submitted with the original request is a dust skirt designed to fit a twin bed, made of 50 percent cotton and 50 percent polyester woven fabric. It has an embroidered lace on three sides, which is composed of 60 percent linen and 40 percent cotton material, and is designed to hang over the edge of a mattress. The dust skirt is decorative, but may remain on a bed at all times.

ISSUE:

Whether the dust skirt is classifiable as a bed spread under Heading 6304 or as a bed valance under Heading 6303, HTSUSA?

LAW AND ANALYSIS:

Classification of merchandise under the HTSUSA is in accordance with the General Rules of Interpretation (GRI's), taken in order. GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes.

Heading 6303, HTSUSA, provides for curtains (including drapes), and interior blinds; curtain or bed valances. The Explanatory Notes, the official interpretation of the HTSUSA at the international level, state that the heading includes bed valances for attachment to beds for concealment and decoration.

The dust skirt at issue is designed to hang over the edge of a mattress as a decorative, and relatively permanent, method of concealment of the area beneath the bed. Such merchandise is commonly defined as a bed valance, as indicated by the following sources:

The New World Dictionary, Second College Edition, at 1567, (1974), defines valance as:

a short drapery or curtain hanging from the edge of a bed, shelf, table, etc., often to the floor.

The Random House Dictionary of the English Language, Unabridged Edition, at 1577, (1983), describes valance as:

a short curtain or piece of drapery that is hung from the edge of a canopy, from the frame of a bed, etc.

Valance is defined in Webster's Third New International Dictionary, Unabridged, at 2529, (1971), as:

a usually gathered or pleated drapery attached along the edge of a bed, table, altar, canopy or shelf and hanging straight and loosely often to the floor for concealment and decoration.

The same source defines dust ruffle as:

a decorative ruffle attached to the rails or springs of a bed and reaching the floor.

From the above definitions, it appears clear that a dust ruffle is a bed valance and that the two terms are interchangeable.

We conclude that heading 6303, HTSUSA, which provides for bed valances, more specifically describes the dust ruffle than Heading 6304, HTSUSA. GRI 3(a) states that, where an article is, *prima facie*, classifiable under two or more headings, the heading which provides the most specific description shall be preferred to headings providing a more general description. We find that a dust ruffle is considered a bed valance under heading 6303, HTSUSA.

HOLDING:

For the above stated reasons, and pursuant to 19 C.F.R. 177.9(d), HRL 085150 is modified to reflect that the subject dust skirt is properly classifiable as a bed valance under Heading 6303, HTSUSA. If the dust skirt is composed of more than 50 percent cotton material, excluding the embroidery, it is classified under subheading 6303.91.0000, HTSUSA, which provides for curtains (including drapes) and interior blinds; curtain or bed valances: other: of cotton, textile category number 369, and dutiable at a rate of 11.7 percent ad valorem. Alternatively, if the dust skirt is composed of more than 50 percent polyester material, excluding the embroidery, it is classified under subheading 6303.92.0000, HTSUSA, which provides for curtains (including drapes) and interior blinds; curtain or bed valances: other: of synthetic fibers, textile category number 666, and dutiable at the rate of 12.8 percent ad valorem.

The merchandise may be submitted to a Customs laboratory for analysis, at the discretion of the classifying officer, and will be classified in accordance with the results of that analysis to determine which fiber predominates by weight.

Due to the changeable nature of the statistical annotation and the restraint (quota/visa) categories applicable to textile merchandise, you should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest that you check, close to the time of shipment, the Status Report on Current Import Quotas

(Restraint Levels), an issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

Pursuant to section 177.9, Customs Regulations (19 C.F.R. 177.9), the ruling letters of September 22, 1989, and October 12, 1989, are modified in conformity with the foregoing.

Sincerely,

HARVEY B. FOX

Director,

Office of Regulations and Rulings

ATTACHMENT E

HQ 085150

September 22, 1989

CLA-2 CO:R:C:G 085150 CC

CATEGORY: Classification

TARIFF NO.: 6304.19.0500; 6304.19.1500

MR. JEFF MUSSER
EXPEDITORS INTERNATIONAL
880 HINCKLEY ROAD
P.O. BOX 4389
BURLINGAME, CA 94011-4389

RE: Tariff classification of a dust skirt

DEAR MR. MUSSER:

This letter is in response to your inquiry of June 8, 1989, in behalf of Expeditors International, requesting tariff classification of a dust skirt. A sample was submitted for examination.

FACTS:

The sample at issue, a dust skirt designed to fit a twin bed, is made of 50 percent polyester and 50 percent cotton woven fabric, according to your submissions. It has an embroidered lace on three sides, which is composed of 60 percent linen and 40 percent cotton material, and is designed to hang over the edge of a mattress. The dust skirt is decorative, but may remain on a bed at all times.

ISSUE:

Whether the dust skirt is classifiable as a bedspread under Heading 6304 of the Harmonized Tariff Schedule of the United States Annotated (HTSUSA)?

LAW AND ANALYSIS:

Classification of merchandise under the HTSUSA is in accordance with the General Rules of Interpretation (GRI's), taken in order. GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes.

Heading 6302, HTSUSA, provides for bed linen, among other articles. The Explanatory Notes, the official interpretation of the HTSUSA at the international level, states that bed linen includes, e.g., sheets, pillow cases, bolster cases, eiderdown cases and mattress covers. Therefore, according to the Explanatory notes, a dust skirt is not specifically provided for in Heading 6302.

Heading 6304, HTSUSA, provides for other furnishing articles, excluding those of Heading 9404, HTSUSA. Dust skirts are not provided for in Heading 9404. A subheading of Heading 6304 provides for bedspreads. The Random House Dictionary of the English Language, the Unabridged Edition (1983), defines a bedspread as "an outer covering, usually decorative, for a bed." Because the merchandise at issue is decorative and serves to cover a bed in a manner similar to a bedspread, we find that it is classifiable as a bedspread in Heading 6304.

The dust skirt is woven, not knitted or crocheted and, thus, is classified under subheading 6304.19, HTSUSA, which provides for bedspreads, other. The question which remains is whether the merchandise at issue is classified under the subheading for bedspreads, other, of cotton, or under the subheading for bedspreads, other, of man-made fibers.

Subheading note 2(A), Section XI, HTSUSA, requires that products of Chapters 56 to 63 which contain two or more textile materials be regarded as consisting wholly of that textile material which would be selected under Note 2 to Section XI. Note 2 provides that goods consisting of a mixture of two or more textile materials are to be classified as consisting wholly of the one textile material which predominates by weight. According to your submissions, the dust skirt, excluding the embroidery, is composed of 50 percent cotton and 50 percent polyester material. Therefore, we cannot classify the merchandise at issue under a specific subheading at this time.

HOLDING:

The merchandise at issue is classified as a bedspread in Heading 6304. If the dust skirt is composed of more than 50 percent cotton material, excluding the embroidery, it is classified under subheading 6304.19.0500, HTSUSA, which provides for bedspreads, other, of cotton, containing any embroidery, lace, braid, edging, trimming, piping or applique work, textile category 362, and dutiable at a rate of 13.6 percent ad valorem. Alternatively, if the dust skirt is composed of more than 50 percent polyester material, excluding the embroidery, it is classified under subheading 6304.19.1500, HTSUSA, which provides for bedspreads, other, of man-made fibers, containing any embroidery, lace, braid, edging, trimming, piping or applique work, textile category 666, and dutiable at a rate of 19.8 percent ad valorem.

The merchandise may be submitted to a Customs laboratory for analysis, at the discretion of the classifying officer, and will be classified in accordance with the results of that analysis to determine which fiber predominates by weight.

Your sample will be returned, under separate cover, as requested.

Due to the changeable nature of the statistical annotation and the restraint (quota/visa) categories applicable to textile merchandise, you should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest that you check, close to the time of shipment, the Status Report On Current Import Quotas (Restraint Levels), an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

Sincerely,

JOHN DURANT,

Director

Commercial Rulings Division

ATTACHMENT F

HQ 088132

November 9, 1990

CLA-2 CO:R:C:G 088132 CMR

CATEGORY: Classification

TARIFF NO.: 6110.90.0074

DUNCAN NIXON, Esq.

SHARRETT, PALEY, CARTER & BLAUVELT, P.C.

1707 L STREET, N.W.

WASHINGTON, D.C. 20036

RE: Modification of DD 856355 of October 15, 1990; Classification of a 50 percent wool/50 percent silk knit garment

DEAR MR. NIXON:

This ruling is in response to your letter of October 26, 1990, on behalf of Anne Klein, requesting modification of DD 856355 of October 15, 1990.

FACTS:

The garment at issue, style 428, is a sleeveless, knit tunic-type garment made of 50 percent wool/50 percent silk fabric. The garment was classified in DD 856355 in subheading 6110.90.0086, HTSUSA, which provides for women's or girls' sweaters, pullovers and similar articles, knitted or crocheted, of silk.

ISSUE:

Was style 428 correctly classified as a silk garment in subheading 6110.90.0086, or is it classifiable as a garment subject to wool restraints in subheading 6110.90.0074?

LAW AND ANALYSIS:

The classification of style 428 as a silk garment appears to be based on a belief that since the garment is 50 percent wool and 50 percent silk it is classified in the heading or subheading, as the case may be, which appears last in the tariff schedule.

The problem in this case has arisen at the statistical level. The subheadings which present themselves as possibilities for the classification of this garment are:

6110.90.00, HTSUSA, which provides for sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted, of other textile materials:

.74 other:

subject to wool restraints;

and

.86 other:

other:

of silk:

other.

The appearance of the subheadings in the tariff schedule is an indication of the order of consideration. “Subject to wool restraints” appears under the designation “other”; whereas, “of silk: other” appears under the designation “other: other.” As can be clearly seen above, the consideration between the subheadings is between “subject to wool restraints” and “other.”

Subject to wool restraints is defined in the statistical notes for Section XI, in pertinent part, as “articles . . . in which the wool (including fine animal hair) component exceeds 17 percent by weight of all the component fibers thereof.”

The garment at issue is stated to be 50 percent wool. It clearly falls within the definition for subject to wool restraints. Applying GRI 1, which provides “classification shall be determined according to the terms of the headings and any relative section or chapter notes, provided such headings or notes do not otherwise require, according to [the remaining GRIs taken in order],” the garment is classified in subheading 6110.90.0074, HTSUSA, as subject to wool restraints.

HOLDING:

The garment at issue, style 428, is classified in subheading 6110.90.0074, HTSUSA, which provides for sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted, of other textile materials: other: subject to wool restraints. The garment falls within textile category 438 and dutiable at 6 percent ad valorem.

In accordance with 19 CFR 177.9(d), DD 856355 of October 15, 1990, is modified to accord with the above.

The designated textile and apparel category may be subdivided into parts. If so, the visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest you check, close to the time of shipment, the Status Report On Current Import Quotas (Restraint Levels), an internal issuance of the U.S. Customs Service which is updated weekly and is available for inspection at your local Customs office.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, you should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

Sincerely,

JOHN DURANT,

Director

Commercial Rulings Division

ATTACHMENT G

HQ H293468
CLA-2 OT:RR:CTF:FTM H293468 TSM
CATEGORY: Classification
TARIFF NO.: 6110.11.00; 6110.20.20; 6203.43.90;
6303.92.20; 6205.30.20.

MR. TIM SAMMY
GFT (USA)

11 W 42ND STREET, 19TH FLOOR
NEW YORK, NY 10036

RE: Proposed revocation of New York Ruling Letter (NY) H84223, NY F89120, NY H84975; Headquarters Ruling Letter (HQ) 085998, HQ 085150, HQ 088132; Tariff Classification of men's shorts, men's sweaters, men's shirts, tunic-type garments and dust skirts.

DEAR MR. SAMMY:

This is in reference to New York Ruling Letter (NY) H84223, issued to you on August 9, 2001, concerning the tariff classification of men's shorts. This is also in reference to NY F89120, dated July 29, 2000; NY H84975, dated August 9, 2001; Headquarters Ruling Letter (HQ) 085998, dated December 28, 1989; HQ 085150, dated September 22, 1989; and HQ 088132, dated November 9, 1990. In those rulings, U.S. Customs and Border Protection ("CBP") classified the subject merchandise under subheadings 6203.49.80, 6303.91.00, 6303.92.00, 6304.19.05, 6304.19.15, 6205.90.40, 6110.90.00 and 6110.90.90, Harmonized Tariff Schedule of the United States ("HTSUS"). Upon additional review, we have found these classifications to be incorrect. For the reasons set forth below we hereby propose to revoke NY H84223, NY F89120, NY H84975, HQ 085998, HQ 085150 and HQ 088132.

FACTS:

NY H84223 describes the subject merchandise as follows:

You submitted a sample of a pair of men's shorts which will be returned as you have requested. The garment is stated to be made of a 50 percent linen and 50 percent viscose rayon fiber blend woven fabric. The garment features a pleated front, two side slash pockets, two rear welt pockets with button closures, a front zippered fly which is secured by a button at the waistband and six belt loops on the waistband.

NY F89120 describes the subject merchandise as follows:

Style S-311 is a men's sweater constructed from 50 percent cotton, 50 percent silk, knit fabric that measures 6 stitches per two centimeters counted in the horizontal direction. Style S-311 features a rib knit crew neckline; long sleeves with rib knit cuffs; and a rib knit bottom.

HQ 085998 describes the subject merchandise as follows:

The sample submitted with the original request is a dust skirt designed to fit a twin bed, made of 50 percent cotton and 50 percent polyester woven fabric. It has an embroidered lace on three sides, which is composed of 60 percent linen and 40 percent cotton material, and is designed to hang over the edge of a mattress. The dust skirt is decorative, but may remain on a bed at all times.

HQ 085150 describes the subject merchandise as follows:

The sample at issue, a dust skirt designed to fit a twin bed, is made of 50 percent polyester and 50 percent cotton woven fabric, according to your submissions. It has an embroidered lace on three sides, which is composed of 60 percent linen and 40 percent cotton material, and is designed to hang over the edge of a mattress. The dust skirt is decorative, but may remain on a bed at all times.

HQ 088132 describes the subject merchandise as follows:

The garment at issue, style 428, is a sleeveless, knit tunic-type garment made of 50 percent wool/50 percent silk fabric.

ISSUE:

What is the tariff classification of the merchandise at issue?

LAW AND ANALYSIS:

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

Note 2 (A) to Section XI, HTSUS, provides:

Goods classifiable in chapters 50 to 55 or in heading 5809 or 5902 and of a mixture of two or more textile materials are to be classified as if consisting wholly of that one textile material which predominates by weight over each other single textile material.

When no one textile material predominates by weight, the goods are to be classified as if consisting wholly of that one textile material which is covered by the heading which occurs last in numerical order among those which equally merit consideration.

* * *

Subheading Note 2 (A) to Section XI, HTSUS, provides:

Products of chapters 56 to 63 containing two or more textile materials are to be regarded as consisting wholly of that textile material which would be selected under note 2 to this section for the classification of a product of chapters 50 to 55 or of heading 5809 consisting of the same textile materials.

* * *

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

Explanatory Note 2 (A) to Section XI, HTSUS, provides:

Goods classifiable in Chapters 50 to 55 or in heading 58.09 or 59.02 and of a mixture of two or more textile materials are to be classified as if

consisting wholly of that one textile material which predominates by weight over any other single textile material.

When no one textile material predominates by weight, the goods are to be classified as if consisting wholly of that one textile material which is covered by the heading which occurs last in numerical order among those which equally merit consideration.

* * *

The 1989 HTSUS provisions under consideration are as follows:

6303	Curtains (including drapes) and interior blinds; curtain or bed valances:
	Knitted or crocheted:
6303.91.00	Of cotton
6303.92.00	Of synthetic fabric
	* * *
6304	Other furnishing articles, excluding those of heading 9404:
	Bedspreads:
6304.19	Other:
	Of cotton:
6304.19.05	Containing any embroidery, lace, braid, edging, trimming, piping or applique work
	Of man-made fibers:
6304.19.15	Containing any embroidery, lace, braid, edging, trimming, piping or applique work
	* * *

The 1990 HTSUS provisions under consideration are as follows:

6110	Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted:
6110.90.00	Of other textile materials
	* * *

The 2000 HTSUS provisions under consideration are as follows:

6110	Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted:
6110.90	Of other textile materials:
6110.90.90	Other
	* * *

The 2001 HTSUS provisions under consideration are as follows:

6203	Men's or boys' suits, ensembles, suit-type jackets, blazers, trousers, bib and brace overalls, breeches and shorts (other than swimwear):
	Trousers, bib and brace overalls, breeches and shorts:

6203.49 Of other textile materials:

6203.49.80 Other
* * *

6205 Men's or boys' shirts:

6205.90 Of other textile materials:

6205.90.40 Other
* * *

The 2018 HTSUS provisions under consideration are as follows:

6110 Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted:

Of wool or fine animal hair:

6110.11.00 Of wool
* * *

6110.20 Of cotton:

6110.20.20 Other
* * *

6203 Men's or boys' suits, ensembles, suit-type jackets, blazers, trousers, bib and brace overalls, breeches and shorts (other than swimwear):

Trousers, bib and brace overalls, breeches and shorts:

6203.43 Of synthetic fibers:

Other:

Other:

Other:

Other:

Other:

6203.43.90 Other
* * *

6205 Men's or boys' shirts:

6205.30 Of man-made fibers:

Other:

6205.30.20 Other
* * *

6303 Curtains (including drapes) and interior blinds; curtain or bed valances:

Other:

6303.92 Of synthetic fibers:

6303.92.20 Other
* * *

Classification of garments consisting of a 50/50 blend of different fibers of chapters 50 to 55 is determined by Section XI Note 2(A) and Subheading Note 2(A), HTSUS. Subheading Note 2(A) to Section XI provides, in pertinent part, that products of Chapters 56 to 63 containing two or more textile materials

are to be regarded as consisting wholly of that textile material which would be selected under Note 2 to Section XI, HTSUS, for the classification of a product of chapters 50 to 55. Consequently, the tariff classification of a garment consisting of a 50/50 blend of fibers classified in chapters 50 to 55 will be determined by the fiber classified in the chapter which occurs last in numerical order. *See* NY M86307, dated October 2, 2006; *See also* NY I83696, dated July 11, 2002.

In NY H84223, dated August 9, 2001, we concluded that the tariff classification of men's shorts, made of 50 percent linen and 50 percent viscose rayon fiber blend, was in subheading 6203.49.80, HTSUS,¹ which provides for "Men's or boys' suits, ensembles, suit-type jackets, blazers, trousers, bib and brace overalls, breeches and shorts (other than swimwear): Trousers, bib and brace overalls, breeches and shorts: Of other textile materials: Other." This subheading covers the linen component of the men's shorts under consideration. However, upon additional review we find this to be incorrect. Applying Note 2 (A) to Section XI, HTSUS, Subheading Note 2 (A) to Section XI, HTSUS, as well as Explanatory Note 2 (A) to Section XI, HTSUS, we conclude that the tariff classification of the shorts is determined by the viscose rayon component. This is because linen is classified in Chapter 53, HTSUS, while rayon is classified in Chapter 55, HTSUS. The rayon component of the men's shorts at issue is provided for in subheading 6203.43.90, HTSUS, which provides for "Men's or boys' suits, ensembles, suit-type jackets, blazers, trousers, bib and brace overalls, breeches and shorts (other than swimwear): Trousers, bib and brace overalls, breeches and shorts: Of synthetic fibers: Other: Other: Other: Other: Other: Other." Consequently, in accordance with the foregoing we conclude that the subject shorts are also classified in this subheading.

In NY H84975, dated August 9, 2001, we concluded that the tariff classification of a men's shirt, made of 50 percent linen and 50 percent viscose rayon fiber blend, was in subheading 6205.90.40, HTSUS, which provides for "Men's or boys' shirts: Of other textile materials: Other." This subheading covers the linen component of the men's shirt under consideration. However, upon additional review we find this to be incorrect. Applying Note 2 (A) to Section XI, HTSUS, Subheading Note 2 (A) to Section XI, HTSUS, as well as Explanatory Note 2 (A) to Section XI, HTSUS, we conclude that the tariff classification of the shirt is determined by the viscose rayon component. This is because linen is classified in Chapter 53, HTSUS, while rayon is classified in Chapter 55, HTSUS. The rayon component of the men's shirt at issue is provided for in subheading 6205.30.20, HTSUS, which provides for "Men's or boys' shirts: Of man-made fibers: Other: Other." Consequently, we conclude that the subject shirt is also classified in this subheading.

In HQ 085150, dated September 22, 1989, a dust skirt made of 50 percent polyester and 50 percent cotton woven fabric, was classified in heading 6304, HTSUS, which provides for "Other furnishing articles, excluding those of heading 9404." This classification was later reconsidered in HQ 085998, dated December 28, 1989, in which we found that the dust skirt at issue is classified in heading 6303, HTSUS, which provides for "Curtains (including drapes) and interior blinds; curtain or bed valances." Specifically, it was determined that "If the dust skirt is composed of more than 50 percent cotton material, excluding the embroidery, it is classified under subheading

¹ Corresponding to 2018 HTSUS subheading 6203.49.90.

6303.91.0000, HTSUSA, which provides for curtains (including drapes) and interior blinds; curtain or bed valances: other: of cotton... Alternatively, if the dust skirt is composed of more than 50 percent polyester material, excluding the embroidery, it is classified under subheading 6303.92.0000, HTSUSA, which provides for curtains (including drapes) and interior blinds; curtain or bed valances: other: of synthetic fibers.”

Upon review, we agree that the dust skirt at issue in HQ 085150 and HQ 085998 is classified in heading 6303, HTSUS, which covers “bed valances.” However, applying Note 2 (A) to Section XI, HTSUS, Subheading Note 2 (A) to Section XI, HTSUS, as well as Explanatory Note 2 (A) to Section XI, HTSUS, we conclude that the tariff classification of the bed skirt is determined by the polyester component. This is because cotton is classified in Chapter 52, HTSUS, while polyester is classified in Chapter 54, HTSUS. The polyester component of the dust skirt at issue is provided for in subheading 6303.92.20, HTSUS, which provides for “Curtains (including drapes) and interior blinds; curtain or bed valances: Other: Of synthetic fibers: Other.” Therefore, we conclude that the dust skirt at issue is also classified in this subheading.

In NY F89120, dated July 29, 2000, we concluded that the tariff classification of a men’s knit sweater, made of 50 percent cotton and 50 percent silk knit fabric, was in subheading 6110.90.90, HTSUS, which provides for “Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: Of other textile materials: Other.” This subheading covers the silk component of the men’s sweater under consideration. However, upon additional review we find this to be incorrect. Applying Note 2 (A) to Section XI, HTSUS, Subheading Note 2 (A) to Section XI, HTSUS, as well as Explanatory Note 2 (A) to Section XI, HTSUS, we conclude that the tariff classification of the sweater is determined by the cotton component. This is because silk is provided for in Chapter 50, HTSUS, while cotton is classified in Chapter 52, HTSUS. The cotton component of the men’s sweater at issue is provided for in subheading 6110.20.20, HTSUS, which provides for “Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: Of cotton: Other.” Consequently, we conclude that the subject sweater is also classified in this subheading.

In HQ 088132, dated November 9, 1990, we concluded that the tariff classification of a sleeveless, knit tunic-type garment made of 50 percent wool and 50 percent silk fabric, was in subheading 6110.90.00, HTSUS, which provides for “Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: Of other textile materials.” This subheading covers the silk component of the garment under consideration. However, upon additional review we find this to be incorrect. Applying Note 2 (A) to Section XI, HTSUS, Subheading Note 2 (A) to Section XI, HTSUS, as well as Explanatory Note 2 (A) to Section XI, HTSUS, we conclude that the tariff classification of the garment at issue is determined by the wool component. This is because silk is provided for in Chapter 50, HTSUS, while wool is provided for in Chapter 51, HTSUS. The wool component of the garment at issue is classified under subheading 6110.11.00, HTSUS, which provides for “Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: Of wool or fine animal hair: Of wool.” Therefore, we conclude that the subject garment is also classified in this subheading.

HOLDING:

By application of GRI 1 and 6, we find that the merchandise at issue is properly classified as follows:

- (1) The men's shorts at issue in NY H84223, dated August 9, 2001, in subheading 6203.43.90, HTSUS, which provides for "Men's or boys' suits, ensembles, suit-type jackets, blazers, trousers, bib and brace overalls, breeches and shorts (other than swimwear): Trousers, bib and brace overalls, breeches and shorts: Of synthetic fibers: Other: Other: Other: Other: Other: Other." The column one, general rate of duty is 27.9% *ad valorem*.
- (2) The men's shirt at issue in NY H84975, dated August 9, 2001, in subheading 6205.30.20, HTSUS, which provides for "Men's or boys' shirts: Of man-made fibers: Other: Other." The column one, general rate of duty is 29.1 ¢/kg + 25.9% *ad valorem*.
- (3) The dust skirt at issue in HQ 085150, dated September 22, 1989 and HQ 085998, dated December 28, 1989, in subheading 6303.92.20, HTSUS, which provides for "Curtains (including drapes) and interior blinds; curtain or bed valances: Other: Of synthetic fibers: Other." The column one, general rate of duty is 11.3% *ad valorem*.
- (4) The men's knit sweater at issue in NY F89120, dated July 29, 2000, in subheading 6110.20.20, HTSUS, which provides for "Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: Of cotton: Other." The column one, general rate of duty is 16.5% *ad valorem*.
- (5) The sleeveless, knit tunic-type garment, at issue in HQ 088132, dated November 9, 1990, in subheading 6110.11.00, HTSUS, which provides for "Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: Of wool or fine animal hair: Of wool." The column one, general rate of duty is 16% *ad valorem*.

EFFECT ON OTHER RULINGS:

NY H84223, dated August 9, 2001, NY H84975, dated August 9, 2001, HQ 085150, dated September 22, 1989, HQ 085998, dated December 28, 1989, NY F89120, dated July 29, 2000 and HQ 088132, dated November 9, 1990, are hereby REVOKED.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

WITHDRAWAL OF PROPOSED REVOCATION OF ELEVEN RULING LETTERS, PROPOSED MODIFICATION OF FIVE RULING LETTERS, AND PROPOSED 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: Withdrawal of notice of proposed revocation of eleven ruling letters, proposed modification of five ruling letters, and proposed revocation of treatment relating to 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), U.S. Customs and Border Protection (CBP) proposed to revoke eleven ruling letters, and modify five ruling letters, relating to the tariff classification of certain sheep's milk cheeses under the Harmonized Tariff Schedule of the United States (HTSUS). Notice of the proposed actions was published in the *Customs Bulletin*, Vol. 52, No. 39, on September 26, 2018. Nineteen comments were received in opposition to the proposed revocations and modifications. After further review, we have determined that revocation and modification of the subject rulings is not appropriate.

EFFECTIVE DATE: This action is effective immediately.

FOR FURTHER INFORMATION CONTACT: Parisa J. Ghazi, Food, Textiles, and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325-0272.

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. 39, on September 26, 2018, proposing to revoke New York Ruling Letters (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, and proposing to modify 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), with respect to the tariff classification of certain sheep’s milk cheeses under heading 0406, Harmonized Tariff Schedule of the United States (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.” In the September 26, 2018 *Customs Bulletin* notice, we proposed to classify certain sheep’s milk cheeses 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.” Commenters conceded that the HTSUS does not contain a definition for pecorino but argued that under decisions of the United States Customs Court, pecorino should be construed broadly. Upon reconsideration of the matter, while the definition cited in the proposed revocation provides some basis for limiting the term, CBP has determined that no revocation or modification is appropriate. Accordingly, we have determined that the subject sheep’s milk cheeses are properly classified in subheading 0406.90.57, HTSUS.

Pursuant to 19 U.S.C. § 1625(c), and 19 C.F.R. § 177.7(a), which states, in pertinent part, that “no ruling letter will be issued . . . in any instance in which it appears contrary to the sound administration of the Customs and related laws to do so,” CBP is withdrawing its proposed revocation of NY C82288, NY D81251, NY D83014, NY

I82452, NY I83887, NY J88309, NY M81478, NY N089415, NY N089417, NY N104824, and NY N236149, and its proposed modification of NY 815281 (Rocinante Manchego cheese and Mini-Rocinante Manchego cheese), NY G85117 (“Creamy Premium Bulgarian Feta” (from sheep’s milk)), NY J81192 (White Bulgarian cheese (feta cheese – item 1) and Balkan cheese – item 4), NY N094196 (Item E - Gazi® White Sheep’s Milk Cheese in Brine 50%), and NY N099535 (“Allegretto” cheese imported in original loaves).

Dated: March 15, 2019

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 PLASTIC PLAY FOOD
PACKAGED IN A PLASTIC BACKPACK**

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 plastic play food packaged in a plastic backpack.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is modifying one ruling letter concerning tariff classification of plastic play food packaged in a plastic backpack 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. 46, on November 14, 2018. No comments to the proposed modification 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 June 3, 2019.

FOR FURTHER INFORMATION CONTACT: Beth Jenior, Food, Textile & 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 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. 46, on November 14, 2018, proposing to modify one ruling letter pertaining to the tariff classification of plastic play food in a plastic backpack. 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 Preclassification Ruling Letter ("PC") K88915, dated September 29, 2004, CBP classified the plastic play food and the plastic backpack together in heading 9503, HTSUS, specifically in subheading 9503.00.00, HTSUS, which provides for "other toys." CBP has reviewed PC K88915 and has determined the ruling letter to be in error. It is now CBP's position that plastic play food and backpack are properly classified separately, with the backpack being classified in heading 4202, HTSUS, specifically in subheading 4202.92.45, HTSUS, which provides for "backpacks."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is modifying PC K88915 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter (“HQ”) H300680, 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: March 18, 2019

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H300680

March 18, 2019

CLA-2 OT:RR:CTF:FTM H300680 EGJ

CATEGORY: Classification

TARIFF NO.: 9503.00.00; 4202.92.45

GEOFFREY GREENBERG
CREATIVE DESIGNS INTERNATIONAL LTD.
207-208 EAST PENNSYLVANIA BLVD.
FEASTERVILLE, PA 19053

RE: Modification of PC K88915: Classification of Plastic Play Food in a Backpack

DEAR MR. GREENBERG:

We have reviewed unpublished Pre-Classification Ruling (PC) K88915, dated September 29, 2004, issued to you concerning the tariff classification of different types of merchandise, including Subway® plastic play food packaged inside of a plastic backpack. In the pre-classification ruling, CBP classified the play food and the backpack together under heading 9503, HTSUS. We have reviewed PC K88915 and find it to be in error with regard to the tariff classification of the Subway® plastic play food and backpack. For the reasons set forth below, we hereby modify PC K88915.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. No. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed action was published on November 14, 2018, in Volume 52, Number 46, of the *Customs Bulletin*. No comments were received in response to this notice.

FACTS:

In PC K88915, the relevant merchandise consists of Subway® brand plastic play food packaged inside of a clear plastic backpack. According to the labeling on the sample, there are 29 pieces of plastic play food. The play food includes plastic cheese, lettuce, cold cuts, bread, and condiment containers. A picture of the merchandise is provided below:



ISSUE:

What is the tariff classification of the Subway® brand plastic play food packaged inside of a clear plastic backpack under the HTSUS?

LAW AND ANALYSIS:

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

The HTSUS provisions at issue are as follows:

4202	Trunks, suitcases, vanity cases, attaché 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 plastics or of textile materials:
	Travel, sports and similar bags:
4202.92.45	Other.
	* * *
9503.00.00	Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls, other toys; reduced-scale ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof
	* * *

Additional U.S. Note 1 to Chapter 42 states that:

1. 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 (emphasis added).

Note 1(d) to Chapter 95 provides as follows:

1. This chapter does not cover:

(d) Sports bags or other containers of heading 4202, 4303 or 4304;

Note 4 to Chapter 95 provides as follows:

Subject to the provisions of Note 1 above, heading 9503 applies, *inter alia*, to articles of this heading combined with one or more items, which cannot be considered as sets under the terms of General Interpretative Rule 3(b), and which, if presented separately, would be classified in other headings, provided the articles are put up together for retail sale and the combinations have the essential character of toys.

* * *

GRI 3(b) provides as follows:

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

...

- (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.

GRI 5 provides as follows:

In addition to the foregoing provisions, the following rules shall apply in respect of the goods referred to therein:

- (a) Camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and entered with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This rule does not, however, apply to containers which give the whole its essential character;
- (b) Subject to the provisions of rule 5(a) above, packing materials and packing containers entered with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However, this provision is not binding when such packing materials or packing containers are clearly suitable for repetitive use.

* * *

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

The ENs to GRI 3(b) state, in pertinent part, as follows:

- (VII) In all these cases the goods are to be classified as if they consisted of the material or component **which gives them their essential character**, insofar as this criterion is applicable.
- (VIII) The factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.
- (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. Therefore, for example, six fondue forks cannot be regarded as a set within the meaning of this Rule;
- (b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and
- (c) are put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or cases or on boards).

The term therefore covers sets consisting, for example, of different foodstuffs intended to be used together in the preparation of a ready-to-eat dish or meal.

The ENs to GRI 5 provide as follows:

RULE 5 (a)

(Cases, boxes and similar containers)

(I) This Rule shall be taken to cover only those containers which:

- (1) are specially shaped or fitted to contain a specific article or set of articles, i.e., they are designed specifically to accommodate the article for which they are intended. Some containers are shaped in the form of the article they contain;
- (2) are suitable for long-term use, i.e., they are designed to have a durability comparable to that of the articles for which they are intended. These containers also serve to protect the article when not in use (during transport or storage, for example). These criteria enable them to be distinguished from simple packings;
- (3) are presented with the articles for which they are intended, whether or not the articles are packed separately for convenience of transport. Presented separately the containers are classified in their appropriate headings;
- (4) are of a kind normally sold with such articles; and
- (5) do not give the whole its essential character.

(II) Examples of containers, presented with the articles for which they are intended, which are to be classified by reference to this Rule are:

- (1) Jewelry boxes and cases (heading 71.13);
- (2) Electric shaver cases (heading 85.10);
- (3) Binocular cases, telescope cases (heading 90.05);
- (4) Musical instrument cases, boxes and bags (e.g., heading 92.02);
- (5) Gun cases (e.g., heading 93.03).

(III) Examples of containers not covered by this Rule are containers such as a silver caddy containing tea, or an ornamental ceramic bowl containing sweets.

RULE 5 (b)

(Packing materials and packing containers)

(IV) This Rule governs the classification of packing materials and packing containers of a kind normally used for packing the goods to which

they relate. However, this provision is not binding when such packing materials or packing containers are clearly suitable for repetitive use, for example, certain metal drums or containers of iron or steel for compressed or liquefied gas.

- (V) This Rule is subject to Rule 5 (a) and, therefore, the classification of cases, boxes and similar containers of the kind mentioned in Rule 5 (a) shall be determined by the application of that Rule.

* * *

In PC K88915, CBP classified Subway® brand plastic play food and a clear plastic backpack together as a toy under heading 9503, HTSUS. There are three HTSUS provisions which may allow the instant merchandise to be classified together: 1) Note 4 to Chapter 95, 2) GRI 3(b) or 3) GRI 5. Note 4 to Chapter 95 only applies to toys packaged together with other items which do not constitute a GRI 3(b) set. Therefore, we must first consider whether the play food and the backpack constitute a GRI 3(b) set.

We note that in order to be classified as a GRI 3(b) retail set, the subject merchandise must meet three requirements. First, the merchandise must consist of two or more articles which are *prima facie* classifiable in different headings. Second, the merchandise must consist of articles put up together to meet a particular need or to carry out a specific activity. Finally, the merchandise must be suitable for direct sale to users without repacking. See *Estee Lauder v. United States*, 815 F.Supp. 2d 1287, 1294 (Ct. Int'l Trade 2012) (citing to the ENs to GRI 3(b)).

The plastic play food and the backpack meet the first and third criteria. The play food is classified under heading 9503, HTSUS, and the backpack is classified under heading 4202, HTSUS. Further, they are packaged together and are suitable for direct sale to users without repacking.

However, the play food and backpack do not meet the second criterion necessary for classification as a GRI 3(b) retail set. They are not packaged together to meet a particular need or to carry out a specific activity. The play food is packed very tightly inside of the backpack. Examining the sample in our office, we struggled to fit all of the play food back inside of the backpack after removing it. We take the view that the consumer will likely store the play food in a container other than the instant backpack. Moreover, the play food and the backpack are not put up to meet a particular need or to carry out a specific activity. If a consumer is pretending to be a sandwich maker at a Subway® restaurant, then there is no connection to a backpack involved in that activity. For these reasons, we find that the play food and backpack do not constitute a GRI 3(b) retail set.

As we have determined that this merchandise cannot be classified together under GRI 3(b), we now turn to Note 4 to Chapter 95. Note 4 to Chapter 95 states that, subject to Note 1 to Chapter 95, items packaged together with toys for retail sale may be classified under heading 9503, HTSUS, so long as the toy and the item do not constitute a GRI 3(b) set and so long as the combination has the essential character of a toy. We take the view that the play food and the backpack are not a GRI 3(b) set and that the combination has the essential character of a toy.

However, Note 4 states that it is subject to the exclusions of Note 1 to Chapter 95. Note 1(d) excludes bags of heading 4202, HTSUS, from being

classified in Chapter 95. Therefore, the backpack and play food combination cannot be classified together under heading 9503, HTSUS, by application of Note 4 to Chapter 95.

Finally, we turn to GRI 5, which applies to the classification of certain packaging. GRI 5(a) states that containers such as camera cases, musical instrument cases, gun cases and similar containers which are specially shaped or fitted to contain a specific article or set of articles, which are suitable for long-term use and are entered with the articles for which they are intended should be classified together with the article that they contain, so long as the container does not give the combination its essential character. The ENs to GRI 5(a) give examples of containers which are classified together with their contents under this provision, such as jewelry cases, electric shaver cases, binocular cases and telescope cases.

Although the clear backpack is suitable for long-term use, we find that it is not specially shaped or fitted to contain the play food. The examples of containers listed above are either shaped to precisely fit their contents, or else they are equipped with inserts that fit the contents. The backpack is not specially shaped or fitted to contain the play food. Therefore, the backpack cannot be classified together with the play food by application of GRI 5(a).

GRI 5(b) states that normal packaging can generally be classified together with its contents. However, GRI 5(b) does not apply to packaging which is suitable for repetitive use. We note that the backpack is sturdy and is suitable for repetitive use. Therefore, we cannot classify the backpack and the play food together by application of GRI 5(b). For all of the aforementioned reasons, we must classify the backpack separately from the play food.

HOLDING:

By application of GRIs 1 and 6, the backpack is classified under subheading 4202.92.45, HTSUS, which provides for, in pertinent part, for “[B]ackpacks ...: Other: With outer surface of sheeting of plastics or of textile materials: Travel, sports and similar bags: Other.” The 2019 column one, general rate of duty is 20 percent *ad valorem*.

By application of GRIs 1 and 6, the plastic play food is classified under subheading 9503.00.00, which provides for “Tricycles, scooters, pedal cars and similar wheeled toys; dolls’ carriages; dolls, other toys; reduced-scale (“scale”) models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof.” The 2019 column one, general rate of duty is free.

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:

PC K88915, dated September 29, 2004, is hereby modified with regard to the tariff classification of the Subway® plastic play food and backpack.

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

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**PROPOSED REVOCATION OF TWO RULING LETTERS
AND PROPOSED REVOCATION OF TREATMENT
RELATING TO THE TARIFF CLASSIFICATION OF PLASTIC
SPRAY ACTUATORS**

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

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

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 plastic spray actuators 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 May 3, 2019.

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

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with information concerning the trade community's responsibilities and rights under the customs and

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

Pursuant to 19 U.S.C. § 1625(c)(1), this notice advises interested parties that CBP is proposing to revoke two ruling letters pertaining to the tariff classification of plastic spray actuators. Although in this notice, CBP is specifically referring to New York Ruling Letter (“NY”) 874164, dated May 13, 1992 (Attachment A), and NY R00270, dated May 13, 2004 (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 874164, CBP classified a plastic spray actuator in heading 8424, HTSUS, specifically in subheading 8424.90.90, HTSUS, which provides for “parts for mechanical appliances for projecting, dispersing or spraying liquids or powders, other.” In NY R00270, CBP classified a plastic spray actuator in heading 3923, HTSUS, specifically in subheading 3923.50.00, HTSUS, which provides for “for stoppers, lids, caps and other closures, of plastics.” CBP has reviewed NY 874164 and NY R00270 and has determined the ruling letters to be in error. It is now CBP’s position that plastic spray actuators are properly classified, in heading 8424, HTSUS, specifically in subheading 8424.89.90, HTSUS, which provides for “mechanical appliances (whether or not hand operated) for projecting, dispersing or spraying liquids or powders; other appliances: other.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY 874164 and NY R00270 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H294716, 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: February 7, 2019

GREG CONNOR
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

ATTACHMENT A

NY 874164

May 13, 1992

CLA-2-84:S:N:N1:106-874164

CATEGORY: Classification

TARIFF NO.: 8424.90.9080

MR. ROBERT J. CORE
ENCORE INTERNATIONAL
170 BROADWAY
SUITE 1601
NEW YORK, NY 10038

RE: The tariff classification of a plastic dispersing actuator from Italy.

DEAR MR. CORE:

In your letter dated May 5, 1992, on behalf of your client L'Oreal Hair Care, you requested a tariff classification ruling. Your included a sample with your request.

The red and white plastic actuator sits atop a can of hair mousse and is used to apply pressure to a valve and plastic stem (sample also enclosed) in order to release the mousse, which is packaged under pressure. Once actuated, a propellant forces the mousse up the plastic stem and through the actuator's dispersing holes, assuring a uniform, foamed delivery.

The applicable subheading for the plastic actuator will be 8424.90.9080, Harmonized Tariff Schedule of the United States (HTS), which provides for parts for mechanical appliances for projecting, dispersing or spraying liquids or powders, other. The rate of duty will be 3.7 per cent ad valorem.

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

NY R00270

May 13, 2004

CLA-2-39:RR:NC:SP:221 R00270

CATEGORY: Classification

TARIFF NO.: 3923.50.0000

MR. JOSEPH J. KENNY
J.F. MORAN CO., INC.
475 DOUGLAS PIKE
SMITHFIELD, RI 02917

RE: The tariff classification of an actuator/cap from the United Kingdom.

DEAR MR. KENNY:

In your letter dated April 12, 2004, on behalf of CCL Custom Mfg., Inc., you requested a tariff classification ruling.

The actuator/cap is composed of plastic and will be used on top of an aerosol can of deodorant. The cap includes a plastic handle which, when pressed, opens a valve on the can to release the deodorant.

You suggest classification in subheading 8424.90.9080, Harmonized Tariff Schedule of the United States (HTS), which provides for other parts of mechanical appliances for projecting, dispersing or spraying liquids or powders. However, aerosol can sprayers are classified as containers, not as mechanical appliances of heading 8424. Therefore, the actuator/cap cannot be classified as a part of the appliances of heading 8424.

The applicable subheading for the actuator/cap will be 3923.50.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for stoppers, lids, caps and other closures, of plastics. The rate of duty will be 5.3 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 Joan Mazzola at 646-733-3023.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity
Specialist Division

ATTACHMENT C

HQ H294716
CLA-2 OT:RR:CTF:EMAIN H294716 SKK
CATEGORY: Classification
TARIFF NO.: 8424.89.90

MR. ROBERT J. CORE
ENCORE INTERNATIONAL
170 BROADWAY
SUITE 1601
NEW YORK, NY 10038

RE: Revocation of NY 874164 and NY R00270; Spray actuators; Spray nozzle; Spray can valve; Mechanical appliance for spraying liquid; Parts.

DEAR MR. CORE:

This ruling is in reference to New York Ruling Letter (NY) 874164, dated May 13, 1992, issued to L'Oreal Hair Care, regarding the classification of a plastic actuator under the Harmonized Tariff Schedule of the United States (HTSUS). In NY 874164, U.S. Customs and Border Protection (CBP) classified the subject article in subheading 8424.90.90, HTSUS, which provides for parts for mechanical appliances for spraying liquids, other. Since the issuance of that ruling, we have determined that NY 874164 is in error.

CBP has also reviewed NY R00270, dated May 13, 2004, which involves the classification of substantially similar merchandise in subheading 3923.50.00, HTSUS, which provides for stoppers, lids, caps and other closures, of plastics. As with NY 874164, we have determined that the tariff classification of the subject merchandise in this ruling is incorrect.

Pursuant to the analysis set forth below, CBP is revoking NYs 874164 and R00270.

FACTS:

In NY 874164, the subject merchandise is described as a plastic actuator that sits atop a can of hair mousse and is used to apply pressure to a valve and plastic stem in order to release the mousse which is packaged under pressure. Once actuated, a propellant forces the mousse up the plastic stem and through the actuator's dispersing holes, assuring a uniform, foamed delivery.

In NY 874164, the actuator was classified in subheading 8424.90.90, HTSUS, which provides for parts for mechanical appliances for projecting, dispersing or spraying liquids or powders, other.

In NY R00270, dated May 13, 2004, CBP classified a plastic actuator/cap designed to attach to the top of an aerosol can of deodorant. The actuator/cap includes a plastic handle which, when pressed, opens a valve on the can to release the deodorant. CBP classified the actuator/cap in subheading 3923.50.00, HTSUS, which provides for stoppers, lids, caps and other closures, of plastics.

As the articles in these rulings disburse, respectively, hair mousse and deodorant, and these products are typically released in a uniform spray, it is assumed that they do not contain a control valve to further regulate the spray pattern of the liquid that is released through the aerosol can's pressure spray can valve.

ISSUE:

Whether the subject articles are classifiable as hand-operated mechanical appliances for projecting, dispersing or spraying liquids in subheading 8424.89, as parts thereof in subheading 8424.90, or as stoppers, lids, caps and other closures or plastics in subheading 3923.50, HTSUS.

LAW AND ANALYSIS:

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

The following provisions of the HTSUS are under consideration:

8424	Mechanical appliances (whether or not hand operated) for projecting, dispersing or spraying liquids or powders; fire extinguishers, whether or not charged; spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines; parts thereof:
8424.89	--Other appliances: Other
8424.90	--Parts
8481	Taps, cocks, valves and similar appliances, for pipes, boiler shells, tanks, vats or the like, including pressure-reducing valves and thermostatically controlled valves; parts thereof:
8481.90	--Parts
3923	Articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics:
3923.50	--Stoppers, lids, caps and other closures, of plastics:

Section XVI, Note 2, provides in pertinent part as follows:

2. Subject to note 1 to this section, note 1 to chapter 84 and to note 1 to chapter 85, parts of machines (not being parts of the articles of heading 8484, 8544, 8545, 8546 or 8547) are to be classified according to the following rules:

- (a) Parts which are goods included in any of the headings of chapter 84 or 85 (other than headings 8409, 8431, 8448, 8466, 8473, 8487, 8503, 8522, 8529, 8538 and 8548) are in all cases to be classified in their respective headings;
- (b) Other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 8479 or 8543) are to be classified with the machines of that kind or in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate. However, parts which are equally suitable for use principally with the goods of headings 8517 and 8525 to 8528 are to be classified in heading 8517.

Note 2(s) to Chapter 39 excludes articles of section XVI (machines and mechanical or electrical appliances).

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 84.24 provides, in relevant part:

This heading covers machines and appliances for projecting, dispersing or spraying steam, liquids or solid materials (e.g., sand, powders, granules, grit or metallic abrasives) in the form of a jet, a dispersion (whether or not in drips) or a spray.

* * *

PARTS

Subject to the general provisions regarding the classification of parts (see the General Explanatory Note to Section XVI), the heading includes parts for the appliances and machines of this heading. Parts falling in this heading thus include, *inter alia*, reservoirs for sprayers, spray nozzles, lances and turbulent sprayer heads not of a kind described in **heading 84.81**.

* * *

EN 84.81 provides, in relevant part:

This heading covers taps, cocks, valves and similar appliances, used on or in pipes, tanks, vats or the like to regulate the flow (for supply, discharge, etc.), of fluids (liquid, viscous or gaseous), or, in certain cases, of solids (e.g., sand). The heading includes such devices designed to regulate the pressure or the flow velocity of a liquid or a gas.

The appliances regulate the flow by opening or closing an aperture (e.g., gate, disc, ball, plug, needle or diaphragm). They may be operated by hand (by means of a key, wheel, press button, etc.), or by a motor, solenoid, clock movement, etc., or by an automatic device such as a spring, counterweight, float lever, thermostatic element or pressure capsule.

* * *

The heading includes *inter alia*:

* * *

- (17) Pressure spray-can lids for cans to be filled with liquid or gaseous insecticides, disinfectants, etc., under pressure, comprising a metal head fitted with a press-button displacing a needle which opens or closes the ejection orifice.

* * *

PARTS

Subject to the general provisions regarding the classification of parts (see the General Explanatory Note to Section XVI), parts of the appliances of this heading are also classified here.

As an initial matter, we note that the term “actuator” is a generic term that describes an appliance or device that actuates and is a “mechanical device for moving or controlling something.” See <https://www.merriam-webster.com/dictionary/actuator> (2018). As such, actuators may possess different design features from those at issue, such as valves that create different spray patterns or control the flow of liquid. The subject actuators at issue in NYs

874164 and R00270 spray the liquid contents of an aerosol can by exerting force on a spray can valve via a hollow tube or stem. As these particular models disperse, respectively, hair mousse and deodorant for uniform delivery, they do not possess valves.

As set forth above, Section XVI Note 2(a) prescribes the rules governing the classification of articles as “parts” of machinery within this section, and provides that “[P]arts which are goods included in any of the headings of chapter 84 or 85 (other than headings 8409, 8431, 8448, 8466, 8473, 8487, 8503, 8522, 8529, 8538 and 8548) are in all cases to be classified in their respective headings.” The subject actuators are *prima facie* described by heading 8424, HTSUS, in that they are hand-operated mechanical appliances for dispersing liquids. The subject actuators are designed to be depressed by a finger to exert pressure on a tube that actuates a valve atop an aerosol can to release gas propelled liquid hair mousse and deodorant. Specifically, the actuators are provided for in subheading 8424.89, HTSUS, which provides for, in pertinent part, other hand-operated mechanical appliances for dispersing or spraying liquids.

Heading 8481, HTSUS, provides for, in pertinent part, valves and parts thereof.

As the subject actuators do not incorporate a valve in their design, they are not classified as valves of heading 8481, HTSUS. Because the actuators are themselves appliances of heading 8424, HTSUS, and classified under that heading pursuant to Note 2(a) to Section XVI, we need not discuss whether they are *prima facie* classifiable under subheading 8481.90, HTSUS, as parts of valves, which would be pursuant to Note 2(b) to Section XVI, *supra*.

We further note that the subject actuators are not classified as parts within heading 8424, HTSUS, in that they are not dedicated for use with the articles of heading 8424, HTSUS. Rather, as noted *supra*, they are dedicated for use with spray can valves of heading 84.81, HTSUS. For this reason, classification of the actuator at issue in NY 874164 under subheading 8424.90, HTSUS, is in error.

We also find NY R00270 to be in error in which CBP classified a plastic actuator in subheading 3923.50.00, HTSUS, which provides for stoppers, lids, caps and other closures, of plastics. As set forth above, Note 2(s) to Chapter 39 excludes articles of Section XVI. In that ruling, CBP stated that classification in subheading 8424.90, HTSUS, as other parts of mechanical appliances for spraying liquids was inappropriate in that “aerosol can sprayers are classified as containers, not as mechanical appliances of heading 8424, HTSUS, and therefore the actuator/cap cannot be classified as a part of the appliances of heading 8424.” We disagree, and note that the subject actuator is classifiable in Section XVI, in subheading 8424.89, HTSUS, for the reasons set forth above.

HOLDING:

By application of GRI 1 and Note 2(a) to Section XVI, the articles at issue in NYs 874164 and R00270 are classified under subheading 8424.89.90, HTSUS. The 2019 applicable rate of duty is 1.8 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.

EFFECT ON OTHER RULINGS:

NY 874164, dated May 13, 1992, and NY R00270, dated May 13, 2004, are hereby REVOKED in accordance with the above analysis.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Mr. Joseph J. Kenny
J.F. Moran Co., Inc.
475 Douglas Pike
Smithfield, RI 02917

**MODIFICATION OF TWO RULING LETTERS AND
REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF A CERTAIN MEN'S WOVEN
SHIRT AND MEN'S WOVEN SUIT AS ARTICLES FOR THE
HANDICAPPED**

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

ACTION: Notice of modification of two ruling letters and revocation of treatment relating to the tariff classification of a certain men's woven shirt and a men's woven suit.

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 two ruling letters concerning the tariff classification of a certain men's woven shirt and a men's woven suit under the Harmonized Tariff Schedule of the United States (HTSUS), as articles for the handicapped. Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Three comments were received in response to CBP's proposed action.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after June 3, 2019.

FOR FURTHER INFORMATION CONTACT: Cynthia Reese, Valuation and Special Programs Branch, Regulations and Rulings, Office of Trade, at (202) 325-0046.

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. 46 on November 14, 2018, proposing to modify two ruling letters, New York Ruling Letter (NY) N278872, dated September 29, 2016 and NY N282688, dated January 27, 2017, pertaining to the tariff classification of a certain men's woven shirt and a men's woven suit, respectively, as articles for the handicapped. Three comments were received to CBP's proposed action. While all three commenters addressed the proposed action with regard to NY N278872, only one commenter addressed the proposed action with regard to NY N282688. 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 N278872 and NY N282688, CBP found that a men's woven shirt with a magnetic front closure and magnetic sleeve cuff closures and a men's woven suit with magnetic closures on the jacket, vest and pants were eligible for classification in subheading 9817.00.96, HTSUS, which provides for, among other things, articles specially designed or adapted for the use or benefit of physically or mentally handicapped persons, other than articles for the blind. CBP has reviewed NY N278872 and NY N282688 and has determined the ruling letters to be in error with regard to the classification of the subject garments in subheading 9817.00.96, HTSUS. It is now CBP's position that these garments are not classifiable as articles for the handicapped.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is modifying NY N278872 and NY N282688, and revoking or modifying any other ruling not specifically identified, to reflect the analysis contained in Headquarters Ruling Letter ("HQ") H300625 and HQ H300660, set forth as Attachments "A" and "B" 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: February 27, 2019

MONIKA R. BRENNER
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

ATTACHMENT A

HQ H300625

February 27, 2019
OT:RR:CTF:VS H300625 CMR
CATEGORY: Classification
TARIFF NO.: 6205.20.2026

JOHN B. PELLEGRINI, ESQ.
MCGUIREWOODS LLP
1345 AVENUE OF THE AMERICAS
SEVENTH FLOOR
NEW YORK, NY 10105-0106

RE: Modification of New York Ruling Letter N278872, dated September 29, 2016; Tariff classification of a men's woven shirt from Bangladesh and Indonesia; Articles for the Handicapped

DEAR MR. PELLEGRINI:

This is in reference to New York (NY) Ruling Letter N278872, dated September 29, 2016, which was issued to you, on behalf of your client, PVH Corporation. We are modifying NY N278872 with regard to the determination that the shirt was eligible for classification under subheading 9817.00.96, of the Harmonized Tariff Schedule of the United States (HTSUS), as an article specially designed or adapted for the use or benefit of the handicapped, as that determination was incorrect. The tariff classification of the garment in subheading 6205.20.2026, (HTSUS), was correct and remains undisturbed by this decision.

Pursuant to 19 U.S.C. § 1625(c)(1), a notice was published in the *Customs Bulletin*, Volume 52, No. 46, on November 14, 2018, proposing to modify NY N278872, and any treatment accorded to substantially similar transactions. Three comments, which will be addressed below, were received in response to this notice.

FACTS:

The garment was described in NY N278872 as follows:

The submitted sample, described as a "Magna Click Shirt," is a men's shirt constructed from 55% cotton, 45% polyester, woven fabric. The garment features a self-fabric point collar; a full front opening secured by a left-over-right, seven button faux closure and a concealed seven magnet closure; a patch pocket on the left chest; long vented sleeves with a single button closure on the vent plackets; a faux button closure with a concealed magnetic closure on each cuff; a back yoke; a hanger loop and a box pleat on the center back panel; and a curved, hemmed bottom. You state that the shirts will be available in five basic and three fashion colors.

You indicated in the ruling request that the shirts with the magnetic closures are more expensive to produce and are designed for use by individuals with limited mobility or dexterity, such as individuals suffering from Parkinson's disease. You stated that the shirts would be marketed for use by handicapped individuals and would be available in limited styles and colors. Further, you stated that these shirts would be "40 percent more expensive than 'normal' shirts" reducing the probability of use by individuals not suffering from mobility or dexterity issues. Therefore, you claimed that these

shirts satisfy the requirements for classification in subheading 9817.00.96, HTSUS, which provides for:

articles specially designed or adapted for the use or benefit of the blind or other physically or mentally handicapped persons; parts and accessories (except parts and accessories of braces and artificial limb prosthetics) that are specially designed or adapted for use in the foregoing articles . . . Other.

NY N278872 indicates that these items are described on your client's website as "designed for individuals with limited mobility or dexterity." The ruling further states:

Magna Ready® shirts contain self-closing technology that eliminates the need to button a shirt. Simply pressing the two sides of the shirt front together snaps the magnets into place. The magnets are hidden between layers of fabric, and buttons or traditional closures are placed decoratively on the garments. The magnetic closures are clearly consistent with the garments being specially designed for use by those with chronic disabilities (for example, arthritis, Parkinson's disease) who struggle to dress themselves.

Based on the above information, NY N278872 held that the shirt at issue was eligible for duty-free treatment under subheading 9817.00.96, HTSUS. As noted above, this determination was in error.

ISSUE:

Whether the "Magna Click Shirt" is eligible for duty-free treatment under subheading 9817.00.96, HTSUS, as articles specially designed or adapted for the handicapped.

LAW AND ANALYSIS:

Congress passed the Educational, Scientific, and Cultural Materials Importation Act of 1982, Pub. L. No. 97-446, 96 Stat. 2329, 2346 (1983), and the Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, 102 Stat. 1107 (1988), to implement the Nairobi Protocol to the Florence Agreement on the Importation of Educational, Scientific and Cultural Materials ("Nairobi Protocol"), an international agreement intended to provide "duty free treatment to articles for the use or benefit of the physically or mentally handicapped persons, in addition to articles for the blind." See also *U.S. Customs Serv. Implementation of the Duty-Free Provisions of the Nairobi Protocol, Annex E, to the Florence Agreement*, T.D. 92-77, 26 *Cust. B. & Dec.* 240, 241 (1992) ("*Implementation of the Nairobi Protocol*"). Presidential Proclamation 5978 and Section 1121 of the Omnibus Trade and Competitiveness Act of 1988, provided for the implementation of the Nairobi Protocol into subheadings 9817.00.92, 9817.00.94, and 9817.00.96, HTSUS.¹ Therefore, this legislation eliminated duties for products covered by subheading 9817.00.96, HTSUS, which provides for:

articles specially designed or adapted for the use or benefit of the blind or other physically or mentally handicapped persons; parts and accessories

¹ By Presidential Proclamation 6821 of September 12, 1995, 60 *Federal Register* 47663 (published on September 13, 1995), the superior text preceding subheading 9817.00.92, HTSUS, (and applicable to subheadings 9817.00.92, 9817.00.94, and 9817.00.96, HTSUS) was modified to include parts and accessories for the articles of the subheading.

(except parts and accessories of braces and artificial limb prosthetics) that are specially designed or adapted for use in the foregoing articles . . . Other.

See subheading 9817.00.96, HTSUS; see also *Sigvaris, Inc. v. United States*, 227 F. Supp. 3d 1327, 1335 (Ct. Int'l Trade, 2017). Subheading 9817.00.96 excludes "(i) articles for acute or transient disability; (ii) spectacles, dentures, and cosmetic articles for individuals not substantially disabled; (iii) therapeutic and diagnostic articles; or, (iv) medicine or drugs." U.S. Note 4(b), Subchapter XVII, Chapter 98, HTSUS.

Accordingly, classification within subheading 9817.00.96, HTSUS, depends on whether the article in question is "specially designed or adapted for the use or benefit of the blind or physically and mentally handicapped persons," and whether it falls within any of the enumerated exclusions. See subheading 9817.00.96, HTSUS; U.S. Note 4(b), Subchapter XVII, Chapter 98, HTSUS. Note 4(a) to Chapter 98, HTSUS, provides:

- (a) For purposes of subheadings 9817.00.92, 9817.00.94 and 9817.00.96, the term "blind or other physically or mentally handicapped persons" includes 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(a), Subchapter XVII, Chapter 98, HTSUS. This list of exemplar activities indicates that the term "handicapped persons" is to be liberally construed so as to encompass a wide range of conditions, provided the condition substantially interferes with a person's ability to perform an essential daily task. See *Sigvaris*, 227 F. Supp. 3d at 1335. While the HTSUS and subchapter notes do not provide a proper definition of "substantial" limitation, the inclusion of the word "substantially" denotes that the limitation must be "considerable in amount" or "to a large degree." *Id.* at 1335 (citing *Webster's* at 2280).

In the Court of Appeals for the Federal Circuit's decision in *Sigvaris, Inc. v. United States*, 899 F.3d 1308 (Fed. Cir. 2018), the court found that the Court of International Trade reached the correct conclusion in finding the merchandise at issue therein, compression stockings, not eligible for classification under subheading 9817.00.96, HTSUS, but the court disagreed with the lower court's analysis. The court found that the Court of International Trade looked to the condition or disorder and whether it is a handicap. The court stated:

The plain language of the heading focuses the inquiry on the "persons" for whose use and benefit the articles are "specially designed," and not on any disorder that may incidentally afflict persons who use the subject merchandise.

* * *

. . . we must ask first, "for whose, if anyone's, use and benefit is the article specially designed," and then, "are those persons physically handicapped?"

Id.

The language of subheading 9817.00.96, HTSUS, states that the provision provides for "articles specially designed or adapted" for the use or benefit of the physically handicapped. The design and construction of an article may be

indicative of whether it is specially designed or adapted for the use or benefit of the handicapped. The HTSUS does not establish a clear definition of what constitutes “specially designed or adapted for the use or benefit” of handicapped persons. In the absence of a clear definition, the Court of the International Trade stated that it may rely upon its own understanding of the terms or consult dictionaries and other reliable information. *See Danze, Inc. v. United States*, Slip Op. 18–69 (Ct. Int’l Trade 2018). Moreover, in analyzing this same provision in *Sigvaris v. United States*, the Court of International Trade construed these operative words as follows:

The term “specially” is synonymous with “particularly,” which is defined as “to an extent greater than in other cases or towards others.” [Webster’s] at 1647, 2186 . . . The dictionary definition for “designed” is something that is “done, performed, or made with purpose and intent often despite an appearance of being accidental, spontaneous, or natural.” [Webster’s] at 612

See Sigvaris, 227 F. Supp. 3d at 1336. *See also, Sigvaris, Inc. v. United States*, 899 F.3d 1308 (Fed. Cir. 2018), wherein the court cited the definitions relied upon by the Court of International Trade in *Sigvaris*, in concluding that “articles specially designed for handicapped persons must be made with the specific purpose and intent to be used by or benefit handicapped persons rather than the general public.” *See Sigvaris*, 899 F.3d 1308 (Fed. Cir. 2018). The Court of Appeals for the Federal Circuit refined this requirement which it found to be incomplete. The court concluded that:

to be “specially designed,” the subject merchandise must be intended for the use or benefit of a specific class of persons to an extent greater than for the use or benefit of others.

Sigvaris, 899 F.3d 1308.

Finally, the legislative history further aids our analysis of these terms as used in subheading 9817.00.96, HTSUS. The Senate stated in its Report that one of the goals of this law was to benefit the handicapped and show U.S. support for the rights of the handicapped. The Senate stated, in relevant part:

By providing for duty-free treatment of articles specially adapted for the blind or other physically or mentally handicapped persons, the committee does not intend that an insignificant adaptation would result in duty-free treatment for an entire relatively expensive article. Otherwise, the special tariff category will create incentives for commercially motivated tariff-avoidance schemes and pre-import and post-entry manipulation. Rather, the committee intends that, in order for an entire modified article to be accorded duty-free treatment, the modification or adaptation must be significant, so as clearly to render the article for use by handicapped persons.

S. Rep. No. 97 564, 97th Cong. 2nd Sess. (1982). The Senate was concerned that persons would misuse this tariff provision to avoid paying duties on expensive products. Similarly, in *Danze v. United States*, the court looked to the legislative history and noted that its interpretation of the terms “specially” and “designed” in *Sigvaris* comported with the legislative intent behind subheading 9817.00.96, HTSUS, that any modification or adaptation be “significant.” Specifically, the court in *Danze* stated:

“articles specially designed for handicapped persons must be made with the specific purpose and intent to be used by or benefit handicapped persons rather than the general public.” *Sigvaris*, 227 F. Supp. 3d at 1336. Any adaptation or modification to an article to render it for use or benefit by handicapped persons must be significant.

See *Danze* at 14.

CBP has recognized several factors to be utilized and weighed against each other on a case-by-case basis when determining whether a particular product is “specially designed or adapted” for the benefit or use of handicapped persons. See *Implementation of the Nairobi Protocol*, 26 *Cust. Bull. & Dec.* at 243–244. 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. See also *Danze, Inc. v. United States*, Slip Op. 18–69 (Ct. Int’l Trade 2018); *Sigvaris, Inc. v. United States*, 227 F.Supp.3d 1327 (Ct. Int’l Trade, 2017), *aff’d*, 899 F.3d 1308 (Fed. Cir. 2018). The court in *Sigvaris*, 899 F.3d. 1308 (Fed. Cir. 2018), found that “[t]hese factors aid in assessing whether the subject merchandise is intended for the use or benefit of a specific class of persons to a greater extent than for the use or benefit of others.” The court adopted these factors into its analysis.

Looking to the court’s analysis in *Sigvaris*, 899 F.3d 1308 (Fed. Cir. 2018), we must first examine for whose use and benefit the Magna Click shirt is “specially designed,” and whether such persons are physically handicapped. In other words, we must consider whether such persons are suffering from a permanent or chronic physical or mental impairment which substantially limits one or more major life activities. In this case, the life activity for which the shirt is claimed to be “specially designed”² is the ability to dress oneself.

With regard to the first two factors to consider in determining whether an article is “specially designed,” *i.e.*, the physical properties of the article and any characteristics of the article that easily distinguish it from articles useful to the general public, we find that the Magna Click shirt is not distinguishable from articles useful to the general public. Magnetic closures for garments have become mainstream in their use. An internet search revealed numerous websites advertising men’s shirts with magnetic closures. While it is true that some websites advertising such shirts make reference to a garment as “adaptive clothing” or as being for those with limited dexterity, those same websites include statements that such shirts are also beneficial or

² References to “specially designed” include “specially designed or adapted.”

useful for those who would like to avoid the hassle of buttons,³ which is evidence that the mainstream use of magnetic closures is especially true with regard to men's shirts.

These shirts, with magnetic front closures, are being sold by various stores, including J.C. Penney's, The Men's Wearhouse,⁴ Costco,⁵ Kohl's,⁶ Macy's,⁷ Duluth Trading Company,⁸ as well as by companies which generally market products to individuals with disabilities or considered "senior", such as Silvert's⁹, where a men's shirt with magnetic buttons appears when one clicks the 'Men's Regular' or "Men's Adaptive" tabs. In the case of Silvert's, the

³ See <https://www.jcpenney.com/p/van-heusen-easy-care-magnaclick-long-sleeve-twill-dress-shirt>, wherein the shirt description includes the following statement: "Hidden magnetic closures are featured underneath the buttons, making everyday fashion a breeze for those with limited dexterity or others who would like to avoid the hassle of buttons." The garment is described as being of 55% cotton/45% polyester twill wrinkle-free fabric and having long sleeves, a spread collar, a regular fit, and a magnetic closure. The shirt is designed for the young men's/adult age group.

⁴ See <https://www.menswearhouse.com/shirts/dress-shirts/classic-fit-regular-shirts/magnaclick-reg-blue-classic-fit-dress-shirt-53U053U102>, wherein the product details provide: "This ingenious dress shirt has all of the classic styling of a fine men's dress shirt, but with a secret benefit – magnets. MagnaClick® shirts feature hidden magnetic closures wherever you'd find a button. It is the perfect choice for those with limited dexterity, or anyone who wants to eliminate the fuss of buttons." The garment is described as being of 60% cotton/40% polyester fabric with a spread collar, chest pocket, magnetic closures on the front placket and sleeve cuffs and having a "classic fit." It is also identified as "adaptive clothing."

⁵ See <https://www.costco.com/MagnaClick-Men%E2%80%99s-Dress-Shirt.product.100418298.html>, wherein the garment is identified as "adaptive clothing" and "stress free apparel." The product details state:

To the unknowing eye, a MagnaClick® shirt looks just like any other dress shirt hanging in the closet. Same collar and cuffs, same row of little white buttons down the front. But, those buttons are merely for looks. Hidden inside the placket of a MagnaClick® shirt are powerful magnets that link together for a secure closure without the hassle of manipulating tiny buttons into buttonholes.

⁶ See <https://www.kohls.com/product/prd-3299808/mens-magnaclick-regular-fit-spread-collar-dress-shirt.jsp>, wherein the product details provide: "Easy style. Featuring hidden magnetic closures, this men's MagnaClick dress shirt makes standout style simple for those with limited dexterity or anyone who'd rather do without the fuss of buttons."

⁷ See <https://www.macys.com/shop/product/magnaclick-mens-classic-fit-solid-shirt?ID=6380592&CategoryID=20626&swatchColor=Blue#fn=BRAND%3DMagnaClick%26SIZE%3D%26sp%3D1%26spc%3D3%26ruleId%3D78%7CBOOST%20ATTRIBUTE%26searchPass%3DmatchNone%26slotId%3D3>, wherein the "MagnaClick Men's Classic-fit Solid Shirt" description states: "Magnet closures at the center front placket and cuffs bring unbeatable convenience and versatility to this classic long-sleeve shirt from MagnaClick." See also, <https://www.macys.com/shop/product/magnaclick-mens-knit-solid-pima-cotton-polo?ID=6465511&CategoryID=20626&swatchColor=Black#fn=BRAND%3DMagnaClick%26SIZE%3D%26sp%3D1%26spc%3D3%26ruleId%3D78%7CBOOST%20ATTRIBUTE%26searchPass%3DmatchNone%26slotId%3D1>, wherein the "MagnaClick Men's Knit Solid Pima Cotton Polo" shirt description states: "MagnaClick presents a classic short-sleeve polo in soft Pima cotton, finished with a hidden magnet-close placket down the front for a stylish and convenient twist."

⁸ See <https://www.duluthtrading.com/mens-wrinklefighter-long-sleeve-shirt-92105.html>, wherein the descriptive text includes the following: "If you have a health condition or disability that affects your dexterity, have big fingers – or if you just want to get dressed more quickly and easily – this shirt is for you."

⁹ See <https://www.silverts.com/show.php/product/40000-magnetic-buttons-mens-shirt-arthritis-parkinsons-mens-magnetic-closing-shirts-with-shirt-magnet-buttons>,

descriptive text indicates that the target market is individuals with lowered hand dexterity due to illness. The descriptive text states, among other things:

This magnet fastening shirt features terrific dressing for those with lowered hand dexterity when paralysis is an issue caused by arthritis, Rheumatoid arthritis, Parkinson's, Neuropathy, Multiple Sclerosis, ALS and Stroke. . . . The best in Parkinson's clothing magnetic buttons for clothing make the difficult task of dressing a breeze! The faux-button placket and cuffs conceal magnetic closures that make dressing incredibly easy. . . . If you are looking for a great gift for someone who is handicapped, disabled or an elderly senior look no further.

Furthermore, in an article appearing on *www.businesswire.com*, dated September 27, 2016, and entitled, "Van Heusen Introduces Adaptive Clothing Solutions in Major Retailers Utilizing Hidden Magnet Closures," David Sirkin, President, The Dress Furnishings Group at PVH Corporation, was quoted as stating:

"We are extremely proud to launch the *Van Heusen* dress shirt featuring *MagnaClick*™ technology. . . . We believe this is a game-changing product that offers a stylish, high quality solution for consumers with limited dexterity or those seeking an alternative to buttons."

You stated that these shirts are more expensive to produce, but did not provide any evidence to support the assertion or the range of the additional expense claimed. Further, you stated that these shirts would be 40 percent more expensive than "normal" shirts, making it less likely than individuals without mobility or dexterity limitations would purchase these shirts. However, we found the MagnaClick men's dress shirt for sale online at various prices depending on the retailer. The prices for which the shirts were offered for sale ranged from \$22.99 to \$74.50. While we noticed some variation in prices between the magnetic closure shirts and "normal" shirts, the greatest variation we found was a 25 percent difference. This is far less than the 40 percent greater expense claimed in the ruling request. Further, we note that Macy's sold the MagnaClick shirts and comparable "normal" shirts for the exact same price.

As the court in *Sigvaris*, 899 F.3d 1308 (Fed. Cir. 2018), stated, we must consider for whose benefit the article is specially designed and whether the article is intended for the use or benefit of a specific class of persons to an extent greater than for the use or benefit of others. Based upon the information we have found, we find that the "Magna Click Shirt" at issue is not specially designed or adapted for the use or benefit of a specific class of persons, *i.e.*, the handicapped, to an extent greater than for the use or benefit of the general public. The use of magnets for the front closure and on the sleeve cuffs does not cause this article to be easily distinguishable from articles useful to non-handicapped persons. As the use of magnets for closures in garments has become mainstream, we do not view their use to be a significant adaptation to a garment such that the use of a garment with such closures would be more prevalent among the handicapped or disabled, as opposed to the general public. In fact, we have found identical or virtually identical shirts being marketed to the general public for their use and convenience. In addition, while individuals with some limited dexterity in their fingers may find such shirts convenient, their dexterity issue may not rise to a level that one would consider such individuals to be handicapped. For instance, as the Duluth Trading Company webpage pointed out with regard

to the magnetic closure shirt it was advertising, “[i]f you have . . . big fingers, . . . this shirt is for you.” We also do not find any characteristics about the Magna Click Shirt at issue that creates a substantially greater probability of use by the handicapped versus the general public. These garments are marketed to the general public, as well as to those with difficulties dressing themselves, so use by the general public is not so improbable that it would be fugitive.

As to the remaining factors we consider in determining whether an article qualifies as “specially designed or adapted,” the Magna Click Shirt is imported and sold by PVH, an entity that has established itself as one of the largest apparel companies in the world. PVH is not generally recognized as a distributor of wearing apparel for the chronically disabled. *See* Headquarters Ruling Letter (HQ) H292642, dated June 29, 2018, and HQ H292346, dated June 29, 2018. While the garment, or virtually identical garments are sold in specialty stores or websites, such as Silvert’s, the Magna Click Shirt is sold by various retailers who market merchandise to the general public and not just a special segment or group of the public. As to the condition of the Magna Click Shirt at the time of importation, we do not believe there is anything with regard to the garment that indicates that it is for the use or benefit of the handicapped to an extent greater than for the use or benefit of the general public.

With regard to the three comments received by CBP, all three commenters opposed the modification of NY N278872. One commenter stated that in marketing shirts with magnetic closures in its conventional line, it sold an insignificant amount of such shirts in comparison with its overall sale of conventional shirts during the same time period. As a result, the commenter abandoned the effort to sell such shirts in its conventional line and only markets such shirts as part of an adaptive clothing line. The commenter argues that shirts with magnetic closures represent a very small fraction of shirts sold, and thus, a magnetic closure feature cannot be considered “mainstream.”

An internet search of “common clothing fasteners” reveals that magnets as fasteners are being used in garments when, for example, a clean look is desired. From <https://www.thecreativecurator.com/clothes-fastenings/>, we find in an article entitled, “15 Ways to Fasten Your DIY Clothes, Zippers, buttons, magnets and more, Creative Fashion Skills”:

A recent addition for clothes fastenings: the use of magnets!

Strong magnets are enclosed in small plastic pouches which are sewn into the garment and hidden by the facing. Great for when a clean minimal look is required with no visible closures to mar the silhouette.

Further, while this ruling focused on the use of magnetic closures in shirts, we found magnetic closures being used in the construction of multiple garments. These garments include men’s trousers available at Macy’s, Kohl’s, and Costco;¹⁰ boys’ uniform shorts, along with pants, skirts, shirts and a

¹⁰ *See* <https://www.macys.com/shop/product/magnaclick-mens-classic-fit-chino-pants?ID=6235455&CategoryID=89&mltPDP=true&swatchColor=Black#fn=BRAND%3DMagnaClick%26SIZE%3D%26sp%3D1%26spc%3D1%26ruleId%3D136%7CBOOST%20ATTRIBUTE%7CBOOST%20SAVED%20SET%26searchPass%3DmatchNone%26slotId%3D1>; <https://www.kohls.com/product/prd-3347003/mens-magnaclip-classic-fit-chino-pants.jsp>; <https://www.costco.com/MagnaClick-Men%27s-Dress-Pant.product.100419200.html>.

dress referred to as uniform garments, available from Land's Ends;¹¹ chef jackets;¹² chef pants;¹³ a men's collarless blazer sold by Maison Margiela;¹⁴ a Nic +Zoe women's tailored, collarless blazer sold by Nordstrom's;¹⁵ a Fleurette wool duster coat with spiral mink fur sold by Neiman Marcus;¹⁶ and various babies' garments available at Dillard's Lord & Taylor, Target, Buy Buy Baby, and Branches Gifts in Bloom,¹⁷ and Nordstrom's, Zulily, and Bed, Bath and Beyond.¹⁸ In 2011, Lanvin offered a double-breasted jacket with a magnetic closure.¹⁹ While in some cases, such as the men's trousers and the children's uniform garments available from Land's End, the term "adaptive" is used to describe the garments, the vast majority of the garments referenced here are clearly marketed to the general public and not to any special class or group of individuals. Even with regard to the garments in which the term adaptive was used in the garments' descriptions, we find descriptive marketing text which is reaching out to the general public. For example, Kohl's descriptive text for the "Men's MagnaClick Classic-Fit Chino Pants" states:

Ease style. Featuring hidden magnetic closures, these men's chino pants from MagnaClick makes standout style simple for those with limited dexterity or anyone who'd rather do without the fuss of buttons.

In addition, the *New York Times* published an article on January 24, 2018, by Michael Kimmelman, entitled "How Design for One Turns Into Design for All," which starts by explaining that Nike's popular "FlyEase" line of shoes was developed in response to a letter from a college-bound student with cerebral palsy who explained he had trouble tying laces and slipping into shoes without help.²⁰ The shoes are "slip-ons with a zipper that seals the back and then Velcro-ties the top in one simple motion."²¹ These shoes, like garments with magnetic closures, are marketed to the general public.²² The Nike website states that these shoes are:

¹¹ See https://www.landsend.com/products/school-uniform-boys-adaptive-blend-chino-short/id_324896?sku_0=:CLN; <https://www.landsend.com/shop/search?initialSearch=true&Ntt=adaptive>.

¹² See <https://www.bragardusa.com/magic-double-breasted-chef-jacket-white.html>; <https://www.bragardusa.com/magic-double-breasted-chef-jacket-black.html>; <https://www.bragardusa.com/fantastic-chef-jacket.html>.

¹³ See <https://www.bragardusa.com/pratic-chef-pants.html>.

¹⁴ See https://www.maisonmargiela.com/us/maison-margiela/blazer_cod41502287je.html.

¹⁵ See <https://shop.nordstrom.com/s/niczoe-sleek-jacket/4951276?origin=category-personalizedsort&breadcrumb=Home%2FBands%2FNIC%2BZOE&color=black%20onyx>.

¹⁶ See https://www.neimanmarcus.com/p/fleurette-magnetic-wool-duster-coat-w-spiral-mink-fur-prod202600089?childItemId=NMTVXL4_.

¹⁷ See <https://www.easymagneticclose.com/>;

¹⁸ See <https://magneticme.com/>; <https://shop.nordstrom.com/c/baby-clothes/magnetic-me-7563>; <https://www.zulily.com/e/magnetic-me-by-magnificent-baby-245459.html>; and <https://www.bedbathandbeyond.com/store/brand/magnetic-me-by-magnificent-baby/6007/>

¹⁹ See <http://daman.co.id/lanvin-magnetic-closure-double-breasted-jacket/>

²⁰ See also, <http://yourcpf.org/cproduct/nike-flyease/>.

²¹ See <https://www.nytimes.com/2018/01/24/arts/design/cooper-hewitt-access-ability.html>.

²² See https://www.nike.com/us/en_us/c/innovation/flyease.

Designed for athletes of all abilities and ages, Nike FlyEase features a revolutionary zipper-and-strap system to help you get your shoes on and off quickly and easily.

Mr. Kimmelman's article points out:

You don't have to have Parkinson's or arthritis or a prosthetic hand to prefer magnets to buttons and snaps, or to like the idea, and look, of Velcro seams and zippered sleeves. There's a white dress shirt with magnetic closures in the show, which could easily be marketed straight to mainstream consumers, never mind the "adaptive" label. Likewise, pairs of brightly patterned compression socks by Top & Derby.

In addition, the article provides an example of articles, compression socks, which are worn by individuals who may suffer from certain infirmities, such as diabetes or high blood pressure, but are also worn by fashion models and athletes. Compression socks help increase blood circulation and minimize swelling in the feet, ankles and lower limbs. The positive attributes of compression socks are advantageous to anyone who may take long airline flights or find themselves in jobs requiring long periods of standing on their feet.

Another article which appeared on the BBC News website and is dated February 14, 2018, entitled "Hillwalkers warned about magnets in clothing, highlights that magnetic closures are becoming increasingly popular. The article, which focused on the danger of magnets affecting compasses, states:

Mountaineering Scotland said it was concerned by the growing use of magnetic closures in outdoor clothing.

Ms. Morning [mountain safety adviser for Mountaineering Scotland] said: "Modern technology is great. . . But more joined-up thinking is needed between outdoor clothing manufacturers and mountain users to avoid potentially life-threatening consequences."

Outerwear garments with magnetic closures are being sold by companies, such as The North Face and Under Armour. These garments are clearly marketed to the general public.²³ Due to the variety of garments in which magnetic closures are used and the marketing of such garments to the general public, we believe our view that magnetic closures have become mainstream in their use, that is, they are not limited to use in garments intended for the handicapped, is correct.

The commenter, who has marketed magnetic closures, submitted that prices of shirts with such closures is comparable to the prices of conventional shirts because, in their case, they and their suppliers make a concerted effort to keep prices down and accept a lower markup on such garments. As for other sellers' prices cited by CBP, the commenter suggests, without any evidence, that the prices are lower because the shirts were not selling as conventional clothing. We do not find the commenter's comment regarding cost and price issues persuasive as it is based, in part, on very limited evidence, and, in part, on obvious conjecture. In addition, the effort to argue that cost and price somehow distinguish the garments at issue from "normal" or "conventional" shirts fails as the numerous variables which go into the pricing of garments are such that price or cost of production is of limited value in this matter.

²³ See <https://www.thenorthface.com/shop/VFSearchDisplay?catalogId=20001&storeId=7001&langId=-1&searchTerm=magnetic+closure>; and <https://www.underarmour.com/en-us/reactor-puffer-jacket/pid1300268-410>.

The commenter relies upon numerous CBP rulings and cites to various court cases, *i.e.*, *Mast Industries, Inc. v. United States*, 9 CIT 549, 553 (1985), *aff'd*, F.2d 144 (Fed. Cir. 1986); *St. Eve International, Inc. v. United States*, 11 CIT 224 (1987); and *Inner Secrets/Secretly Yours, Inc. v. United States*, 19 CIT 496, 505–06 (1995) to argue that the advertising and marketing of the magnetic closure shirts in an adaptive clothing line should be a factor supporting classification in subheading 9817.00.96, HTSUS. The other two commenters also focus on the importer’s intent and marketing. One commenter believes that CBP should look to “an examination of the company’s intent, such as the activities surrounding the design, marketing, and merchandising of the product.” Another commenter submits that marketing should be a factor and importers who limit marketing to the differently abled community should be able to claim eligibility for duty-free treatment of garments so marketed under subheading 9817.00.96, HTSUS.

In the court cases and rulings cited by the commenter, advertising and marketing were factors in determining the identity of the garments or articles at issue. For example, with regard to garments, advertising and marketing were considered in determining whether garments were classifiable as sleepwear, outerwear, or underwear. In this case, the commenters would have CBP differentiate identical garments used for the identical purpose, *i.e.*, shirts to be worn for decency, comfort, or adornment, based upon the consumers to whom the importer decides to advertise and market his garments. This is simply not a proper basis for classification.

The proper basis for determining whether a garment is classifiable as an article specially designed or adapted for the handicapped is discussed thoroughly in this ruling. Among the factors considered is the extent of the modification or adaptation performed on an article. In an article submitted by the commenter, entitled “For people with disabilities, a trend in ‘adaptive’ clothing,” which appeared in *Moneywatch* (December 12, 2018), we find the following of note:

Simple clothing alterations, such as magnetic closures that replace buttons, snaps and hooks on shirts and jackets, can benefit people with a range of disabilities, while also expanding their wardrobe with stylish options, designers say. [Emphasis added.]

This statement supports CBP’s view that the substitution of magnetic closures for buttons in shirts is not a significant adaptation or modification of the garments. Later in the same article, the author wrote: “Even able-bodied consumers see value in some of the innovations that have resulted, like shoes that zip open in the back.” A review of online shoe websites reveals the popularity of shoes that open in the back that are sold to the general public.²⁴

Having considered the submitted comments, CBP continues to believe the shirt at issue in NY N278872 does not qualify for classification in subheading 9817.00.96, HTSUS, as an article specially designed or adapted for the handicapped.

HOLDING:

The “Magna Click Shirt” is not eligible for duty-free treatment under subheading 9817.00.96, HTSUS, as an article specially designed or adapted for the handicapped. NY N278872 is hereby modified.

²⁴ See <https://www.dsw.com/en/us/browse/zip+back/?No=0>; and, <https://www.zappos.com/back-zip-shoes>.

Sincerely,

MONIKA R. BRENNER

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

ATTACHMENT B

HQ H300660

February 27, 2019

OT:RR:CTF:VS H300660 CMR

CATEGORY: Classification

TARIFF NO.: 6203.12.2010

BETH C. RING, ESQ.
SANDLER, TRAVIS & ROSENBERG, P.A.
551 FIFTH AVENUE, SUITE 1100
NEW YORK, NY 10176

RE: Modification of New York Ruling Letter N282688, dated January 27, 2017; Tariff classification of a men's woven suit from Vietnam; Articles for the Handicapped

DEAR MS. RING:

This is in reference to New York (NY) Ruling Letter N282688, dated January 27, 2017, which was issued to you, on behalf of your client, Marcraft Clothes, Inc. We are modifying NY N282688 with regard to the determination that the suit was eligible for classification as an article specially designed or adapted for the use or benefit of the handicapped, as that determination was incorrect. The tariff classification of the garment in subheading 6203.12.2010, of the Harmonized Tariff Schedule of the United States (HTSUS), was correct and remains undisturbed by this decision.

Pursuant to 19 U.S.C. § 1625(c)(1), a notice was published in the *Customs Bulletin*, Volume 52, No. 46, on November 14, 2018, proposing to modify NY N282688 and any treatment accorded to substantially similar transactions. One comment was in response to the proposed modification of NY N282688.

FACTS:

The garment was described in NY N282688, in part, as follows:

The submitted sample, for which a style number is not available, is comprised of three pieces: a men's suit-type jacket, a pair of men's trousers, and a men's vest. You indicate that the three pieces will be put up together for retail sale. In addition, although no information has been provided regarding the sizes of the garments, you state that the three pieces are of compatible size. . . .

The jacket is constructed of six panels sewn together lengthwise and features a notched collar with lapels; a non-functional button hole on the left lapel; a left-over-right, full front opening with two non-functional button holes on the left front panel; a button sewn over the upper button hole with a concealed magnet closure behind this button; a button sewn on the right front panel opposite the lower button hole;

The trousers feature a flat waistband; a left-over-right opening with a button, a non-functional button hole, and a hook-and-loop closure on the front waistband; two concealed magnet closures within the fly placket; four elastic strips enclosed within the waistband, two of which are partially visible on the waistband's inner surface;

The vest is constructed from three panels (two in the front, and one in the rear) sewn together lengthwise. . . The garment features a V-neckline;

oversized armholes; a left-over-right, full front opening with five faux button closures and five magnet closures concealed behind the buttons; . . .

You indicated in the ruling request that the garments (the components of the suit) “are designed for individuals with limited mobility or dexterity and contain self-closing magnets using the “Magna Ready”® technology that eliminates the need to button the jacket, vest or trousers.” You stated that “[t]he magnetic closures are clearly consistent with the garments being specially designed for use by those with chronic disabilities (e.g. arthritis, Parkinson’s disease) who struggle to dress themselves.” You also indicated that the suit would be sold with a tag similar to a tag used on the shirts which were the subject of NY N278872. The tag you submitted, which was to be used with shirts, stated, among other things: “Magna Ready Stress Free Shirting.” The tag contains a message from the creator of MagnaReady, Maura Horton, regarding the inspiration for the line which was her husband’s Parkinson’s disease.

ISSUE:

Whether the subject suit with Magna Ready® self-closing technology is eligible for duty-free treatment under subheading 9817.00.96, HTSUS, as an article specially designed or adapted for the handicapped.

LAW AND ANALYSIS:

Congress passed the Educational, Scientific, and Cultural Materials Importation Act of 1982, Pub. L. No. 97–446, 96 Stat. 2329, 2346 (1983), and the Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100–418, 102 Stat. 1107 (1988), to implement the Nairobi Protocol to the Florence Agreement on the Importation of Educational, Scientific and Cultural Materials (“Nairobi Protocol”), an international agreement intended to provide “duty free treatment to articles for the use or benefit of the physically or mentally handicapped persons, in addition to articles for the blind.” *See also U.S. Customs Serv. Implementation of the Duty-Free Provisions of the Nairobi Protocol, Annex E, to the Florence Agreement*, T.D. 92–77, 26 *Cust. B. & Dec.* 240, 241 (1992) (“*Implementation of the Nairobi Protocol*”). Presidential Proclamation 5978 and Section 1121 of the Omnibus Trade and Competitiveness Act of 1988, provided for the implementation of the Nairobi Protocol into subheadings 9817.00.92, 9817.00.94, and 9817.00.96, HTSUS.²⁵ Therefore, this legislation eliminated duties for products covered by subheading 9817.00.96, HTSUS, which provides for:

articles specially designed or adapted for the use or benefit of the blind or other physically or mentally handicapped persons; parts and accessories (except parts and accessories of braces and artificial limb prosthetics) that are specially designed or adapted for use in the foregoing articles . . . Other.

See subheading 9817.00.96, HTSUS; *see also Sigvaris, Inc. v. United States*, 227 F. Supp. 3d 1327, 1335 (Ct. Int’l Trade, 2017). Subheading 9817.00.96

²⁵ By Presidential Proclamation 6821 of September 12, 1995, 60 *Federal Register* 47663 (published on September 13, 1995), the superior text preceding subheading 9817.00.92, HTSUS, (and applicable to subheadings 9817.00.92, 9817.00.94, and 9817.00.96, HTSUS) was modified to include parts and accessories for the articles of the subheading.

excludes “(i) articles for acute or transient disability; (ii) spectacles, dentures, and cosmetic articles for individuals not substantially disabled; (iii) therapeutic and diagnostic articles; or, (iv) medicine or drugs.” U.S. Note 4(b), Subchapter XVII, Chapter 98, HTSUS.

Accordingly, classification within subheading 9817.00.96, HTSUS, depends on whether the article in question is “specially designed or adapted for the use or benefit of the blind or physically and mentally handicapped persons,” and whether it falls within any of the enumerated exclusions. *See* subheading 9817.00.96, HTSUS; U.S. Note 4(b), Subchapter XVII, Chapter 98, HTSUS. Note 4(a) to Chapter 98, HTSUS, provides:

- (a) For purposes of subheadings 9817.00.92, 9817.00.94 and 9817.00.96, the term “blind or other physically or mentally handicapped persons” includes 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(a), Subchapter XVII, Chapter 98, HTSUS. This list of exemplar activities indicates that the term “handicapped persons” is to be liberally construed so as to encompass a wide range of conditions, provided the condition substantially interferes with a person’s ability to perform an essential daily task. *See Sigvaris*, 227 F. Supp. 3d at 1335. While the HTSUS and subchapter notes do not provide a proper definition of “substantial” limitation, the inclusion of the word “substantially” denotes that the limitation must be “considerable in amount” or “to a large degree.” *Id.* at 1335 (citing *Webster’s* at 2280).

In the Court of Appeals for the Federal Circuit’s decision in *Sigvaris, Inc. v. United States*, 899 F.3d 1308 (Fed. Cir. 2018), the court found that the Court of International Trade reached the correct conclusion in finding the merchandise at issue therein, compression stockings, not eligible for classification under subheading 9817.00.96, HTSUS, but the court disagreed with the lower court’s analysis. The court found that the Court of International Trade looked to the condition or disorder and whether it is a handicap. The court stated:

The plain language of the heading focuses the inquiry on the “persons” for whose use and benefit the articles are “specially designed,” and not on any disorder that may incidentally afflict persons who use the subject merchandise.

* * *

... we must ask first, “for whose, if anyone’s, use and benefit is the article specially designed,” and then, “are those persons physically handicapped?”

Id.

The language of subheading 9817.00.96, HTSUS, states that the provision provides for “articles specially designed or adapted” for the use or benefit of the physically handicapped. The design and construction of an article may be indicative of whether it is specially designed or adapted for the use or benefit of the handicapped. The HTSUS does not establish a clear definition of what constitutes “specially designed or adapted for the use or benefit” of handicapped persons. In the absence of a clear definition, the Court of the International Trade stated that it may rely upon its own understanding of the

terms or consult dictionaries and other reliable information. *See Danze, Inc. v. United States*, Slip Op. 18–69 (Ct. Int'l Trade 2018). Moreover, in analyzing this same provision in *Sigvaris v. United States*, the Court of International Trade construed these operative words as follows:

The term “specially” is synonymous with “particularly,” which is defined as “to an extent greater than in other cases or towards others.” [Webster’s] at 1647, 2186 . . . The dictionary definition for “designed” is something that is “done, performed, or made with purpose and intent often despite an appearance of being accidental, spontaneous, or natural.” [Webster’s] at 612

See Sigvaris, 227 F. Supp. 3d at 1336. *See also, Sigvaris, Inc. v. United States*, 899 F.3d 1308 (Fed. Cir. 2018), wherein the court cited the definitions relied upon by the Court of International Trade in *Sigvaris*, in concluding that “articles specially designed for handicapped persons must be made with the specific purpose and intent to be used by or benefit handicapped persons rather than the general public.” *See Sigvaris*, 899 F.3d 1308 (Fed. Cir. 2018). The Court of Appeals for the Federal Circuit refined this requirement which it found to be incomplete. The court concluded that:

to be “specially designed,” the subject merchandise must be intended for the use or benefit of a specific class of persons to an extent greater than for the use or benefit of others.

Sigvaris, 899 F.3d 1308.

Finally, the legislative history further aids our analysis of these terms as used in subheading 9817.00.96, HTSUS. The Senate stated in its Report that one of the goals of this law was to benefit the handicapped and show U.S. support for the rights of the handicapped. The Senate stated, in relevant part:

By providing for duty-free treatment of articles specially adapted for the blind or other physically or mentally handicapped persons, the committee does not intend that an insignificant adaptation would result in duty-free treatment for an entire relatively expensive article. Otherwise, the special tariff category will create incentives for commercially motivated tariff-avoidance schemes and pre-import and post-entry manipulation. Rather, the committee intends that, in order for an entire modified article to be accorded duty-free treatment, the modification or adaptation must be significant, so as clearly to render the article for use by handicapped persons.

S. Rep. No. 97 564, 97th Cong. 2nd Sess. (1982). The Senate was concerned that persons would misuse this tariff provision to avoid paying duties on expensive products. Similarly, in *Danze v. United States*, the court looked to the legislative history and noted that its interpretation of the terms “specially” and “designed” in *Sigvaris* comported with the legislative intent behind subheading 9817.00.96, HTSUS, that any modification or adaptation be “significant.” Specifically, the court in *Danze* stated:

“articles specially designed for handicapped persons must be made with the specific purpose and intent to be used by or benefit handicapped persons rather than the general public.” *Sigvaris*, 227 F. Supp. 3d at 1336. Any adaptation or modification to an article to render it for use or benefit by handicapped persons must be significant.

See Danze at 14.

CBP has recognized several factors to be utilized and weighed against each other on a case-by-case basis when determining whether a particular product is “specially designed or adapted” for the benefit or use of handicapped persons. See *Implementation of the Nairobi Protocol*, 26 *Cust. Bull. & Dec.* at 243–244. 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. See also *Danze, Inc. v. United States*, Slip Op. 18–69 (Ct. Int’l Trade 2018); *Sigvaris, Inc. v. United States*, 227 F.Supp.3d 1327 (Ct. Int’l Trade, 2017), *aff’d*, 899 F.3d 1308 (Fed. Cir. 2018). The court in *Sigvaris*, 899 F.3d 1308 (Fed. Cir. 2018), found that “[t]hese factors aid in assessing whether the subject merchandise is intended for the use or benefit of a specific class of persons to a greater extent than for the use or benefit of others.” The court adopted these factors into its analysis.

Looking to the court’s analysis in *Sigvaris*, 899 F.3d 1308 (Fed. Cir. 2018), we must first examine for whose use and benefit the subject suit is “specially designed,” and whether such persons are physically handicapped. In other words, we must consider whether such persons are suffering from a permanent or chronic physical or mental impairment which substantially limits one or more major life activities. In this case, the life activity for which the suit is claimed to be “specially designed”²⁶ is the ability to dress oneself.

With regard to the first two factors to consider in determining whether an article is “specially designed,” *i.e.*, the physical properties of the article and any characteristics of the article that easily distinguish it from articles useful to the general public, we find that the subject suit is not distinguishable from articles useful to the general public. Magnetic closures for garments have become mainstream in their use. An internet search revealed numerous websites advertising men’s shirts with magnetic closures. While it is true that some websites advertising such shirts make reference to a garment as “adaptive clothing” or as being for those with limited dexterity, those same websites include that such shirts are also beneficial or useful for those who would like to avoid the hassle of buttons.²⁷

²⁶ References to “specially designed” include “specially designed or adapted.”

²⁷ See <https://www.jcpennney.com/p/van-heusen-easy-care-magnaclick-long-sleeve-twill-dress-shirt>, wherein the shirt description includes the following statement: “Hidden magnetic closures are featured underneath the buttons, making everyday fashion a breeze for those with limited dexterity or others who would like to avoid the hassle of buttons.” The garment is described as being of 55% cotton/45% polyester twill wrinkle-free fabric and having long sleeves, a spread collar, a regular fit, and a magnetic closure. The shirt is designed for the young men’s/adult age group.

These shirts, with magnetic front closures, are being sold by various stores, including J.C. Penney's, The Men's Wearhouse,²⁸ Costco,²⁹ Kohl's,³⁰ Macy's,³¹ Duluth Trading Company,³² as well as by companies which generally market products to individuals with disabilities or considered "senior", such as Silvert's³³, where a men's shirt with magnetic buttons appears when one clicks the "Men's Regular" or "Men's Adaptive" tabs.

We have found other garments, in addition to shirts, using magnetic closures as part of their design. These garments include men's trousers available at Macy's, Kohl's, and Costco;³⁴ boys' uniform shorts, along with pants,

²⁸ See <https://www.menswearhouse.com/shirts/dress-shirts/classic-fit-regular-shirts/magnaclick-reg-blue-classic-fit-dress-shirt-53U053U102>, wherein the product details provide: "This ingenious dress shirt has all of the classic styling of a fine men's dress shirt, but with a secret benefit – magnets. MagnaClick® shirts feature hidden magnetic closures wherever you'd find a button. It is the perfect choice for those with limited dexterity, or anyone who wants to eliminate the fuss of buttons." The garment is described as being of 60% cotton/40% polyester fabric with a spread collar, chest pocket, magnetic closures on the front placket and sleeve cuffs and having a "classic fit." It is also identified as "adaptive clothing."

²⁹ See <https://www.costco.com/MagnaClick-Men%E2%80%99s-Dress-Shirt.product.100418298.html>, wherein the garment is identified as "adaptive clothing" and "stress free apparel." The product details state:

To the unknowing eye, a MagnaClick® shirt looks just like any other dress shirt hanging in the closet. Same collar and cuffs, same row of little white buttons down the front. But, those buttons are merely for looks. Hidden inside the placket of a MagnaClick® shirt are powerful magnets that link together for a secure closure without the hassle of manipulating tiny buttons into buttonholes.

³⁰ See <https://www.kohls.com/product/prd-3299808/mens-magnaclick-regular-fit-spread-collar-dress-shirt.jsp>, wherein the product details provide: "Easy style. Featuring hidden magnetic closures, this men's MagnaClick dress shirt makes standout style simple for those with limited dexterity or anyone who'd rather do without the fuss of buttons."

³¹ See <https://www.macys.com/shop/product/magnaclick-mens-classic-fit-solid-shirt?ID=6380592&CategoryID=20626&swatchColor=Blue#fn=BRAND%3DMagnaClick%26SIZE%3D%26sp%3D1%26spc%3D3%26ruleId%3D78%7CBOOST%20ATTRIBUTE%26searchPass%3DmatchNone%26slotId%3D3>, wherein the "MagnaClick Men's Classic-fit Solid Shirt" description states: "Magnet closures at the center front placket and cuffs bring unbeatable convenience and versatility to this classic long-sleeve shirt from MagnaClick." See also, <https://www.macys.com/shop/product/magnaclick-mens-knit-solid-pima-cotton-polo?ID=6465511&CategoryID=20626&swatchColor=Black#fn=BRAND%3DMagnaClick%26SIZE%3D%26sp%3D1%26spc%3D3%26ruleId%3D78%7CBOOST%20ATTRIBUTE%26searchPass%3DmatchNone%26slotId%3D1>, wherein the "MagnaClick Men's Knit Solid Pima Cotton Polo" shirt description states: "MagnaClick presents a classic short-sleeve polo in soft Pima cotton, finished with a hidden magnet-close placket down the front for a stylish and convenient twist."

³² See <https://www.duluthtrading.com/mens-wrinklefighter-long-sleeve-shirt-92105.html>, wherein the descriptive text includes the following: "If you have a health condition or disability that affects your dexterity, have big fingers – or if you just want to get dressed more quickly and easily – this shirt is for you."

³³ See <https://www.silverts.com/show.php/product/40000-magnetic-buttons-mens-shirt-arthritis-parkinsons-mens-magnetic-closing-shirts-with-shirt-magnet-buttons>,

³⁴ See <https://www.macys.com/shop/product/magnaclick-mens-classic-fit-chino-pants?ID=6235455&CategoryID=89&mltPDP=true&swatchColor=Black#fn=BRAND%3DMagnaClick%26SIZE%3D%26sp%3D1%26spc%3D1%26ruleId%3D136%7CBOOST%20ATTRIBUTE%7CBOOST%20SAVED%20SET%26searchPass%3DmatchNone%26slotId%3D1>; <https://www.kohls.com/product/prd-3347003/mens-magnaclick-classic-fit-chino-pants.jsp>; <https://www.costco.com/MagnaClick-Men%27s-Dress-Pant.product.100419200.html>.

skirts, shirts and a dress referred to as uniform garments, available from Land's Ends;³⁵ chef jackets;³⁶ chef pants;³⁷ a men's collarless blazer sold by Maison Margiela;³⁸ a Nic +Zoe women's tailored, collarless blazer sold by Nordstrom's;³⁹ a Fleurette wool duster coat with spiral mink fur sold by Neiman Marcus;⁴⁰ and various babies' garments available at Dillard's Lord & Taylor, Target, Buy Buy Baby, and Branches Gifts in Bloom,⁴¹ and Nordstrom's, Zulily, and Bed, Bath and Beyond.⁴² In 2011, Lanvin offered a double-breasted jacket with a magnetic closure.⁴³ While in some cases, such as the men's trousers and the children's uniform garments available from Land's End, the term "adaptive" is used to describe the garments, the vast majority of the garments referenced here are clearly marketed to the general public and not any special class or group of individuals. Even with regard to the garments in which the term adaptive was used in the garments' descriptions, we find descriptive marketing text which is reaching out to the general public. For example, Kohl's descriptive text for the "Men's MagnaClick Classic-Fit Chino Pants" states:

Ease style. Featuring hidden magnetic closures, these men's chino pants from MagnaClick makes standout style simple for those with limited dexterity or anyone who'd rather do without the fuss of buttons.

Another example is found on the Duluth Trading Company webpage for the "Men's Magnet Front Wrinklefighter Shirt." The webpage text includes the following: "If you have a health condition or disability that affects your dexterity, have big fingers – or if you just want to get dressed more quickly and easily – this shirt is for you." The garment is being marketed to people at all levels of ability, *i.e.*, the general public.

As the court in *Sigvaris*, 899 F.3d 1308 (Fed. Cir. 2018), stated, we must consider for whose benefit the article is specially designed and whether the article is intended for the use or benefit of a specific class of persons to an extent greater than for the use or benefit of others. Based upon the information we have found, we find that the subject suit is not specially designed or adapted for the use or benefit of a specific class of persons, *i.e.*, the handicapped, to an extent greater than for the use or benefit of the general public.

³⁵ See https://www.landsend.com/products/school-uniform-boys-adaptive-blend-chino-short/id_324896?sku_0=:CLN; <https://www.landsend.com/shop/search?initialSearch=true&Ntt=adaptvie>.

³⁶ See <https://www.bragardusa.com/magic-double-breasted-chef-jacket-white.html>; <https://www.bragardusa.com/magic-double-breasted-chef-jacket-black.html>; <https://www.bragardusa.com/fantastic-chef-jacket.html>.

³⁷ See <https://www.bragardusa.com/pratic-chef-pants.html>.

³⁸ See https://www.maisonmargiela.com/us/maison-margiela/blazer_cod41502287je.html.

³⁹ See <https://shop.nordstrom.com/s/niczoe-sleek-jacket/4951276?origin=category-personalizedsort&breadcrumb=Home%2FBands%2FNIC%2BZOE&color=black%20onyx>.

⁴⁰ See https://www.neimanmarcus.com/p/fleurette-magnetic-wool-duster-coat-w-spiral-mink-fur-prod202600089?childItemId=NMTVXL4_.

⁴¹ See <https://www.easymagneticclose.com/>;

⁴² See <https://magneticme.com/>; <https://shop.nordstrom.com/c/baby-clothes/magnetic-me-7563>; <https://www.zulily.com/e/magnetic-me-by-magnificent-baby-245459.html>; and <https://www.bedbathandbeyond.com/store/brand/magnetic-me-by-magnificent-baby/6007/>

⁴³ See <http://daman.co.id/lanvin-magnetic-closure-double-breasted-jacket/>

The use of magnets for the front closure of a jacket or vest, or the fly of a pair of pants, does not cause this suit to be easily distinguishable from articles useful to non-handicapped persons. As the use of magnets for closures in garments has become mainstream, we do not view their use to be a significant adaptation to a garment such that the use of a garment with such closures would be more prevalent among the handicapped or disabled, as opposed to the general public. In addition, while individuals with some limited dexterity in their fingers may find such garments convenient, their dexterity issue may not rise to a level that one would consider such individuals to be handicapped. We also do not find any characteristics about the subject suit that creates a substantially greater probability of use by the handicapped versus the general public. Garments with magnetic closures are marketed to the general public, as well as to those with difficulties dressing themselves, so use by the general public is not so improbable that it would be fugitive.

As to the remaining factors we consider in determining whether an article qualifies as “specially designed or adapted,” the subject suit is imported and sold by Marcrafft Clothes, Inc. an entity identified by Bloomberg as a wholesale apparel store which specializes in providing men’s and boys’ clothing.⁴⁴ Marcrafft Clothes is not generally recognized as a distributor of wearing apparel for the chronically disabled. *See* Headquarters Ruling Letter (HQ) H292642, dated June 29, 2018, and HQ H292346, dated June 29, 2018. We were unable to find the suit being sold by any retailers; however, we have found numerous garments, including jackets and pants with magnetic closures that are designed for use by the general public and not a special segment or group. As to the condition of the suit at the time of importation, we do not believe there is anything with regard to the garment that indicates that it is for the use or benefit of the handicapped.

The commenter believes that CBP should look to “an examination of the company’s intent, such as the activities surrounding the design, marketing, and merchandising of the product.” In this case, the commenter would have CBP differentiate identical garments used for the identical purpose, *i.e.*, shirts to be worn for decency, comfort, or adornment, based upon the consumers to whom the importer decides to advertise and market his garments. This is simply not a proper basis for classification.

In an article, by Michael Kimmelman, published in the *New York Times* on January 24, 2018, entitled “How Design for One Turns Into Design for All,” the writer starts by explaining that Nike’s popular “FlyEase” line of shoes was developed in response to a letter from a college-bound student with cerebral palsy who explained he had trouble tying laces and slipping into shoes without help.⁴⁵ The shoes are “slip-ons with a zipper that seals the back and then Velcro-ties the top in one simple motion.”⁴⁶ These shoes, like garments with magnetic closures, are marketed to the general public.⁴⁷ The Nike website states that these shoes are:

Designed for athletes of all abilities and ages, Nike FlyEase features a revolutionary zipper-and-strap system to help you get your shoes on and off quickly and easily.

⁴⁴ <https://www.bloomberg.com/profiles/companies/0274059Z:US-marcraft-clothes-inc>.

⁴⁵ *See also*, <http://yourcpf.org/cpproduct/nike-flyease/>.

⁴⁶ *See* <https://www.nytimes.com/2018/01/24/arts/design/cooper-hewitt-access-ability.html>.

⁴⁷ *See* https://www.nike.com/us/en_us/c/innovation/flyease.

Mr. Kimmelman’s article points out:

You don’t have to have Parkinson’s or arthritis or a prosthetic hand to prefer magnets to buttons and snaps, or to like the idea, and look, of Velcro seams and zippered sleeves. There’s a white dress shirt with magnetic closures in the show, which could easily be marketed straight to mainstream consumers, never mind the “adaptive” label. Likewise, pairs of brightly patterned compression socks by Top & Derby.

In addition, the article provides an example of articles, compression socks, which are worn by individuals who may suffer from certain infirmities, such as diabetes or high blood pressure, but are also worn by fashion models and athletes. Compression socks help increase blood circulation and minimize swelling in the feet, ankles and lower limbs. The positive attributes of compression socks are advantageous to anyone who may take long airline flights or find themselves in jobs requiring long periods of standing on their feet.

Another article which appeared on the BBC News website and is dated February 14, 2018, entitled “Hillwalkers warned about magnets in clothing, highlights that magnetic closures are becoming increasingly popular. The article, which focused on the danger of magnets affecting compasses, states:

Mountaineering Scotland said it was concerned by the growing use of magnetic closures in outdoor clothing.

Ms. Morning [mountain safety adviser for Mountaineering Scotland] said: “Modern technology is great. . . But more joined-up thinking is needed between outdoor clothing manufacturers and mountain users to avoid potentially life-threatening consequences.”

Outerwear garments with magnetic closures are being sold by companies, such as The North Face and Under Armour. These garments are clearly marketed to the general public.⁴⁸ Due to the variety of garments in which magnetic closures are used and the marketing of such garments to the general public, we believe our view that magnetic closures have become mainstream in their use, that is, they are not limited to use in garments intended for the handicapped, is correct.

Among the factors considered in determining if an article qualifies to be classified as an article for the benefit of the handicapped is the extent of the modification or adaptation performed on an article. In an article entitled “For people with disabilities, a trend in ‘adaptive’ clothing,” submitted by a commenter opposing the modification of NY N278872, and which appeared in *Moneywatch* (December 12, 2018), we find the following of note:

Simple clothing alterations, such as magnetic closures that replace buttons, snaps and hooks on shirts and jackets, can benefit people with a range of disabilities, while also expanding their wardrobe with stylish options, designers say. [Emphasis added.]

This statement supports CBP’s view that the substitution of magnetic closures for buttons in garments, such as the men’s woven suit at issue herein, is not a significant adaptation or modification of the garments. Later in the same article, the author wrote: “Even able-bodied consumers see value in some of the innovations that have resulted, like shoes that zip open in the

⁴⁸ See <https://www.thenorthface.com/shop/VFSearchDisplay?catalogId=20001&storeId=7001&langId=-1&searchTerm=magnetic+closure>; and <https://www.underarmour.com/en-us/reactor-puffer-jacket/pid1300268-410>.

back.” A review of online shoe websites reveals the popularity of shoes that open in the back that are sold to the general public.⁴⁹

An internet search of “common clothing fasteners” reveals that magnets as fasteners are being used in garments when, for example, a clean look is desired. From <https://www.thecreativecurator.com/clothes-fastenings/>, we find in an article entitled, “15 Ways to Fasten Your DIY Clothes, Zippers, buttons, magnets and more, Creative Fashion Skills”:

A recent addition for clothes fastenings: the use of magnets!

Strong magnets are enclosed in small plastic pouches which are sewn into the garment and hidden by the facing. Great for when a clean minimal look is required with no visible closures to mar the silhouette.

The proper basis for determining whether a garment is classifiable as an article specially designed or adapted for the handicapped is discussed thoroughly in this ruling. We cannot, as the commenter suggests, base our classification of garments as specially designed or adapted for the handicapped on simply the importer’s intent as reflected in the design, marketing, and merchandising of their garment. Having considered the submitted comment, CBP continues to believe the men’s woven suit at issue in NY N282688 does not qualify for classification in subheading 9817.00.96, HTSUS, as an article specially designed or adapted for the handicapped.

HOLDING:

The subject suit is not eligible for duty-free treatment under subheading 9817.00.96, HTSUS, as an article specially designed or adapted for the handicapped. NY N282688 is hereby modified.

Sincerely,

MONIKA R. BRENNER

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

⁴⁹ See <https://www.dsw.com/en/us/browse/zip+back/?No=0> ; and, <https://www.zappos.com/back-zip-shoes>.

AGENCY INFORMATION COLLECTION ACTIVITIES:

Customs-Trade Partnership Against Terrorism (C-TPAT) and the Trusted Trader Program

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

ACTION: 60-Day Notice and request for comments; Extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and must be submitted (no later than May 20, 2019) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651-0077 in the subject line and the agency name. To avoid duplicate submissions, please use only one of the following methods to submit comments:

(1) *Email.* Submit comments to: CBP_PRA@cbp.dhs.gov.

(2) *Mail.* Submit written comments to CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE, 10th Floor, Washington, DC 20229-1177.

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

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in

accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Customs-Trade Partnership Against Terrorism (C-TPAT) and the Trusted Trader Program.

OMB Number: 1651-0077.

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

Type of Review: Extension (with no change).

Affected Public: Businesses.

Abstract: The C-TPAT Program is designed to safeguard the world's trade industry from terrorists and smugglers by prescreening its participants. The C-TPAT Program applies to United States importers, customs brokers, consolidators, port and terminal operators, carriers, and foreign manufacturers.

Respondents apply to participate in the Trusted Trader Program and C-TPAT using an on-line application at: <https://ctpat.cbp.dhs.gov/trade-web/index>. The C-TPAT Program application requests an applicant's contact and business information, including the number of company employees, the number of years in business, and a list of company officers. This collection of information is authorized by the SAFE Port Act (Pub. L. 109-347).

The Trusted Trader Program involves a unification of supply chain security aspects of the C-TPAT Program and the internal controls of the Importer Self-Assessment (ISA) Program to integrate supply chain security and trade compliance. The Trusted Trader Program

strengthens security by leveraging the C-TPAT supply chain requirements and validation, identifying low-risk trade entities for supply chain security and trade compliance, and increasing the overall efficiency of trade by segmenting risk and processing by account. The Trusted Trader Program applies to importer participants who have satisfied C-TPAT supply chain security and trade compliance requirements.

After an importer obtains Trusted Trader Program membership, the importer will be required to submit an Annual Notification Letter to CBP confirming that they are continuing to meet the requirements of the Trusted Trader Program. This letter should include: personnel changes that impact the Trusted Trader Program; organizational and procedural changes; a summary of risk assessment and self-testing results; a summary of post-entry amendments and/or disclosures made to CBP; and any importer activity changes within the last 12-month period.

C-TPAT Program Application:

Estimated Number of Respondents: 750.

Estimated Number of Responses per Respondent: 1.

Estimated Time per Response: 20 hours.

Estimated Total Annual Burden Hours: 15,000.

Trusted Trader Program Application:

Estimated Number of Respondents: 50.

Estimated Number of Responses per Respondent: 1.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 100.

Trusted Trader Program's Annual Notification Letter:

Estimated Number of Respondents: 50.

Estimated Number of Responses per Respondent: 1.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 100.

Dated: March 14, 2019.

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