

U.S. Customs and Border Protection



19 CFR PART 177

REVOCATION OF ONE RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF LATEX RUBBER BOOT COVERS

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 latex rubber boot covers.

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 latex rubber boot covers 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. 53, No. 22, on July 3, 2019. One comment was received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after October 21, 2019.

FOR FURTHER INFORMATION CONTACT: Tanya Secor, Food, Textiles and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325–0062.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obli-

gation 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. 53, No. 22, on July 3, 2019, proposing to revoke one ruling letter pertaining to the tariff classification of latex rubber boot covers. 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") N295514, dated April 25, 2018, CBP classified latex rubber boot covers in subheading 6401.92.90, HTSUS, which provides for "waterproof footwear with outer soles and uppers of rubber or plastics, the uppers of which are neither fixed to the sole nor assembled by stitching, riveting, nailing, screwing, plugging or similar processes: other footwear: covering the ankle but not covering the knee: other: other." CBP has reviewed NY N295514 and has determined the ruling letter to be in error. It is now CBP's position that latex rubber boot covers are properly classified in subheading 6401.99.30, HTSUS, which provides for "waterproof footwear with outer soles and uppers of rubber or plastics, the uppers of which are neither fixed to the sole nor assembled by stitching, riveting, nailing, screwing, plugging or similar processes: other footwear: other: other: 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: designed for use without closures."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY N295514 and revoking or modifying any other ruling not specifically identified

to reflect the analysis contained in Headquarters Ruling Letter (“HQ”) H303063, set forth as an attachment to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: August 8, 2019

YULIYA GULIS
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H303063

August 8, 2019

OT:RR:CTF:FTM H303063 TJS

CATEGORY: Classification

TARIFF NO.: 6401.99.30

MR. ROBERT B. SILVERMAN

GRUNFELD, DESIDERIO, LEBOWITZ, SILVERMAN & KLESTADT LLP

599 LEXINGTON AVE, 36TH FLOOR

NEW YORK, NY 10022

RE: Revocation of NY N295514; Classification of the Latex Rubber Boot Saver

DEAR MR. SILVERMAN:

This is in response to your January 31, 2019 letter, filed on behalf of Tingley Rubber Corporation (“Tingley”), requesting modification of New York Ruling Letter (“NY”) N295514, dated April 25, 2018. In NY N295514, U.S. Customs and Border Protection (“CBP”) classified certain disposable latex shoe/boot covers under subheading 6401.92.9060, Harmonized Tariff Schedule of the United States (“HTSUS”), which provides for “waterproof footwear with outer soles and uppers of rubber or plastics, the uppers of which are neither fixed to the sole nor assembled by stitching, riveting, nailing, screwing, plugging or similar processes: other footwear: covering the ankle but not covering the knee: other: other.”

On November 26, 2018, you filed a request for modification of NY N295514, asserting classification under subheading 6401.99.30, HTSUS, which provides for “waterproof footwear with outer soles and uppers of rubber or plastics, the uppers of which are neither fixed to the sole nor assembled by stitching, riveting, nailing, screwing, plugging or similar processes: other footwear: other: other: 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: designed for use without closures.” On January 31, 2019, you amended your request asserting classification under subheading 3926.90.9990, HTSUS, as “other articles of plastics and articles of other materials of headings 3901 to 3914: other: other: other,” or alternatively, under 6401.99.30, HTSUS.

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 July 3, 2019, in Volume 53, Number 22, of the *Customs Bulletin*. One comment, which will be addressed below, was received in response to this notice.

FACTS:

The product at issue is a disposable, ambidextrous, unisex, shoe/boot cover, identified as the Latex Rubber Boot Saver (the “Boot Saver”). The Boot Saver, a product of Thailand, is made of powder-free natural latex rubber with acid-dipped bottoms. The manufacturing process involves aluminum formers being dipped twice into latex and once into dilute acetic acid. The first dip coats the former with latex. The second dip coats only the lower portion of the former with an additional layer of latex to create a durable bottom/sole. The bottom portion is then dipped a third time in dilute acetic acid, which

textures the surface for improved slip resistance. The Boot Savers are meant to be worn over regular shoes or boots by people in food processing facilities to protect the facility from cross-contamination. They come in four sizes (medium, large, extra large, and extra extra large) and four colors (yellow, red, blue, and black).

You submitted two samples: an extra large yellow Boot Saver and a large black Boot Saver over a size 13 Tingley brand, Triumph, waterproof boot.

ISSUE:

Whether the Latex Rubber Boot Saver imported by Tingley Rubber Corporation is classified under subheading 3926.90.9990, HTSUS, 6401.99.3000, HTSUS, or 6401.92.9060 HTSUS.

LAW AND ANALYSIS:

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (“GRI”). GRI 1 provides that classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. Where goods cannot be classified solely on the basis of GRI 1, the remaining GRIs will be applied in their appropriate order.

The HTSUS subheadings under consideration are as follows:

3926:	Other articles of plastics and articles of other materials of headings 3901 to 3914:
3926.90:	Other:
3926.90.99:	Other...
3926.90.9990:	Other...
* * * *	
6401:	Waterproof footwear with outer soles and uppers of rubber or plastics, the uppers of which are neither fixed to the sole nor assembled by stitching, riveting, nailing, screwing, plugging or similar processes:
	Other footwear:
6401.92:	Covering the ankle but not covering the knee:
	Other:
6401.92.90:	Other...
6401.92.9060:	Other...
6401.99:	Other:
	Other:
	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:
6401.99.3000:	Designed for use without closures...
* * * *	

Note 2 to Chapter 39 provides, in pertinent part, as follows:

* * * *

2. This chapter does not cover:

- (q) Articles of section XII (for example, footwear, headgear, umbrellas, sun umbrellas, walking-sticks, whips, riding-crops or parts thereof);

* * * *

Note 1 to Chapter 64 provides, in pertinent part, as follows:

1. This chapter does not cover:

- (a) Disposable foot or shoe coverings of flimsy material (for example, paper, sheeting of plastics) without applied soles. These products are classified according to their constituent material;

* * * *

The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the Harmonized System at the international level. While 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 Chapter 64 provides, in pertinent part, as follows:

GENERAL

With certain exceptions (see particularly those mentioned at the end of this General Note) this Chapter covers, under headings 64.01 to 64.05, various types of footwear (including overshoes) irrespective of their shape and size, the particular use for which they are designed, their method of manufacture or the materials of which they are made.

For the purposes of this Chapter, the term “footwear” does not, however, include disposable foot or shoe coverings of flimsy material (paper, sheeting of plastics, etc.) without applied soles. These products are classified according to their constituent material.

(A)[...] The Chapter includes:

...

(10) Disposable footwear, with applied soles, generally designed to be used only once.

* * * *

Pursuant to Note 1(a) to Chapter 64, a disposable shoe covering made of flimsy material and lacking an applied sole is precluded from classification as footwear of Chapter 64, HTSUS. You argue that pursuant to Note 1(a), the Boot Saver is precluded from classification in Chapter 64, HTSUS, because it is a disposable shoe cover, made of flimsy material, without an applied sole. You therefore assert that the Boot Saver should be classified according to its constituent material under subheading 3926.90.9990, HTSUS.

You argue that the Boot Saver’s material is flimsy because it is designed for limited use and must be disposed of to prevent ripping. You assert that even flimsy products must be durable enough to serve a one-time limited use. To support this, you cite several CBP rulings concerning the classification of Halloween costumes in Chapter 95, HTSUS. We note that the merchandise in those rulings is substantially different than the shoe covers at issue. In fact, CBP has consistently determined that disposable latex shoe covers, similar to the Boot Savers, are not flimsy pursuant to Chapter 64, Note 1(a), HTSUS, despite being intended for a one-time limited use. *See* NY M86014 (Sept. 8, 2006); NY L81039 (Dec. 13, 2004); *and*, NY E81872 (June 8, 1999). Moreover, the Oxford English Dictionary defines “flimsy” as “insubstantial and easily

damaged. “See <https://en.oxforddictionaries.com/definition/flimsy> (accessed May 15, 2019). The Boot Saver’s latex rubber material is strong and stretchy, and does not tear or rip when pushing a finger through it with little effort. Accordingly, we find that the Boot Saver’s latex rubber material is not flimsy.

As per the General Explanatory Note, Chapter 64 includes disposable footwear, generally designed to be used only once, if it has an applied sole. You argue that the Boot Savers do not have applied soles because they are made from a single component of latex rubber and there are no detachable parts. Whether footwear has an applied sole pursuant to Note 1(a) depends on whether a “line of demarcation” between the outer sole and the upper can be identified. See Headquarters Ruling Letter (“HQ”) H246161 (Sept. 12, 2016); HQ H241512 (July 07, 2014); and, HQ 956921 (Nov. 22, 1994). The samples show a clear line of demarcation where the outer sole’s rough surface meets the upper’s smooth surface. You cite HQ H241512, which indicated that footwear made of a single material, with no additional, applied layer or covering on the bottom, does not have a line of demarcation distinguishing the sole from the remainder of the item. The Boot Savers, while made from a single material, have two additional, distinguishable, applied layers on the bottoms: a second coating of latex and a texturized outer sole. Your product specification sheet even states that “[t]he gap between the 2nd layer of latex and the acid texturing should target 5 mm” and “[t]he lines of the second dip and acid etching should be visually parallel with the shoe bottom edge.” These are clearly noticeable on the samples. Due to the distinguishable outer soles and line of demarcation, we find that the Boot Savers have applied soles.

CBP has consistently determined that one-piece latex shoe/boot covers with roughed up outer soles have applied soles pursuant to Note 1(a) to Chapter 64, HTSUS. See NY N171055 (July 12, 2011); NY E85883 (Sept. 13, 1999); and, NY E81872 (June 8, 1999). In your request, you cite several rulings including NY N266909, dated August 10, 2015, NY D86071, dated January 20, 1999, and NY N171076, dated June 21, 2011, all of which classify various disposable shoe coverings. In your discussion of NY N266909, you reference the styles KBSB “Super Nonskid, Waterproof Shoe Covers-Super Bootie” and the KBE “Economy Short Wear,” neither of which CBP found classifiable in Chapter 64, HTSUS. However, in that ruling, CBP did classify style KBCP “Extra Durable” in Chapter 64, HTSUS, noting that blue-colored chlorinated polyethylene, which covered all but the top 2.5 inches of the white textile material, was a clearly defined outer sole. We find that the Boot Saver, having a distinct rough outer sole, is more analogous to the KBCP “Extra Durable” than the styles you refer to. Similarly, you cite NY D86071, asserting that the Boot Savers are analogous to latex booties stock #1525Y and #1525B, which were classified under subheading 4016.99.35, HTSUS. However, we note that the Boot Savers, having rough soles, are more akin to stock #LB 1250, a latex bootie with a ridged sole that CBP classified under subheading 6401.92.90, HTSUS. In reference to NY N171076, you include pictures of the subject shoe cover. The pictures show no clear line of demarcation, unlike the Boot Savers.

In accordance with the above, we find that Boot Savers are classifiable as footwear in Chapter 64, HTSUS, pursuant to Note 1(a), because they are not flimsy and have applied soles. You argue that the Boot Savers should be classified according to their constituent material under Chapter 39, HTSUS.

However, we have determined that the Boot Savers are articles of Section XII as footwear, and are therefore precluded from classification in Chapter 39, HTSUS, by application of Note 2(q).

Because we find that the Boot Saver is classifiable in Chapter 64, HTSUS, we consider your alternative claim that the Boot Saver should be classified under subheading 6401.99.30, HTSUS, as waterproof footwear with uppers and soles of rubber/plastic which do not cover the ankle. Whether the Boot Saver is classified under subheading 6401.92.9060 or 6401.99.30 depends on whether it covers the ankle. A representative of your firm visited the National Commodity Specialist Division in New York to demonstrate that the Boot Saver did not cover his anklebone when worn over regular shoes. Based on the observation of the National Import Specialist and our own examination of the samples, we find that the Boot Savers do not cover the ankle. Therefore, the Latex Rubber Boot Saver is classified under subheading 6401.99.30, HTSUS.

In the comment we received, the commenter proposed that the Latex Rubber Boot Saver should be classified under subheading 6401.99.80, HTSUS, which provides for “waterproof footwear with outer soles and uppers of rubber or plastics, the uppers of which are neither fixed to the sole nor assembled by stitching, riveting, nailing, screwing, plugging or similar processes; other footwear: other: other: other: having upper’s 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 foxing or a foxing-like band applied or molded at the sole and overlapping the upper). In particular, the commenter claimed that the Boot Saver should not be considered protective because they protect the work space from contamination rather than the wearer’s footwear.

In support of its argument, the commenter relied on NY N304851, dated July 16, 2019, which classified a closed toe/closed heel, one piece molded, 100% rubber, slip-on overshoe, identified as the “Easy Max”, in subheading 6401.99.80, HTSUS. Although the “Easy Max” was designed to prevent slipping on oil, wet, or greasy floors, it did not cover the top of the foot and was not considered protective. CBP does not consider footwear that leaves the top of the foot exposed to be protective. *See* NY N281317 (Dec. 21, 2016); *and* NY N271998 (Feb. 11, 2016). Unlike the “Easy Max”, the Boot Saver covers the top of the foot. The fact that the Boot Saver is used to prevent cross-contamination in the workplace does not preclude it from protecting the wearer’s footwear as well. Furthermore, the amended request states, “[t]he Boot Saver’s latex material allows the shoe cover to adequately protect the wearer’s shoe for a limited time.” Therefore, we are not persuaded by the commenter’s assertion that the Boot Savers are not protective. Having considered the submitted comment, CBP finds that the Latex Rubber Boot Saver remains classified under subheading 6401.99.30, HTSUS.

HOLDING:

By application of GRI 1, we find that the Latex Rubber Boot Saver in NY N295514 is classified under subheading 6401.99.30, HTSUS, which provides for “Waterproof footwear with outer soles and uppers of rubber or plastics, the uppers of which are neither fixed to the sole nor assembled by stitching, riveting, nailing, screwing, plugging or similar processes: Other footwear: Other: Other: 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: Designed for use without closures.” The 2019 column one duty rate is 25% *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NYN295514, dated April 25, 2018 is hereby REVOKED.

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

Sincerely,

YULIYA GULIS

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

PROPOSED REVOCATION OF ONE RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF ARM SLEEVES

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

ACTION: Notice of proposed revocation of one ruling letter and revocation of treatment relating to the tariff classification of arm sleeves.

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 arm sleeves 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 September 20, 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: John Rhea, Food, Textiles & Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325–0035.

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 arm sleeves. Although in this notice, CBP is specifically referring to revoking New York Ruling Letter (“NY”) N258826, dated November 24, 2014 (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 N258826, CBP classified an arm sleeve in heading 6117, HTSUS, specifically in subheading 6117.80.9540, HTSUSA (Annotated), which provides for “Other made up clothing accessories: Other accessories: Other: Other, of man-made fibers: Other.” CBP has reviewed NY N258826 and has determined the ruling letter to be in error. It is now CBP’s position that the arm sleeves are properly classified in heading 6307, HTSUS, specifically in subheading 6307.90.9889, HTSUS (Annotated), which provides for “Other made up articles, including dress patterns: Other: Other: Other: Other.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke NY N258826 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed HQ H262218, 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: August 2, 2019

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachments

ATTACHMENT A

N258826

November 24, 2014

CLA-2-61:OT:RR:NC:N3:348

CATEGORY: Classification

TARIFF NO.: 6117.80.9540

MS. MONA ASBERRY
FRACHT USA
150 BOUSH STREET
SUITE 203
NORFOLK, VA 23510

RE: The tariff classification of arm sleeves from Pakistan.

DEAR MS. ASBERRY:

In your letter dated October 30, 2014, you requested a tariff classification ruling. The sample will be returned to you, as requested.

The submitted sample, identified as FANSLEEVES, is a pair of arm sleeves. The sleeves are composed of 85% polyester, 15% spandex knit fabric. The tapered sleeves measure 15" in length and are designed to be worn on the arms of sports fans during sporting events.

In your letter, you suggested classification of the FANSLEEVES under 6307.90.9889, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other made up textile articles, other. We disagree with your proposed classification. GRI 1 provides that classification is determined according to the terms of the headings and any relevant section or chapter notes. Explanatory Notes (EN) to the HTSUS provides guidance in the interpretation of the Harmonized Commodity Description and Coding System at the international level. The EN for heading 6117 provides for made up knitted or crocheted clothing accessories and state that the heading includes sleeves protectors.

The applicable subheading for the FANSLEEVES will be 6117.80.9540, HTSUS, which provides for Other made up clothing accessories, knitted or crocheted; knitted or crocheted parts of garments or of clothing accessories: Other accessories: Other: Other, Of man-made fibers: Other. The duty rate will be 14.6% ad valorem.

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

In response to your request on whether the proposed marking of the container with the country of origin in lieu of marking the article itself is acceptable. You state the fan sleeves will enter the U.S. packaged for sale in a hard plastic case. Each case will contain a thin piece of cardboard that will wrap around the sleeve, clearly marked with the country of origin, "Made in Pakistan" to be easily seen by the consumer. A marked sample of the plastic case was with your letter for review.

The marking statute, section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, 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 its container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article.

Part 134, Customs Regulations (19 CFR Part 134), implements the country of origin marking requirements and exceptions of 19 U.S.C. 1304. Section 134.41(b), Customs Regulations (19 CFR 134.41(b)), mandates that the ultimate purchaser in the U.S. must be able to find the marking easily and read it without strain. Section 134.1(d), defines the ultimate purchaser as generally the last person in the U.S. who will receive the article in the form in which it was imported. If an imported article is to be sold at retail in its imported form, the purchaser at retail is the ultimate purchaser. In this case, the ultimate purchaser of the fan sleeves is the consumer who purchases the product at retail.

An article is excepted from marking under 19 U.S.C. 1304 (a)(3)(D) and section 134.32(d), Customs Regulations (19 CFR 134.32(d)), if the marking of a container of such article will reasonably indicate the origin of such article. Accordingly, if Customs is satisfied that the article will remain in its container until it reaches the ultimate purchaser and if the ultimate purchaser can tell the country of origin of the fan sleeves by viewing the container in which it is packaged, the individual fan sleeve would be excepted from marking under 19 U.S.C. 1304 (a)(3)(D) and 19 CFR 134.32(d). Accordingly, marking the container in which the fan sleeves are imported and sold to the ultimate purchaser in lieu of marking the article itself is an acceptable country of origin marking for the imported fan sleeves provided the port director is satisfied that the article will remain in the marked container until it reaches the ultimate purchaser.

In reference to the fiber content, information on these labeling requirements may be obtained at the Federal Trade Commission website at www.ftc.gov. For information on the acceptability of the marking on this product, you should contact the Federal Trade Commission, Division of Enforcement, 6th and Pennsylvania Ave, N.W., Washington, D.C. 20508 to ascertain whether the proposed marking satisfies their requirements.

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 Rosemarie Hayward via email at rosemariecasey.hayward@cbp.dhs.gov.

Sincerely,

GWENN KLEIN KIRSCHNER

Director

National Commodity Specialist Division

ATTACHMENT B

HQ H262218
OT:RR:CTF:FTM H262218 JER
CATEGORY: Classification
TARIFF NO.: 6307.90.98

MS. LISA HAMPTON
FTZ COMPLIANCE & DEVELOPMENT
FRACHT FORWARDING, INC.
150 BOUSH ST.
NORFOLK, VA 23510

RE: Revocation of NY N258826; classification of arm sleeves

DEAR MS. HAMPTON:

This is in response to your request of January 5, 2015, for reconsideration of New York Ruling Letter (“NY”) N258826, issued on November 24, 2014, to your client, T-Shirts International, concerning the classification of certain merchandise under the Harmonized Tariff Schedule of the United States (“HTSUS”). In NY N258826, U.S. Customs and Border Protection (“CBP”) classified the imported arm sleeves under heading 6117, HTSUS, in particular, under subheading 6117.80.9540, HTSUS, as, “Other made up clothing accessories: Other accessories: Other: Other, of man-made fibers: Other.” It is your contention that heading 6117, HTSUS, is not the proper heading and that it does not describe the merchandise at issue. You contend that the merchandise is properly classified under heading 9505, HTSUS, as a festive article. In reaching our decision, we considered the information presented in your January 5, 2015 submission as well additional information obtained during our research. For the reasons set forth below, we hereby revoke NY N258826.

FACTS:

The merchandise at issue is a pair of arm sleeves marketed as the FANSLEEVE (hereinafter, “Fan-Sleeve”). The arm sleeves are composed of 85% polyester and 15% spandex knit fabric. The tapered sleeves measure 15 inches in length and are designed to be worn on each arm covering the top of the bicep, elbow, forearm and wrist area. The website of the producer of the subject arm sleeves, Pro-Sleeves, the parent company of FANSLEEVE, indicates that the fundamental use of the Fan-Sleeve is to provide compression support during training, fitness, exercise and other sports related activities. The sample submitted, along with images available on both Pro-Sleeves.com and fansleeves.net, indicate that each of the varying arm sleeves bear a logo and/or mascot of one of the many National Collegiate Athletic Association (“NCAA”) sports teams (e.g., the University of Florida Gators, the Texas A&M Aggies, etc.). The retail labeling on the sample provided states: “Premium Fan Apparel for Game Day or Any Day.” In your January 5, 2015 submission, the Fan-Sleeve is described as being intended for use to celebrate or acknowledge [fan’s] enthusiasm and support for a particular team, sport or affiliation during various types of festivities as a novelty item.

ISSUE:

Whether the subject merchandise is classifiable under heading 6117, HTSUS, as a clothing accessory, or under heading 6307, HTSUS, as other made-up articles or under 9505, HTSUS, as a festive article.

LAW AND ANALYSIS:

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

The 2019 HTSUS provisions under consideration are as follows:

6117	Other made up clothing accessories, knitted or crocheted; knitted or crocheted or parts of garments or of clothing accessories:
6117.80	Other accessories: * * *
	Other...
6117.80.95	Other... Of man-made fibers:
6117.80.95.40	Other
6307	Other made up articles, including dress patterns:
6307.90	Other: Other...
6307.90.98	Other... Other:
6307.90.98.89	Other...
9505	Festive, carnival or other entertainment articles, including magic tricks and practical jokes; parts and accessories thereof:
9505.90	Other:
9505.90.60.00	Other...

Chapter 95, Note 1 provides, in pertinent part, as follows:

1. This chapter does not cover:

* * *

(e) Sports clothing or fancy dress, of textiles, of chapter 61 or 62;

* * *

Chapter 90, Note 1 provides, in pertinent part, as follows:

Notes

1. This chapter does not cover:

* * *

(b) Supporting belts or other support articles of textile material, whose intended effect on the organ to be supported or held derives solely from their elasticity (for example, maternity belts, thoracic support bandages, abdominal support bandages, support for joints or muscles (section XI);

* * *

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 or dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

The EN to 63.07 states, in relevant part, that:

This heading covers made up articles of any textile material which are **not included** more specifically in other headings of Section XI or elsewhere in the Nomenclature.

It includes, in particular:

* * *

(26) Support articles of the kind referred to in Note 1(b) to Chapter 90 for joints (e.g., knees, ankles, elbows or wrist) or muscles (e.g., thigh muscles), other than those falling in other headings of Section XI.

* * *

The EN to 95.05 states, in relevant part, that:

This heading covers:

(A) **Festive, carnival or other entertainment articles**, which in view of their intended use are generally made of non-durable material. They include:

- (1) Festive decorations used to decorate rooms, tables, etc. (such as garlands, lanterns, etc.); decorative articles for Christmas trees (tinsel, coloured balls, animals and other figures, etc); cake decorations which are traditionally associated with a particular festival (e.g., animals, flags).
- (2) Articles traditionally used at Christmas festivities, e.g., artificial Christmas trees, nativity scenes, nativity figures and animals, angels, Christmas crackers, Christmas stockings, imitation yule logs, Father Christmases.
- (3) Articles of fancy dress, e.g., masks, false ears and noses, wigs, false beards and moustaches (**not being** articles of postiche – **heading 67.04**), and paper hats. However, the heading **excludes** fancy dress of textile materials, of **Chapter 61** or **62**.

* * *

In your request for reconsideration of NY N258826, you contend that the subject Fan-Sleeve “closely resembles” the tattoo sleeves of NY N012644, dated June 19, 2007 and NY L88410 dated, October 27, 2005, in which CBP classified tattoo sleeves under heading 9505, HTSUS, which provides for: “Festive, carnival or other entertainment articles, including magic tricks and practical jokes; parts and accessories thereof.” As such, you assert that NY N258826 incorrectly classified the subject Fan-Sleeves as clothing accessories under heading 6117, HTSUS, and that the subject Fan-Sleeves should be classified under heading 9505, HTSUS, as a festive article.

Initially we note that not all costume articles associated with entertainment or celebratory occasions are classifiable as “festive articles” under heading 9505, HTSUS. However, when addressing the classification of arm sleeves generally, CBP has previously determined that headings 6117, 6307

and 9505, HTSUS are implicated. See e.g., Headquarters Ruling Letter (“HQ”) 963734, dated March 28, 2003 and NY N276138, June 10, 2016 (wherein CBP determined that certain arm sleeves were classified under heading 6117, HTSUS). In determining the proper classification of arm sleeves, CBP has examined the design, use, and primary purpose of the arm sleeve.

As concerns “festive articles” of heading 9505, HTSUS, the United States Court of Appeals for the Federal Circuit (“CAFC”) noted that the lower court “correctly ruled that articles with symbolic content associated with a particular recognized holiday, such as Christmas trees, Halloween jack-o-lanterns, or bunnies for Easter, were festive articles.” *Park B. Smith, Ltd. v. United States*, 347 F.3d 922, 929 (2003); citing, *Park B. Smith v. United States*, 25 C.I.T. 506 (2001). Similarly, in *Midwest of Cannon Falls v. United States*, 122 F.3d, 1423 (Fed. Cir. 1997), the court held that classification as a “festive article” under Chapter 95 requires that the article satisfy two criteria: (1) it must be closely associated with a festive occasion and (2) the article is used or displayed principally during that festive occasion. *Id.*, at 1429. The U.S. Court of International Trade further explained that the phrase “closely associated with a festive occasion” requires that “the physical appearance of an article is so intrinsically linked to a festive occasion that its use during other time periods would be aberrant.” *Park B. Smith v. United States*, 25 C.I.T. 506, 2001 Ct. Intl. Trade LEXIS 71, 23 Int’l Trade Rep. (BNA) 1545, SLIP OP. 2001–63 *Park B. Smith*, 25 C.I.T. 506 (citing, *Brookside Veneers, Ltd. v. United States*, 847 F.2d 786 (Fed. Cir. 1988)).

Under our facts, the subject Fan-Sleeve is not associated with any particular holiday. It is neither symbolic of any annually celebrated occasion, nor is it associated with any particular festive event. Instead, the subject Fan-Sleeve can be worn daily and is closely associated with sports teams and everyday fitness activities, while having the capacity to provide compression support to the arm, elbow and wrist area. Accordingly, the Fan-Sleeve is marketed as being “Premium Fan Apparel for Game Day or Any Day.” An article which is amenable to use on “game day” or “any day”, cannot be said to be an article that is closely associated with a festive occasion because there are hundreds if not thousands of sports games and training activities occurring throughout the calendar year. Likewise, if the Fan-Sleeve can be worn on “any day” then the article is not used or displayed principally during any particular festive occasion of the kind discussed in *Park B. Smith* and *Midwest*. Hence, wearing a Fan-Sleeve arm cover during athletic training, exercise activities or during a sports event does not transform the subject article into a festive article as defined by the courts in *Park B. Smith* and *Midwest*.

Furthermore, the subject Fan-Sleeve arm covers are not costumes or costume accessories akin to those found in NY N012644 and NY L88410. A costume is defined as being “an outfit worn to create the appearance or characteristic of a particular person, period, place or thing.” Merriam-Webster’s Collegiate Dictionary (10th Ed. 2001). Hence, the primary purpose of wearing a costume is the act of creating a characterization, appearance, or impersonation.

Unlike the tattoo sleeves of NY N012644 and NY L88410, the wearing of the subject Fan-Sleeves does not give the appearance or impression that the wearer is anything other than a person participating in fitness training or that of a fan of a particular sports team. By contrast, wearing an arm sleeve

that impersonates a tattoo is tantamount to wearing a costume or disguise. Hence, the tattoo sleeves of NY N012644 and NY L88410, by giving the appearance or impression that the wearer has tattoos on his or her arm, were determined to be a costume or an accessory to a costume. Moreover, the subject Fan-Sleeve arm covers are neither intended nor designed to deceive, characterize or impersonate a person, place or thing. As such, the subject Fan-Sleeves cannot be construed as being a costume for purposes of heading 9505, HTSUS.

Having eliminated the possibility of classification of the Fan-Sleeve under heading 9505, HTSUS, we now examine whether the sleeve is properly classified as a clothing accessory of heading 6117, HTSUS. In your submission, you state that the “tagline or slogan, ‘Wear Your Heart on Your Sleeve’ is a common phrase that does not indicate that the product is clothing or accessories of clothing.” In your statement, you opine that the subject Fan-Sleeve is not an accessory to any clothing item and is therefore not classifiable under heading 6117, HTSUS. We agree. Although the subject Fan-Sleeve can be worn in conjunction with a team jersey or other apparel associated with a team logo applied thereto, its fundamental design and purpose is not limited to use as a clothing accessory.

In HQ 963782, dated March 22, 2002, CBP addressed the distinction between clothing accessories of heading 6117, HTSUS, and other made up articles of heading 6307, HTSUS. In that regard, HQ 963782 noted that accessories must be related to or exhibit some connection to the primary clothing article and must be intended for use solely or principally as an accessory. For example, belts used as clothing accessories need not rely or depend on a particular article of clothing. However, they must clearly be intended for use solely or principally as an accessory to the clothing. Under our facts, there are no specific clothing articles for which the Fan-Sleeve is solely or principally used.

As we noted in HQ H281032, dated February 6, 2017, arm sleeves are often worn as fashion statements, even when a player or trainer does not have an injury. In HQ H281032, CBP noted that beyond any advantages related to compression or protective support, there is a placebo effect to wearing such sleeves, as some basketball players continue to wear them after an injury has healed to prevent future injuries. Steven Kotler, *Allen Iverson, Kobe Bryant, and Basketball’s Placebo Effect*, PSYCHOL. TODAY, Apr. 17, 2008, <https://www.psychologytoday.com/blog/the-playing-field/200804/allen-iverson-kobe-bryant-and-basketballs-placebo-effect>, (last visited 03/28/2018). Yet, fashion statements, logos, and artistic designs applied to compression sleeves, do not alter the fundamental purpose and primary function of the sleeve.

Similarly, in HQ 950659, dated January 21, 1992, CBP revoked HQ 086378, dated April 9, 1990, which classified arm covers under heading 6117, HTSUS. In making its decision to rescind HQ 086378, CBP considered whether the arm covers had a logical nexus with clothing. In short, the analysis in HQ 086378 inquired whether the article added to the clothing’s: (1) beauty, (2) convenience, or its (3) effectiveness. In its determination, CBP examined the function and use of the arm covers and concluded that the arm covers could not be considered clothing accessories because they did not satisfy any of the three requirements. Based on the standard set out in HQ 963782 and HQ 950659, the record establishes that the subject Fan-Sleeves are not solely or principally intended to be used with any particular clothing

item, and have no logical nexus to any other clothing article. Accordingly, we find that the subject Fan-Sleeves are not a clothing accessory and therefore do not meet the terms of heading 6117, HTSUS.

Hence, we turn to the remaining HTSUS heading for consideration, heading 6307, HTSUS. Heading 6307, HTSUS, is a residual provision for made-up textile articles that are not more specifically provided for in other headings of Section XI. *See* EN 63.07. The EN to heading 63.07, specifically states that the heading covers “support articles of the kind referred to in Note 1(b) to Chapter 90, HTSUS, for joints (e.g., knees, ankles, elbows or wrists) or muscles (e.g., thigh muscles), other than those falling in other headings of Section XI.” Note 1(b) to Chapter 90 defines “support articles” as being, “other support articles of textile material, whose intended effect on the organ to be supported or held derives solely from their elasticity (for example, maternity belts, thoracic support bandages, abdominal support bandages, supports for joints or muscles).”

The subject Fan-Sleeve is marketed, in part, as a compression sleeve with microfiber yarns that offer support. The Fan-Sleeve is marketed as having the capacity to “treat sore muscles.” Additional marketing states that “compression sleeves may help alleviate pain, recover faster from injuries, protect your forearms, and even improve blood circulation.” Likewise, compression arm sleeves are marketed as having the capacity to provide compression support to joints and muscles while their wearer is participating in physical fitness activities or athletic training. *See* FanSleeves at <https://www.amazon.com/d/Sports-Fan-T-Shirts/FanSleeves-Nebraska-Cornhuskers-Clothing> (last visited 11/08/2018); *see also*, Pro-Compression at <https://procompression.com/collections/arm-sleeves>. (last visited 03/28/2018). In fact, the *Wall Street Journal* reports that at least 65% of National Basketball Association players wear at least one shooting sleeve (on their shooting arm) for support and protection; while 57% wear sleeves on one or two legs. *Allen Iverson and the NBA's Sleeve Revolution*, Zolan Kanno-Younga, *Wall Street Journal*, 11/25/2015 <https://www.wsj.com/articles/allen-iverson-and-the-nbas-sleeve-revolution-1448488382> (last visited 11/08/2018).

Additionally, CBP has previously classified substantially similar support sleeves under heading 6307, HTSUS, for the same reasons presented herein. *See e.g.*, NY N240245, May 1, 2013; NY N057848, April 23, 2009; HQ 965110, May 21, 2002; and NY G80012, August 3, 2000 (wherein CBP classified arm sleeves as joint and muscle support articles under heading 6307, HTSUS). In NY N248199, dated December 12, 2013, for example, CBP classified a compression sleeve made up of 80% nylon and 20% spandex knit textile fabric designed to support joints and muscles under heading 6307, HTSUS. Likewise, in NY N221556, dated July 11, 2012, CBP classified a therapeutic compression arm sleeve under heading 6307, HTSUS, because the article was designed to provide compression support to the wearer’s arm. The arm sleeve in NY N221556 was constructed of 70% polypropylene and 30% elastane (spandex) knit textile fabric (referred to as “graduated compression” fabric). The aforementioned material used to construct the arm sleeve of NY N221556 is substantially similar to that which is used to construct the subject Fan-Sleeve (85% polyester and 15% spandex knit fabric).

Moreover, characteristics such as improved circulation, joint and muscle support, each fall squarely within the exemplars set forth in the ENs to heading 63.07. As previously noted, EN 63.07 specifically provides for articles such as the Fan-Sleeve in Note (26), i.e., support articles for joints of the

knees, elbows or wrist. In this regard, CBP has previously classified similar support articles under heading 6307, HTSUS, utilizing the same analysis as offered here. In HQ 965234, dated December 5, 2001, for example, CBP classified a hinged knee support garment under heading 6307, HTSUS, reasoning that the hinged knee support garment was not an orthopedic appliance of heading 9021, HTSUS, or a body supporting garment of heading 6212, HTSUS. Instead, HQ 965234 determined that the hinged knee support was not covered by any more specific heading, and thus it was classifiable in heading 6307, HTSUS, as a support article as described in EN 63.07 Note (26). Likewise, HQ 952568, dated January 28, 1993, determined that knee and joint braces used for sprains and bursitis were properly classified in heading 6307, HTSUS, as they met the definition of support articles as described in Note 1(b) to Chapter 90, HTSUS.

Lastly, in HQ 964317, dated May 1, 2001, CBP classified a knee brace and an ankle brace in heading 6307, HTSUS. Much like the subject Fan-Sleeve, the knee and ankle braces of HQ 964317 were made up of 90% neoprene and 10% nylon elastic. Each brace was designed to allow normal joint bending yet restrict side to side movement during sport activities. As a result, CBP reasoned that the knee and ankle braces of HQ 964317 were support articles as described in EN 63.07. According to the facts of this case, we find the subject Fan-Sleeve to be substantially similar in design, function and in principal use to the aforementioned merchandise. As such, we find that the subject Fan-Sleeve meets the definition for support articles as set forth in EN 63.07 Note (26) and is therefore classified under heading 6307, HTSUS.

HOLDING:

By application of GRI 1 and Note 1(b) to Chapter 90, we find that the instant arm sleeve is provided for in heading 6307, HTSUS, specifically, under subheading 6307.90.98.89, HTSUS (Annotated), which provides for: "Other made up articles, including dress patterns: Other: Other: Other: Other." The 2019 column one, general rate of duty is 7% *ad valorem*.

EFFECT ON OTHER RULINGS:

NY N258826, dated November 24, 2014, is hereby Revoked.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**PROPOSED REVOCATION OF ONE RULING LETTER AND
PROPOSED MODIFICATION OF ONE RULING LETTER
AND REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF GLOVES AND MITT**

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

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

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 and modify one ruling letter concerning the tariff classification of gloves and a mitt 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 September 20, 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: Karen S. Greene, Chemicals, Petroleum, Metals & Miscellaneous Articles Branch, Regulations and Rulings, Office of Trade, at (202) 325–0041.

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 and modify one ruling letter pertaining to the tariff classification of gloves and a mitt. Although in this notice, CBP is specifically referring to New York Ruling Letter (“NY”) NY B87119, dated July 8, 1997 (Attachment A), and NY N006668, dated February 14, 2007 (Attachment B), this notice also covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the three ruling letters 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 B87119, CBP classified a large, white, acrylic pile mitt which is worn on the hand to create the appearance of the three digit hand of the cartoon character “Mickey Mouse, in subheading 9505.90.60, HTSUS as “Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: Other: Other.”

In NY N006668, CBP classified gloves described as cartoon hands which are an oversized pair of polyester knit fabric cartoon style gloves in subheading 9505.90.60, HTSUS as “festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: Other: Other.”

CBP has reviewed NY B87119 and NY N006668 and has determined the ruling letters to be in error. It is now CBP’s position that the gloves and mitt described above are properly classified in heading

6116, specifically subheading 6616.93.88, HTSUS, which provides for: “Gloves, mittens and mitts, knitted or crocheted: Other: Of synthetic fibers: Other: Without fourchettes.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY B87119, and modify NY N006668, and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed HQ H261881, 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: August 2, 2019

ALLYSON R. MATTANAH
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

ATTACHMENT A

NY B87119

July 8, 1997

CLA-2-95:RR:NC:SP:225 B87119

CATEGORY: Classification

TARIFF NO.: 9505.90.6090

LAUREN E. HONG
CUSTOMS REPRESENTATIVE
THE WALT DISNEY COMPANY
101 NORTH BRAND BOULEVARD
SUITE 1000
GLENDALE, CA 91203-2671

RE: The tariff classification of Mickey Mitts from China

DEAR MS. HONG:

In your letter dated June 26, 1997 you requested a tariff classification and marking ruling.

The item, Mickey Mitts, are large white stuffed acrylic pile items which are worn on the hands. The costume item gives the wearer's hands the same appearance of the hands of that well known cartoon character Micky Mouse, a thumb and three digits.

The applicable subheading for the Mickey Mitts will be 9505.90.60.90, Harmonized Tariff Schedule of the United States (HTS), which provides for Festive, carnival or other entertainment articles, Other: Other: Other. The rate of duty will be free.

The marking statute, section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, 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 its container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article.

As provided in section 134.41(b), Customs Regulations (19 CFR 134.41(b)), the country of origin marking is considered conspicuous if the ultimate purchaser in the U.S. is able to find the marking easily and read it without strain.

With regard to the permanency of a marking, section 134.41(a), Customs Regulations (19 CFR 134.41(a)), provides that as a general rule marking requirements are best met by marking worked into the article at the time of manufacture. For example, it is suggested that the country of origin on metal articles be die sunk, molded in, or etched. However, section 134.44, Customs Regulations (19 CFR 134.44), generally provides that any marking that is sufficiently permanent so that it will remain on the article until it reaches the ultimate purchaser unless deliberately removed is acceptable.

The marking on the submitted sample is conspicuously, legibly and permanently marked in satisfaction of the marking requirements of 19 U.S.C. 1304 and 19 CFR Part 134 and is an acceptable country of origin marking for the imported Mickey Mitts. Your sample is returned as requested.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is

imported. If you have any questions regarding the ruling, contact National Import Specialist Alice J. Wong at 212 466-5538.

Sincerely,

GWENN KLEIN KIRSCHNER
*Chief, Special Products Branch
National Commodity
Specialist Division*

ATTACHMENT B

N006668

February 14, 2007

CLA-2-95:RR:NC:N2:225

CATEGORY: Classification

TARIFF NO.: 9505.90.6000

MS. IRENE TSIAVOS
FUNWORLD
80 VOICE ROAD
CARLE PLACE, NY 11514

RE: The tariff classification of Cartoon Hands (8066), Werewolf Gloves (8274), and Character Gauntlets (8040) imported from China

DEAR MS. TSIAVOS:

In your letter dated February 7, 2007 you requested a tariff classification ruling.

The Cartoon Hands (8066) are an oversized pair of cartoon style gloves, 12" wide and 11" in length, with one thumb and three fingers made from 100% polyester knit fabric and stuffed with foam. The Cartoon Hands are to be used as an accessory to a costume.

The Werewolf Gloves (8274) have fake fur cuffs and plastic hands molded with long fingernails. The backing for this glove is made of 100% polyester knit fabric. The Werewolf gloves come in silver or brown and are intended to be used as an accessory to a werewolf costume.

The Character Gauntlets (8040) come in two styles, Ninja and Skull. Each pair of Gauntlets are made of molded plastic and have 100% polyester knit glove tacked on to facilitate wearing them. Also, elastic across the forearm secures the top portion to the arm. The pair of Gauntlets is elbow length and when worn give the appearance of metal covered hands and will be used as an accessory to a costume.

The applicable subheading for the Cartoon Hands (8066), Werewolf Gloves (8274), and Character Gauntlets (8040), will be 9505.90.6000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: Other: Other." The rate of duty will be Free.

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 Wayne Kessler at 646-733-3026.

Sincerely,

ROBERT B. SWIERUPSKI
*Director,
National Commodity
Specialist Division*

ATTACHMENT C

HQ H261881
OT:RR:CTF:CPMM H261881 KSG
CATEGORY: Classification
TARIFF NO.: 6116.93.88

LAUREN E. HONG
CUSTOMS REPRESENTATIVE
THE WALT DISNEY COMPANY
101 NORTH BRAND BOULEVARD
SUITE 1000
GLENDALE CA 91203

IRENE TSIAVOS
FUNWORLD
80 VOICE ROAD
CARLE PLACE NY 11514

RE: Proposed revocation of NY B87119 and proposed modification of
NY N006668

DEAR MADAMS:

This ruling is in reference to the proposed revocation of New York Ruling Letter (NY) B87119, dated July 8, 1997, regarding the tariff classification of a “Mickey” mitt which is a reference to the Mickey Mouse character; and the proposed modification of a pair of “cartoon hand” gloves classified in NY N006668, dated February 14, 2007.¹

In NY B87119, and NY N006668, U.S. Customs & Border Protection (CBP) classified the Mickey mitt and cartoon hand gloves in subheading 9505.90.60, HTSUS, which provides for “Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: Other: Other.”

We have reviewed NY B87119, and NY N006668, and determined that the rulings are in error. Accordingly, for the reasons set forth below, CBP is revoking NY B87119, and modifying NY N006668.

FACTS:

NY B87119 involves a large, white, acrylic pile mitt which is worn on the hand to create the appearance of the three digit hand of the cartoon character “Mickey Mouse.” It allows for the insertion of the thumb and separate insertion of the fingers.

The cartoon hands classified in NY N006668 are an oversized pair of “cartoon hand” style gloves, 12” wide and 11” in length, with one thumb and three fingers made from 100 percent polyester knit fabric and stuffed with foam. It also allows for the insertion of the thumb and separate insertion of the fingers.

¹ We note that NY N006668 also provides the tariff classification for werewolf gloves, ninja gloves and skull gloves which may also be excluded from Chapter 95, HTSUS, pursuant to chapter note 1(v), HTSUS. In NY B81326, dated February 6, 1997, CBP classified a singular glove known as a “Freddy’s” glove, which refers to a character from the movie “A Nightmare on Elm Street” in heading 9505, HTSUS. It may also be excluded from Chapter 95, HTSUS, pursuant to Note 1(v). However, we have insufficient information regarding the constituent materials of the gloves considered in the above rulings to classify them.

ISSUE:

Whether the mitt and gloves, described above, are properly classified in heading 6116, HTSUS, as gloves or a mitt or in heading 9505, HTSUS, as festive articles.

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.

GRI 6 provides that for legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to the above Rules, on the understanding that only subheadings at the same level are comparable. For the purposes of this Rule the relative section and chapter notes also apply, unless the context otherwise requires.

The HTSUS headings under consideration are the following:

- 6116 Gloves, mitten and mitts, knitted or crocheted:
- 9505 Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof:
Other.

Chapter note 1(v), chapter 95, HTSUS, provides that the chapter does not cover “gloves, mittens and mitts (classified according to their constituent materials).” The chapter notes have the same legal force as the text of the headings. *See Roche Vitamins, Inc. v. United States*, 772 F.3d 728 at 730 (Fed. Cir. 2014).

In *Rubies Costume Co. v. United States*, 279 F. Supp. 3d 1145 (Ct. Intl Trade 2017), *aff’d*, No. 2018–1305, 2019 U.S. App. LEXIS 12747 (Fed. Cir. April 29, 2019), the court considered whether a Santa Claus costume was classified as a festive article in heading 9505, HTSUS. White knit 100 percent polyester gloves, which were a part of the costume, were classified in heading 6116, HTSUS. The court cited to the exclusionary language in chapter note 1(u) (now chapter 95 note 1(v)), as the basis for the decision to classify the gloves in heading 6116, HTSUS.

In understanding the language of the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System, 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 for heading 6116, HTSUS, states that the heading includes ordinary short gloves with separate fingers, mittens covering only part of the fingers, mitts with separation for the thumb only and gauntlet or other long gloves that may cover the forearm or even part of the upper arm.

In Headquarters Ruling Letter (HQ) 957261, dated August 11, 1995, CBP affirmed the classification of a power ranger sound effect glove in subheading

6116.10, HTSUS. The ruling examined the definition of “gloves” and found that the article had a separate sheath for each finger and for the thumb and that the article was a glove. Then, CBP applied chapter note 1(v) and interpreted it to mean that the exclusionary language to chapter 95, HTSUS, operated to specifically exclude the power ranger glove from chapter 95, HTSUS.² Accordingly, if the article to be classified is a glove, mitten or mitt, the article is excluded from classification in chapter 95, HTSUS.³

Since the articles involved are either gloves or a mitt, classification in chapter 95, HTSUS, is expressly precluded by chapter note 1(v), and the articles would be classified by their constituent material.⁴ Both the Mickey mitt and the cartoon hands gloves have a separate enclosed opening for the fingers and for the thumb like the article in HQ 957261.

Both the “Mickey” mitt and cartoon gloves are unlikely to be coated or to have a fourchette. Based on the information provided regarding the materials, they would be classified in subheading 6116.93.88, HTSUS, which provides for “Gloves, mittens and mitts, knitted or crocheted: Other: Of synthetic fibers: Other: Without fourchettes.”

HOLDING:

We are revoking NY B87119, and modifying NY N006668. The Mickey mitt and cartoon gloves are classified in subheading 6116.93.88, HTSUS. The column one, general rate of duty is 18.6%.

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 for at www.usitc.gov.

EFFECT ON OTHER RULINGS:

NY B87119 is revoked and NY N006668 is modified in accordance with the above analysis.

Sincerely,

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

² HQ 957261 considered whether the articles were classified in heading 6116 as a glove or in heading 9503 as a toy. CBP concluded that the article was a “glove containing a sound device that provides some amusement” and not a toy.

³ We note that in NY N050418, dated February 13, 2009, CBP classified a pair of three dimensional PVC toy hands in Chapter 95 (heading 9503), HTSUS. Three dimensional PVC toy hands are distinguishable from gloves, mitts or mittens and thus are not excluded from chapter 95 by chapter note 1(v).

⁴

19 CFR PART 177

REVOCATION OF TWO RULING LETTERS AND 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 revocation of two ruling letters and 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) is revoking two ruling letters concerning the tariff classification of plastic spray actuators 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. 53, No. 9, on April 3, 2019. One comment was received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after October 21, 2019.

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

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

Pursuant to 19 U.S.C. § 1625(c)(1), a notice was published in the *Customs Bulletin*, Vol. 53, No. 9, on April 3, 2019, proposing to revoke two ruling letters pertaining to the tariff classification of plastic spray actuators. 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") 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 revoking NY 874164 and NY R00270 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter ("HQ") H294716, set forth as an attachment to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: July 30, 2019

GREG CONNOR
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H294716

July 30, 2019

OT:RR:CTF:EMAIN H294716 SK

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 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 and 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. Upon reconsideration, CBP has 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.

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice proposing to revoke NYs 874164 and R00270 was published on April 3, 2019, in Volume 53, Number 9 of the Customs Bulletin. One comment was received in opposition to the proposed action.

FACTS:

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

In NY R00270, 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.

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.

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 commentary on the scope of each HTSUS heading 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.

One comment was received in response to CBP's solicitation of comments. The commenter asserts NY 874164 should not be revoked as the actuator at issue in that ruling is properly classified under subheading 8424.90, HTSUS, as parts of mechanical appliances, whether or not hand operated, for projecting, dispersing or spraying liquids or powders, by application of Section XVI Note 2(b), *supra*. In support of this classification, the commenter states that CBP created an "artificial distinction between aerosol cans and their valves" when it held that the actuator is dedicated for use with spray can valves of heading 8481, HTSUS, and that this characterization ignores the commercial reality that "actuators would only be attached to the aerosol can valves after they had already been inserted into and affixed to the cans" and that "actuators would never be attached to valves that are not already in the cans." The

commenter further submits that aerosol cans, imported complete with actuators, are classified under subheading 8424.89, HTSUS, as a mechanical appliances and therefore actuators imported separately should be classified as parts thereof in subheading 8424.90, HTSUS. In support of this argument, the commenter cites to Headquarters Ruling Letter (HQ) W968211, dated February 6, 2007, in which CBP classified battery-operated motorized automatic aerosol dispensers, imported without aerosol can and batteries, as “parts” of subheading 8424.90, HTSUS. In that ruling, CBP determined that the subject dispenser itself does not have the ability to project, disperse or spray liquids or powders and, as such, does not have the essential character of a good of heading 8424, HTSUS. The commenter also cites to HQ W968210, dated February 6, 2007, in which CBP classified substantially similar battery-operated motorized automatic aerosol dispensers in subheading 8424.90, HTSUS, pursuant to the same legal analysis. The commenter also refers to NY N047571, dated January 13, 2009, where CBP classified an automatic aerosol air freshener dispenser featuring an integrated circuit board, motor, and timer, imported as a complete system with an aerosol cannister, in subheading 8424.89, HTSUS, and where the same dispensing system, imported without the cannister, was classified in subheading 8424.90, HTSUS. Lastly, the commenter states that classification of the subject actuators as parts of heading 8424, HTSUS, would be consistent with that heading’s ENs which provide that parts of the heading include “spray nozzles.”

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 as well as actuators that also serve as a cap. 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 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 or spraying 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 for spraying. Therefore, by application of this legal note, the actuators are classified in subheading 8424.89, HTSUS, which provides for, in pertinent part, other hand-operated mechanical appliances for dispersing or spraying liquids.¹

¹ In NY N051959, dated March 5, 2009, CBP similarly classified in subheading 8424.89, HTSUS, a wand-shaped spray can actuator that operated in the same manner as the subject actuators (i.e., hand-operated button depresses a valve which releases the liquid to be sprayed by the actuator).

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.

As the subject actuators are themselves appliances of heading 8424, HTSUS, and classified under that heading pursuant to Note 2(a) to Section XVI, we need not examine 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*.

For this same reason, we do not reach the question of whether the subject actuators are classified as parts of mechanical appliances in subheading 8424.90, HTSUS, by application of Section XVI Note 2(b), and the commenter's submissions on this point are rendered moot.

Lastly, we 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 subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided at www.usitc.gov.

EFFECT ON OTHER RULINGS:

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

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

Sincerely,

GREG CONNOR

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

COBRA FEES TO BE ADJUSTED FOR INFLATION IN FISCAL YEAR 2020 CBP DEC. 19-08

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

ACTION: General notice.

SUMMARY: This document announces that U.S. Customs and Border Protection (CBP) is adjusting certain customs user fees and corresponding limitations established by the Consolidated Omnibus Budget Reconciliation Act (COBRA) for Fiscal Year 2020 in accordance with the Fixing America's Surface Transportation Act (FAST Act) as implemented by CBP regulations.

DATES: The adjusted amounts of customs COBRA user fees and their corresponding limitations set forth in this notice for Fiscal Year 2020 are required as of October 1, 2019.

FOR FURTHER INFORMATION CONTACT: Tina Ghiladi, Director—Office of Finance, 202-344-3722, *UserFeeNotices@cbp.dhs.gov*.

SUPPLEMENTARY INFORMATION:

Background

On December 4, 2015, the Fixing America's Surface Transportation Act (FAST Act, Pub. L. 114-94) was signed into law. Section 32201 of the FAST Act amended section 13031 of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985 (19 U.S.C. 58c) by requiring certain customs COBRA user fees and corresponding limitations to be adjusted by the Secretary of the Treasury (Secretary) to reflect certain increases in inflation.

Sections 24.22 and 24.23 of title 19 of the Code of Federal Regulations (19 CFR 24.22 and 24.23) describe the procedures that implement the requirements of the FAST Act. Specifically, paragraph (k) in section 24.22 (19 CFR 24.22(k)) sets forth the methodology to determine the change in inflation as well as the factor by which the fees and limitations will be adjusted, if necessary. The fees and limitations subject to adjustment, which are set forth in Appendix A and Appendix B of part 24, include the commercial vessel arrival fees, commercial truck arrival fees, railroad car arrival fees, private vessel arrival fees, private aircraft arrival fees, commercial aircraft and vessel passenger arrival fees, dutiable mail fees, customs broker permit user fees, barges and other bulk carriers arrival fees, and merchandise processing fees, as well as the corresponding limitations.

Determination of Whether an Adjustment Is Necessary for Fiscal Year 2020

In accordance with 19 CFR 24.22, CBP must determine annually whether the fees and limitations must be adjusted to reflect inflation. For fiscal year 2020, CBP is making this determination by comparing the average of the Consumer Price Index—All Urban Consumers, U.S. All items, 1982–84 (CPI–U) for the current year (June 2018–May 2019) with the average of the CPI–U for the comparison year (June 2017–May 2018) to determine the change in inflation, if any. If there is an increase in the CPI of greater than one (1) percent, CBP must adjust the customs COBRA user fees and corresponding limitations using the methodology set forth in 19 CFR 24.22(k). Following the steps provided in paragraph (k)(2) of section 24.22, CBP has determined that the increase in the CPI between the most recent June to May 12-month period (June 2018–May 2019) and the comparison year (June 2017–May 2018) is 2.02¹ percent. As the increase in the CPI is greater than one (1) percent, the customs COBRA user fees and corresponding limitations must be adjusted for Fiscal Year 2020.

Determination of the Adjusted Fees and Limitations

Using the methodology set forth in section 24.22(k)(2) of the CBP regulations (19 CFR 24.22(k)), CBP has determined that the factor by which the base fees and limitations will be adjusted is 7.167 percent (base fees and limitations can be found in Appendix A and B to part 24 of title 19). In reaching this determination, CBP calculated the values for each variable found in paragraph (k) of 19 CFR 24.22 as follows:

- The arithmetic average of the CPI–U for June 2018–May 2019, referred to as (A) in the CBP regulations, is 252.922;
- The arithmetic average of the CPI–U for Fiscal Year 2014, referred to as (B), is 236.009;
- The arithmetic average of the CPI–U for the comparison year (June 2017–May 2018), referred to as (C), is 247.540;
- The difference between the arithmetic averages of the CPI–U of the comparison year (June 2017–May 2018) and the current year (June 2018–May 2019), referred to as (D), is 5.382;
- This difference rounded to the nearest whole number, referred to as (E), is 5;

¹ The figures provided in this notice may be rounded for publication purposes only. The calculations for the adjusted fees and limitations were made using unrounded figures, unless otherwise noted.

- The percentage change in the arithmetic averages of the CPI–U of the comparison year (June 2017–May 2018) and the current year (June 2018–May 2019), referred to as (F), is 2.02 percent;
- The difference in the arithmetic average of the CPI–U between the current year (June 2018–May 2019) and the base year (Fiscal Year 2014), referred to as (G), is 16.914; and
- Lastly, the percentage change in the CPI–U from the base year (Fiscal Year 2014) to the current year (June 2018–May 2019), referred to as (H), is 7.167 percent.

Announcement of New Fees and Limitations

The adjusted amounts of customs COBRA user fees and their corresponding limitations for Fiscal Year 2020 as adjusted by 7.167 percent set forth below are required as of October 1, 2019. Table 1 provides the fees and limitations found in 19 CFR 24.22 as adjusted for Fiscal Year 2020 and Table 2 provides the fees and limitations found in 19 CFR 24.23 as adjusted for Fiscal Year 2020.

TABLE 1—CUSTOMS COBRA USER FEES AND LIMITATIONS FOUND IN 19 CFR 24.22 AS ADJUSTED FOR FISCAL YEAR 2020

19 U.S.C. 58c	19 CFR 24.22	Customs COBRA user fee/ limitation	New fee/ limitation adjusted in accordance with the FAST Act
(a)(1).....	(b)(1)(i)	Fee: Commercial Vessel Arrival Fee	\$468.32
(b)(5)(A).....	(b)(1)(ii)	Limitation: Calendar Year Maximum for Commercial Vessel Arrival Fees.....	6,381.77
(a)(8).....	(b)(2)(i)	Fee: Barges and Other Bulk Carriers Arrival Fee.....	117.88
(b)(6).....	(b)(2)(ii)	Limitation: Calendar Year Maximum for Barges and Other Bulk Carriers Arrival Fees.	1,607.50

19 U.S.C. 58c	19 CFR 24.22	Customs COBRA user fee/ limitation	New fee/ limitation adjusted in accordance with the FAST Act
(a)(2).....	(c)(1)	Fee: Commercial Truck Arrival Fee ²	³ 5.85
(b)(2).....	(c)(2) and (3) ...	Limitation: Commercial Truck Calendar Year Prepayment Fee ⁴	107.17
(a)(3).....	(d)(1).....	Fee: Railroad Car Arrival Fee ...	8.84
(b)(3).....	(d)(2) and (3)...	Limitation: Railroad Car Calen- dar Year Prepayment Fee.....	107.17
(a)(4).....	(e)(1) and (2)...	Fee and Limitation: Private Vessel or Private Aircraft First Arrival/Calendar Year Prepayment Fee.	29.47
(a)(6).....	(f)	Fee: Dutiable Mail Fee.....	5.89
(a)(5)(A).....	(g)(1)(i)	Fee: Commercial Vessel or Commercial Aircraft Passen- ger Arrival Fee	5.89
(a)(5)(B).....	(g)(1)(ii)	Fee: Commercial Vessel Passen- ger Arrival Fee (from one of the territories and possessions of the United States).....	2.07
(a)(7).....	(h).....	Fee: Customs Broker Permit User Fee.....	147.89

TABLE 2—CUSTOMS COBRA USER FEES AND LIMITATIONS FOUND IN
19 CFR 24.23 AS ADJUSTED FOR FISCAL YEAR 2020

19 U.S.C. 58c	19 CFR 24.23	Customs COBRA user fee/ limitation	New fee/ limitation adjusted in accordance with the FAST Act
(b)(9)(A)(ii).....	(b)(1)(i)(A)	Fee: Express Consignment Carrier/Centralized Hub Fa- cility Fee, Per Individual Waybill/Bill of Lading Fee.	\$1.07

² The Commercial Truck Arrival fee is the CBP fee only, it does not include the United States Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS) agricultural quarantine and inspection (AQI) fee that is collected by CBP on behalf of USDA. See 7 CFR 354.3(c) and 19 CFR 24.22(c)(1). Once 19 Single Crossing Fees have been paid and used for a vehicle identification number (VIN)/vehicle in a Decal and Transponder Online Procurement System (DTOPS) account within a calendar year, the payment required for the 20th (and subsequent) single-crossing is only the APHIS/AQI fee and no longer includes the CBP Commercial Truck Arrival fee (for the remainder of that calendar year).

³ The Commercial Truck Arrival fee is adjusted down from \$5.89 to the nearest lower nickel. See 82 FR 50523 (November 1, 2017).

⁴ See footnote 2 above.

19 U.S.C. 58c	19 CFR 24.23	Customs COBRA user fee/ limitation	New fee/ limitation adjusted in accordance with the FAST Act
(b)(9)(B)(i)	(b)(1)(i)(B)(2)...	Limitation: Minimum Express Consignment Carrier/ Centralized Hub Facility Fee ⁵ .	0.38
(b)(9)(B)(i)	(b)(1)(i)(B)(2)...	Limitation: Maximum Express Consignment Carrier/ Centralized Hub Facility Fee	1.07
(a)(9)(B)(i); (b)(8)(A)(i).	(b)(1)(i)(B)(1) ...	Limitation: Minimum Merchandise Processing Fee ⁶	26.79
(a)(9)(B)(i); (b)(8)(A)(i).	(b)(1)(i)(B)(1) ...	Limitation: Maximum Merchandise Processing Fee ^{7 8}	519.76
(b)(8)(A)(ii)	(b)(1)(ii)	Fee: Surcharge for Manual Entry or Release	3.21
(a)(10)(C)(i)	(b)(2)(i)	Fee: Informal Entry or Release; Automated and Not Prepared by CBP Personnel.	2.14
(a)(10)(C)(ii) ...	(b)(2)(ii)	Fee: Informal Entry or Release; Manual and Not Prepared by CBP Personnel.....	6.43
(a)(10)(C)(iii)..	(b)(2)(iii)	Fee: Informal Entry or Release; Automated or Manual; Prepared by CBP Personnel.	9.64
(b)(9)(A)(ii)	(b)(4)	Fee: Express Consignment Carrier/Centralized Hub Facility Fee, Per Individual Waybill/Bill of Lading Fee.	1.07

Tables 1 and 2, setting forth the adjusted fees and limitations for Fiscal Year 2020, will also be maintained for the public’s convenience on the CBP website at *www.cbp.gov*.

Dated: July 30, 2019.

ROBERT E. PEREZ,
Deputy Commissioner.

[Published in the Federal Register, August 2, 2019 (84 FR 37902)]

COMMERCIAL CUSTOMS OPERATIONS ADVISORY COMMITTEE (COAC)

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

⁵ Although the minimum limitation is published, the fee charged is the fee required by 19 U.S.C. 58c(b)(9)(A)(ii).

⁶ Only the limitation is increasing; the ad valorem rate of 0.3464% remains the same. See 82 FR 32661 (July 17, 2017).

⁷ *Id.*

⁸ For monthly pipeline entries, see: <https://www.cbp.gov/trade/entry-summary/pipeline-monthly-entry-processing/pipeline-line-qa>.

ACTION: Committee management; notice of Federal Advisory Committee meeting.

SUMMARY: The Commercial Customs Operations Advisory Committee (COAC) will hold its quarterly meeting on Wednesday, August 21, 2019 in Buffalo, New York. The meeting will be open to the public to attend in person or via webinar.

DATES: The COAC will meet on Wednesday, August 21, 2019, from 1:00 p.m. to 5:00 p.m. EDT. Please note that the meeting may close early if the committee has completed its business.

ADDRESSES: The meeting will be held at the Buffalo Niagara Convention Center, Convention Center Plaza, Buffalo, New York 14202. For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Ms. Florence Constant-Gibson, Office of Trade Relations, U.S. Customs & Border Protection, at (202) 344-1440 as soon as possible.

Pre-Registration: Meeting participants may attend either in person or via webinar after pre-registering using one of the methods indicated below:

For members of the public who plan to attend the meeting in person, please register by 5:00 p.m. EDT August 20, 2019, either: Online at <https://teregistration.cbp.gov/index.asp?w=166>; by email to tradeevents@dhs.gov; or by fax to (202) 325-4290. You must register prior to the meeting in order to attend the meeting in person.

For CBP personnel who plan to attend in-person, please register online by 5:00 p.m. EDT August 20, 2019, at <https://teregistration.cbp.gov/index.asp?w=165>.

For members of the public who plan to participate via webinar, please register online at <https://teregistration.cbp.gov/index.asp?w=167> by 5:00 p.m. EDT on August 20, 2019.

Please feel free to share this information with other interested members of your organization or association.

Members of the public who are pre-registered to attend and later need to cancel, please do so by August 20, 2019, utilizing the following links: <https://teregistration.cbp.gov/cancel.asp?w=166> to cancel an in-person registration; or <https://teregistration.cbp.gov/cancel.asp?w=167> to cancel a webinar registration. For CBP personnel who are registered to attend in-person and later need to cancel, please do so by utilizing the following link: <https://teregistration.cbp.gov/cancel.asp?w=165>.

To facilitate public participation, we are inviting public comment on the issues the committee will consider prior to the formulation of recommendations as listed in the Agenda section below.

Comments must be submitted in writing no later than August 20, 2019, and must be identified by Docket No. USCBP–2019–0021, and may be submitted by *one (1)* of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Email:* tradeevents@dhs.gov. Include the docket number in the subject line of the message.
- *Fax:* (202) 325–4290, Attention Florence Constant-Gibson.
- *Mail:* Ms. Florence Constant-Gibson, Office of Trade Relations, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.5A, Washington, DC 20229.

Instructions: All submissions received must include the words “Department of Homeland Security” and the docket number (USCBP–2019–0021) for this action. Comments received will be posted without alteration at <http://www.regulations.gov>. Please do not submit personal information to this docket.

Docket: For access to the docket or to read background documents or comments, go to <http://www.regulations.gov> and search for Docket Number USCBP–2019–0021. To submit a comment, click the “Comment Now!” button located on the top-right hand side of the docket page.

There will be multiple public comment periods held during the meeting on August 21, 2019. Speakers are requested to limit their comments to two (2) minutes or less to facilitate greater participation. Contact the individual listed below to register as a speaker. Please note that the public comment period for speakers may end before the time indicated on the schedule that is posted on the CBP web page, <http://www.cbp.gov/trade/stakeholder-engagement/coac>.

FOR FURTHER INFORMATION CONTACT: Ms. Florence Constant-Gibson, Office of Trade Relations, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.5A, Washington, DC 20229; telephone (202) 344–1440; facsimile (202) 325–4290; or Mr. Bradley Hayes, Executive Director and Designated Federal Officer at (202) 344–1440.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. Appendix. The Commercial Customs Operations Advisory Committee (COAC) provides advice to the Secretary of Homeland Security, the Secretary of the Treasury, and the Commissioner of U.S. Customs and Border Protection (CBP) on matters pertaining to the commercial operations of CBP and related functions within the Department of Homeland Security and the Department of the Treasury.

Agenda

1. The Next Generation Facilitation Subcommittee will discuss the Emerging Technologies Working Group's progress on various Blockchain Proof of Concept Projects and other initiatives. An update will be provided regarding the creation of the new Interagency Collaboration/One U.S. Government Working Group. This new working group is a collaborative effort between the government and the trade community to discuss operational and technical issues impacting one or more U.S. government agencies; including, but not limited to, the CBP trade strategy. Finally, CBP will provide an update on the efforts of E-Commerce projects and next steps for the COAC E-Commerce Working Group.

2. The Intelligent Enforcement (IE) Subcommittee will discuss the progress made on CBP's Joint Strategic Plan required under Section 105 of the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA). The subcommittee will also provide updates from the Anti-Dumping and Countervailing Duties (AD/CVD) and Bond Working Groups on risk-based bonding. Additionally, the Intellectual Property Rights (IPR) Working Group will discuss the progress made on prior recommendations and plans to address the Presidential Memorandum on Combatting Trafficking in Counterfeit and Pirated Goods. Lastly, the IE Subcommittee will discuss new topics to be addressed by the Forced Labor Working Group.

3. The Rapid Response Subcommittee will provide an update on progress made by the Northern Triangle Working Group and a preliminary report. The report will outline initial findings and actionable short, medium, and long-term recommendations.

4. The Secure Trade Lanes Subcommittee will present a summary of the activities of the Trusted Trader Working Group as well as the activities to date regarding the Customs Trade Partnership Against Terrorism (CTPAT) Trade Compliance Program. The subcommittee will also provide an update on the progress of the In-Bond Working Group's analysis of the current In-Bond processes and proposed changes. The newly launched Export Modernization Working Group will provide updates regarding the expansion of CBP's post departure filing program and other related subcommittee activities.

Meeting materials will be available by August 19, 2019, at: <http://www.cbp.gov/trade/stakeholder-engagement/coac/coac-public-meetings>.

Dated: July 30, 2019.

VALARIE NEUHART,
Acting Executive Director,
Office of Trade Relations.