

# U.S. Customs and Border Protection



## **REVOCATION OF ONE RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF POLYESTER/RAYON WOVEN FABRIC**

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

**ACTION:** Notice of revocation of one ruling letter, and revocation of treatment relating to the tariff classification of polyester/rayon woven fabric.

**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 polyester/rayon woven fabric 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. 14, on May 8, 2019. No comments were received in response to that notice.

**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after September 26, 2019.

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

### **SUPPLEMENTARY INFORMATION:**

#### **BACKGROUND**

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

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

Pursuant to 19 U.S.C. § 1625(c)(1), a notice was published in the *Customs Bulletin*, Vol. 53, No. 14, on May 8, 2019, proposing to revoke one ruling letters pertaining to the tariff classification of polyester/ rayon woven fabric. 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") N015943, dated September 6, 2007, CBP classified a polyester/rayon woven fabric identified as pattern "Gridlock/K106117" in heading 5407, HTSUS, specifically in subheading 5407.93.2090, HTSUSA, which provides for "Woven fabrics of synthetic filament yarn, including woven fabrics obtained from materials of heading 5404: Other woven fabrics: Of yarns of different colors: Other: Other: Other: Other." CBP has reviewed NY N015943 and has determined the ruling letter to be in error. It is now CBP's position that the polyester/rayon woven fabric is properly classified, in heading 5516, HTSUS, specifically in subheading 5516.23.00, HTSUS, which provides for "Woven fabrics of artificial staple fibers: Containing less than 85 percent by weight of artificial staple fibers, mixed mainly or solely with man-made filaments: Of yarns of different colors."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking N015943 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter ("HQ") H188897, 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 15, 2019

YULIYA A. GULIS  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

*Attachment*

HQ H188897

July 15, 2019

OT:RR:CTF:FTM H188897 PJG

CATEGORY: Classification

TARIFF NO.: 5516.23.00

Ms. STACI MORRISON

UTI

1900-G CENTER PARK DRIVE

CHARLOTTE, NORTH CAROLINA 28217

RE: Revocation of NY N015943; tariff classification of polyester/rayon woven fabric

DEAR Ms. MORRISON:

On September 6, 2007, U.S. Customs and Border Protection (“CBP”) issued to you New York Ruling Letter (“NY”) N015943. The ruling pertains to the tariff classification under the Harmonized Tariff Schedule of the United States (“HTSUS”) of a sample of polyester/rayon woven fabric identified as pattern “Gridlock/K106117.” We have since reviewed NY N015943 and determined the analysis and classification to be in error. Accordingly, NY N015943 is revoked.

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 May 8, 2019, in Volume 53, Number 14, of the *Customs Bulletin*. No comments were received in response to this notice.

**FACTS:**

In NY N015943, the polyester/rayon woven fabric identified as pattern “Gridlock/K106117” was described as follows:

It is composed of 46.2% textured filament polyester, 8.8% spun polyester and 45% rayon staple fibers. Gridlock/K106117 is a dobby woven fabric constructed with yarns of different colors. It contains 33.07 single yarns per centimeter in the warp and 16.14 single yarns per centimeter in the filling. Weighing 520 g/m<sup>2</sup>, this product will be imported in 140-centimeter widths.

In NY N015943, CBP classified the subject merchandise under subheading 5407.93.2090, HTSUSA, which provides for “Woven fabrics of synthetic filament yarn, including woven fabrics obtained from materials of heading 5404: Other woven fabrics: Of yarns of different colors: Other: Other: Other: Other.”

**ISSUE:**

Whether the subject polyester/rayon woven fabric identified as pattern “Gridlock/K106117” is classified in heading 5407, HTSUS, as woven fabrics of synthetic filament yarn, or heading 5516, HTSUS, as woven fabrics of artificial staple fibers.

**LAW AND ANALYSIS:**

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

The 2019 HTSUS provisions under consideration are as follows:

**5407** Woven fabrics of synthetic filament yarn, including woven fabrics obtained from materials of heading 5404:

\* \* \*

**5516** Woven fabrics of artificial staple fibers:

Note 2 to Section XI, HTSUS, states, in relevant part, as follows:

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

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

- (B) For purposes of the above rule:

\* \* \*

(b) The choice of appropriate heading shall be effected by determining first the chapter and then the applicable heading within that chapter, disregarding any materials not classified in that chapter;

(c) When both chapters 54 and 55 are involved with any other chapter, chapters 54 and 55 are to be treated as a single chapter;

\* \* \*

Note 1 to Chapter 54, HTSUS, provides as follows:

Throughout the tariff schedule, the term “*man-made fibers*” means staple fibers and filaments of organic polymers produced by manufacturing processes, either:

- (a) By polymerization of organic monomers to produce polymers such as polyamides, polyesters, polyolefins or polyurethanes, or by chemical modification of polymers produced by this process (for example, poly(vinyl alcohol) prepared by the hydrolysis of poly(vinyl acetate)); or
- (b) By dissolution or chemical treatment of natural organic polymers (for example, cellulose) to produce polymers such as cuprammonium rayon (cupro) or viscose rayon, or by chemical modification of natural organic polymers (for example, cellulose, casein and other proteins, or alginic acid), to produce polymers such as cellulose acetate or alginates.

The terms “*synthetic*” and “*artificial*”, used in relation to fibers, mean: synthetic: fibers as defined at (a); artificial: fibers as defined at (b). Strip and the like of heading 5404 or 5405 are not considered to be man-made fibers.

The terms “*man-made*”, “*synthetic*” and “*artificial*” shall have the same meanings when used in relation to “*textile materials*”.

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

General EN (I)(B) to Section XI, HTSUS, states, in pertinent part:

(1) **General.**

Textile yarns may be single, multiple (folded) or cabled. For the purposes of the Nomenclature :

(i) **Single yarns** means yarns composed **either of :**

(a) Staple fibres, usually held together by twist (**spun yarns**); **or**  
**of**

\* \* \*

Pursuant to the definition provided for in General EN (I)(B)(1)(i)(a) to Section XI, HTSUS, “spun yarns” are defined as “[s]taple fibres, usually held together by twist.” Therefore, we must add the 8.8% spun polyester to the 45% rayon staple fibers to determine the correct amount of staple fibers in the subject fabric. Since 53.8% of the subject fabric is composed of staple fibers, we must classify the merchandise in Chapter 55, HTSUS, because, in accordance with Note 2(A) to Section XI, HTSUS, the good is “classified as if consisting wholly of that one textile material which predominates by weight,” which in this case is the staple fibers.

In order to classify the merchandise within Chapter 55, HTSUS, we must consider the definition provided by Note 1 to Chapter 54, HTSUS, for “artificial” fibers. Since the rayon staple fibers, which are defined as artificial fibers in Note 1 to Chapter 54, HTSUS, predominate by weight (45%) over the spun polyester (8.8%), which is defined as a synthetic fiber by Note 1 to Chapter 54, HTSUS, then the subject merchandise is classified in heading 5516, HTSUS, which provides for woven fabrics of artificial staple fibers. See Note 2 to Section XI, HTSUS. The subject merchandise is specifically provided for in subheading 5516.23.00, HTSUS, which provides for “Woven fabrics of artificial staple fibers: Containing less than 85 percent by weight of artificial staple fibers, mixed mainly or solely with man-made filaments: Of yarns of different colors.”

**HOLDING:**

Under the authority of GRIs 1 and 6 the subject polyester/rayon woven fabric identified as pattern “Gridlock/K106117” is classified in heading 5516, HTSUS, specifically in subheading 5516.23.00, HTSUS, which provides for “Woven fabrics of artificial staple fibers: Containing less than 85 percent by weight of artificial staple fibers, mixed mainly or solely with man-made filaments: Of yarns of different colors.” The 2019 column one, general rate of duty is 8.5 percent *ad valorem*.

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

**EFFECT ON OTHER RULINGS:**

NY N015943, dated September 6, 2007, is REVOKED.

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

*Sincerely,*

YULIYA A. 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 INFLATABLE GUITAR**

**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 an inflatable guitar.

**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 an inflatable guitar under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments on the correctness of the proposed actions are invited.

**DATE:** Comments must be received on or before August 27, 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, 10<sup>th</sup> 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:** Michele A. Boyd, Chemicals, Petroleum, Metals and Miscellaneous Articles Branch, Regulations and Rulings, Office of Trade, at (202) 325–0136.

**SUPPLEMENTARY INFORMATION:**

**BACKGROUND**

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



importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether any other applicable legal requirement is met.

Pursuant to 19 U.S.C. § 1625(c)(1), this notice advises interested parties that CBP is proposing to revoke one ruling letter pertaining to the tariff classification of an inflatable guitar. Although in this notice, CBP is specifically referring to New York Ruling Letter (“NY”) NY J81414, dated February 27, 2003 (Attachment 1), 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 J81414, CBP classified an inflatable guitar in heading 9503, HTSUS, specifically in subheading 9503.50.00, HTSUS, which provides for “Other toys; reduced-size (“scale”) models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof: toy musical instruments and apparatus and parts and accessories thereof.” CBP has reviewed NY J81414 and has determined the ruling letter to be in error. It is now CBP’s position that the inflatable guitar is properly classified, in heading 3926, HTSUS, specifically in subheading 3926.90.75, HTSUS, which provides for “Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Pneumatic mattresses and other inflatable articles, not elsewhere specified or included.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY J81414 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H289843, set forth as Attachment 2 to this

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

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

Dated: June 28, 2019

ALLYSON MATTANAH

*for*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

Attachments

ATTACHMENT 1.

NY J81414

February 27, 2003  
CLA-2-95:RR:NC:SP:225 J81414  
CATEGORY: Classification  
TARIFF NO.: 9503.50.0000

MR. DENNIS SHOSTAK  
THE PAPER MAGIC GROUP, INC.  
100 NORTH SIXTH STREET, SUITE 899C  
MINNEAPOLIS, MN 55403

RE: The tariff classification of an inflatable guitar from China.

DEAR MR. SHOSTAK:

In your letter dated February 21, 2003, you requested a tariff classification ruling.

The sample submitted, Item #6546680, 42" Inflatable Guitar, is a toy rubber musical instrument that, when inflated with air, resembles a six string electric guitar. The item has the words "Rock 'n Roll" on its body and when fully inflated measures 42 inches in length. The toy guitar does not play actual notes, but is designed to provide amusement through the simulation of guitar playing.

The applicable subheading for Item #6546680, 42" Inflatable Guitar, will be 9503.50.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for "Other toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof: Toy musical instruments and apparatus and parts and accessories thereof." The rate of duty will be free.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Alice Wong at 646-733-3026.

*Sincerely,*

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

## ATTACHMENT 2.

HQ H298843  
OT:RR:CTF:CPMM H298843 MAB  
CATEGORY: Classification  
TARIFF NO.: 3926.90.7500

MR. DENNIS SHOSTAK  
CUSTOMS COMPLIANCE OFFICER  
THE PAPER MAGIC GROUP, INC.  
54 GLENMAURA NATIONAL BLVD., SUITE 200  
MOOSIC, PA 18507

RE: Revocation of NY J81414; Tariff classification of an inflatable guitar from China

DEAR MR. SHOSTAK:

On February 27, 2003, U.S. Customs and Border Protection (“CBP”) issued The Paper Magic Group, Inc., New York Ruling Letter (“NY”) J81414. The ruling pertains to the tariff classification under the Harmonized Tariff Schedule of the United States (“HTSUS”) of an inflatable guitar from China. We have reviewed additional information regarding this product and have found NY J81414 to be in error with respect to the tariff classification.

**FACTS:**

In NY J81414, CBP found the following:

The sample submitted, Item #6546680, 42” Inflatable Guitar, is a toy rubber musical instrument that, when inflated by air, resembles a six string electric guitar. The item has the words “Rock ‘n Roll” on its body and when fully inflated measures 42 inches in length. The toy guitar does not play actual notes, but is designed to provide amusement through the simulation of guitar playing.

The applicable subheading for Item #654660, 42” Inflatable Guitar, will be 9503.50.0000, Harmonized Tariff Schedule of the United States (HTS) which provides for “Other toys; reduced-size (“scale”) models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof: toy musical instruments and apparatus and parts and accessories thereof.” The rate of duty will be free.

**ISSUE:**

Whether the subject inflatable guitar is classified as “other articles of plastics” in heading 3926, HTSUS, or as “other toys” in heading 9503, HTSUS.

**LAW AND ANALYSIS:**

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

The 2018 HTSUS headings under consideration are as follows:

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

\* \* \* \* \*

**9503** Tricycles, scooters, pedal cars and similar wheeled toys; dolls’ carriages; dolls, other toys; reduced-scale (“scale”) models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof...

\* \* \* \* \*

Chapter 39, Note 2(y) states:

2. This chapter does not cover:

(y) Articles of chapter 95 (for example, toys, games, sports equipment)

\* \* \* \* \*

Additional U.S. Rule of Interpretation 1(a), HTSUS:

1. In the absence of special language or context which otherwise requires –

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

\* \* \* \* \*

Classification within chapter 39 is subject to chapter 39, Legal Note 2(y), which excludes from chapter 39 goods that are classifiable in chapter 95, HTSUS. Therefore, as long as the subject article is described in chapter 95, it is precluded from classification in any of the provisions of chapter 39, even if it is described therein. We must therefore first address whether the subject article is described in heading 9503, HTSUS.

Heading 9503, HTSUS, is the provision for “other toys.” Although the term “toy” is not defined in the HTSUS, in *Minnetonka Brands, Inc. v. United States*, 24 CIT 645, 651, 110 F. Supp. 2d 1020, 1026 (2000), the Court of International Trade (CIT) held that an “object is a toy only if it is designed and used for amusement, diversion or play, rather than practicality.” *Id.* The court also concluded that heading 9503, HTSUS, is a “principal use” provision within the meaning of Additional U.S. Rule of Interpretation 1(a), HTSUS. Therefore, classification under the heading is controlled by the principal use of goods of that class or kind to which the imported goods belong in the United States at or immediately prior to the date of the importation.

In order to be considered a toy, the inflatable guitar must be designed for amusement and not practicality. Internet research reveals that identical items imported into the United States are marketed and used as party decorations and favors. Thus, any amusement value provided by the inflatable guitar is incidental to its practical purpose as a party favor or decoration. This is because when inflated with air, although it is shaped like an electric guitar, the article is not operable as a music-maker. It is not capable of emitting sound. Instead, the article is merely a depiction of an electric guitar

with six strings and keys printed on inflatable plastic.<sup>1</sup> We therefore find that the inflatable guitar is not a toy classifiable in heading 9503, HTSUS.

Accordingly, we consider whether the inflatable guitar is classified in heading 3926, HTSUS, which provides, *inter alia*, for “other articles of plastics.” In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) may be utilized. ENs, though not dispositive or legally binding, provide commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. Customs believes the ENs should always be consulted. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989). EN 39.26 states, in relevant part, that heading 3926, HTSUS “covers articles, not elsewhere specified or included, of plastics...” Consistent with EN 39.26, we have previously classified an inflatable plastic article with a depiction of a musical instrument printed on it in heading 3926, HTSUS. See NY C82463 (Dec. 18, 1997), wherein CBP classified an inflatable plastic saxophone in subheading 3926.90.7500, HTSUSA.

Consequently, as an article made up entirely of plastic that is not described by heading 9503 or elsewhere in the HTSUS, it is our decision that the inflatable guitar is classified in heading 3926, HTSUS, as “Other articles of plastics...” Specifically, it is classified in subheading 3926.90.7500, HTSUSA, as: “Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Pneumatic mattresses and other inflatable articles, not elsewhere specified or included.”

Our decision is also consistent with rulings wherein we classified musical instruments that provide amusement and are operable as music-makers by emitting sound as toys in heading 9503, HTSUS. See *e.g.* NY L85699 (June 22, 2005), classifying various toy musical instruments, including an electronic guitar mixer featuring button modes for rap, funk, hip-hop, rock and pop, in subheading 9503.50.0000, HTSUS; NY L87114 (Aug. 30, 2005), classifying toy musical keyboards in subheading 9503.50.0000, HTSUS; and NY M86122 (Aug. 29, 2006), classifying percussion tubes and a keyboard in subheading 9503.50.0000, HTSUS, as “... electronic toys designed to provide amusement by allowing one to ‘create’ their own music.”

#### **HOLDING:**

Pursuant to GRI 1 and Additional U.S. Rule of Interpretation 1(a), HTSUS, the subject inflatable saxophone is classified in heading 3926, HTSUS. It is specifically provided for in subheading 3926.90.7500, HTSUSA, which provides for: “Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Pneumatic mattresses and other inflatable articles, not elsewhere specified or included.” The column one, general rate of duty is 4.2 percent *ad valorem*.

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

<sup>1</sup> Although the inflatable guitar is referred to as “rubber” in NY J81414, our research indicates that it is made of plastic.

**EFFECT ON OTHER RULINGS:**

NY J81414, dated February 27, 2003, is hereby REVOKED as set forth above with regard to the classification of the inflatable guitar described therein.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

**MODIFICATION OF ONE RULING LETTER AND  
REVOCATION OF TREATMENT RELATING TO THE  
COUNTRY OF ORIGIN FOR MARKING PURPOSES OF  
COOKED SHRIMP**

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

**ACTION:** Notice of modification of one ruling letter, and revocation of treatment relating to the country of origin for marking purposes of cooked shrimp.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is modifying one ruling letter concerning country of origin for marking purposes. Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 53, No. 17, on May 29, 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 September 26, 2019.

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

**SUPPLEMENTARY INFORMATION:**

**BACKGROUND**

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



Pursuant to 19 U.S.C. § 1625(c)(1), a notice was published in the *Customs Bulletin*, Vol. 53, No. 17, on May 29, 2019, proposing to modify one ruling letter pertaining to the country of origin for marking purposes of cooked shrimp. 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") N281670, dated January 3, 2017, CBP considered, in relevant part, the country of origin for marking purposes of shrimp that was exported from India to Guatemala, where it was subsequently cooked. CBP determined that this "Cooked Peeled Shrimp" was substantially transformed in Guatemala and concluded that the country of origin for marking purposes was Guatemala. It is now CBP's position that the country of origin for marking purposes of the cooked shrimp ("Cooked Peeled Shrimp") is India.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is modifying NY N281670 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter ("HQ") H301495, 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 11, 2019

YULIYA A. GULIS  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

*Attachment*

HQ H301495

July 11, 2019

OT:RR:CTF:FTM H301495 PJG

CATEGORY: Marking

MR. JUAN RODRIGUEZ  
ROD INTERNATIONAL  
11445 PARAMOUNT BLVD. SUITE A  
DOWNEY, CALIFORNIA 90241

RE: Modification of NY N281670; Country of origin marking of cooked shrimp

DEAR MR. RODRIGUEZ:

On January 3, 2017, U.S. Customs and Border Protection (“CBP”) issued New York Ruling Letter (“NY”) N281670 to you on behalf of your client, Pescanova, Inc. The ruling pertains to the tariff classification under the Harmonized Tariff Schedule of the United States (“HTSUS”), and the country of origin marking of frozen farm raised shrimp of the *litopenaeus vannamei* species that are processed into three products: “Raw Peeled Shrimp”, “Cooked Peeled Shrimp”, and “Breaded Shrimp.” The National Fisheries Institute has inquired whether the country of origin decision concerning the “Cooked Peeled Shrimp” is inconsistent with an existing CBP ruling concerning the same issue. We have reconsidered NY N281670 and found that the holding is in error with respect to the country of origin marking determination concerning the “Cooked Peeled Shrimp.” Accordingly, NY N281670 is modified.

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 May 29, 2019, in Volume 53, Number 17, of the *Customs Bulletin*. CBP received one comment in support of the proposed action.

**FACTS:**

In NY N281670, the subject merchandise was described as follows:

[f]rozen farm raised shrimp of the *litopenaeus vannamei* species. Per the description provided, the shrimp will be exported from India to Guatemala as frozen headless shell-on of various sizes for further processing. The product will be thawed, deveined and soaked in sodium tripolyphosphate and salt. The shrimp will be processed into three products: “Raw Peeled Shrimp” (Size 31/35), “Cooked Peeled Shrimp” (Size 31/35), and “Breaded Shrimp” (Size 25/30).

The “Raw Peeled Shrimp” and “Cooked Peeled Shrimp” will be individually quick frozen and packaged in a polyethylene bag which will have a total net weight of two pounds. Each master case for both items will contain five bags which in turn will have a total net weight of ten pounds. The product will be labeled “Frozen P&D Tail-Off Raw Shrimp IQF,” and “Frozen P&D Tail-Off Cooked Shrimp IQF,” respectively.... All products are intended for sale to wholesalers or markets.

In NY N281670, we determined that the “Cooked Peeled Shrimp” was substantially transformed in Guatemala and, therefore, the country of origin for marking purposes was Guatemala.

**ISSUE:**

Whether the process of cooking shrimp substantially transforms the shrimp for country of origin marking purposes.

**LAW AND ANALYSIS:**

The marking statute, Section 304(a), Tariff Act of 1930, as amended (19 U.S.C. § 1304(a)), provides that unless excepted, every article of foreign origin imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit in such manner as to indicate to an ultimate purchaser in the United States the English name of the country of origin of the article. Congressional intent in enacting 19 U.S.C. § 1304 was “that the ultimate purchaser should be able to know by an inspection of the marking on imported goods the country of which the goods is the product. The evident purpose is to mark the goods so that at the time of purchase the ultimate purchaser may, by knowing where the goods were produced, be able to buy or refuse to buy them, if such marking should influence his will.” *United States v. Friedlaender & Co.*, 27 C.C.P.A. 297, 302 (1940).

Part 134 of Title 19 of the Code of Federal Regulations (19 C.F.R. Part 134), implements the country of origin marking requirements and exceptions of 19 U.S.C. § 1304. Section 134.1(b) (19 C.F.R. § 134.1(b)) provides as follows:

(c) *Country of origin.* “Country of origin” means the country of manufacture, production, or growth of any article of foreign origin entering the United States. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the “country of origin” within the meaning of this part; however, for a good of a NAFTA country, the NAFTA Marking Rules will determine the country of origin.

CBP has previously held that the process of cooking shrimp does not substantially transform shrimp because it “does not result in a change in the name, character or use” of the shrimp. *See* HQ 731763 (May 17, 1989) (citing *United States v. Gibson-Thomsen Co., Inc.*, 27 C.C.P.A. 267 (1940) (setting forth the three main factors for a substantial transformation determination). In HQ 731763, CBP stated that the name of the cooked shrimp remains unchanged because it is still “referred to as shrimp,” the character remains unchanged because it is still frozen shrimp with the same size, quality, and shape, and the use remains unchanged because cooking is a process that “merely render[s] the product ready for eating.” HQ 731763 further indicates that although the tariff classification of cooked and raw shrimp are different, that change does not alter the substantial transformation analysis. Accordingly, the country of origin for marking of the “Cooked Peeled Shrimp” in NY N281670 is India.

Foreign natural products (such as shrimp) are on the so-called “J-list” and are excepted from individual marking requirements pursuant to 19 U.S.C. § 1304(a)(3)(J) and 19 C.F.R. § 134.33. *See* HQ 731763 (May 17, 1989). However, 19 C.F.R. § 134.33 requires that “the outermost container in which the article ordinarily reaches the ultimate purchaser ... be marked to indicate the origin of its contents.”

Section 134.1(d) of Title 19 of the Code of Federal Regulations (19 C.F.R. § 134.1(d)) defines the term “ultimate purchaser” as “generally the last person in the United States who will receive the article in the form in which it was

imported.” Moreover, 19 C.F.R. § 134.1(d)(3) indicates that “[i]f an article is to be sold at retail in its imported form, the purchaser at retail is the ‘ultimate purchaser.’” NY N281670 indicates that the “Cooked Peeled Shrimp” will be packaged in a polyethylene bag with a total net weight of two pounds, and five of those bags will be placed into a master case that is intended for sale to wholesalers or markets. If the wholesalers or markets are distributing the master cases to restaurant operators for their own use, then the ultimate purchaser is the restaurant operator and only the master cases must be marked with the country of origin. See Customs Service Decision (C.S.D.) 90–42 (Jan. 11, 1990); HQ 560498 (Dec. 19, 1997). If the wholesalers or markets are selling the individual polyethylene bags of “Cooked Peeled Shrimp,” then the ultimate purchaser is the person who will purchase the individual bags of shrimp and the country of origin marking must appear on the individual bags of shrimp.

Upon publication in the *Customs Bulletin*, CBP received one comment in support of its proposed action concerning NY N281670. The commenter also suggested that CBP modify a sentence<sup>1</sup> in NY N281670 concerning “Raw Peeled Shrimp” to avoid suggesting that the processing of the raw shell-on shrimp in the Indian facility affects the substantial transformation determination, particularly since the raw shrimp is subsequently peeled in Guatemala. CBP has considered the processing that occurred in India and determined that it does not affect the substantial transformation determination. Accordingly, we are not modifying the identified sentence because it accurately reflects that we considered the processing that occurred in India and Guatemala.

#### **HOLDING:**

The imported “Cooked Peeled Shrimp” is not substantially transformed when it is cooked in Guatemala, therefore, the country of origin for marking purposes is the country where the shrimp is raised, which is India.

Foreign natural products (such as shrimp) are on the so-called “J-list” and are excepted from individual marking requirements pursuant to 19 U.S.C. § 1304(a)(3)(J) and 19 C.F.R. § 134.33. However, “the outermost container in which the article ordinarily reaches the ultimate purchaser is required to be marked to indicate the origin of its contents.” 19 C.F.R. § 134.33. If the wholesalers or markets purchase the master cases for resale to restaurant operators for restaurant use, then the ultimate purchaser is the restaurant operator and the master cases must be marked with the country of origin. If the wholesalers or markets purchase the master cases and sell the individual polyethylene bags of shrimp, then the ultimate purchaser is the person who purchases the individual bags of shrimp and the individual bags must be marked with the country of origin.

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

NY N281670, dated January 3, 2017, is MODIFIED.

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

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<sup>1</sup> The sentence in NY N281670 currently reads as follows: “In the present case, we find that the processing of the “Raw Peeled Shrimp” in both the Indian and Guatemalan facilities by the means you outline does not effect a substantial transformation.”

*Sincerely,*

YULIYA A. GULIS

*for*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

**REVOCATION AND MODIFICATION OF TWO RULING  
LETTERS AND REVOCATION OF TREATMENT RELATING  
TO THE TARIFF CLASSIFICATION OF NON-TEXTILE CAR  
COVERS**

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

**ACTION:** Notice of revocation of one ruling letter and modification of one ruling letter and revocation of treatment relating to the tariff classification of non-textile car 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 and modifying one ruling letter concerning tariff classification of non-textile car 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. 14, on May 8, 2019. No comments were received in response to that notice.

**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after September 26, 2019.

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

**SUPPLEMENTARY INFORMATION:**

**BACKGROUND**

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

Pursuant to 19 U.S.C. § 1625(c)(1), a notice was published in the *Customs Bulletin*, Vol. 53, No. 14, on May 8, 2019, proposing to revoke one ruling letter and modify one ruling letter pertaining to the tariff classification of non-textile car 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") I89651, dated January 15, 2003, and NY 866826, dated September 20, 1991, CBP classified non-textile car covers in heading 8708, HTSUS, which provides for "Parts and accessories of the motor vehicles of headings 8701 to 8705." CBP has reviewed NY I89651 and NY 866826 and has determined the ruling letters to be in error with regard to the non-textile car covers. It is now CBP's position that non-textile car covers are properly classified, in heading 3926, HTSUS, specifically in subheading 3926.90.99, HTSUS, which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other." CBP is not proposing to change the classification of the general purpose cover in NY I89651.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY 866826 and modifying NY I89651 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter ("HQ") H287397, 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 16, 2019

YULIYA GULIS  
for

MYLES B. HARMON,  
Director

*Commercial and Trade Facilitation Division*

*Attachment*

## HQ H287397

July 16, 2019

OT:RR:CTF:FTM H287397 PJG

CATEGORY: Classification

TARIFF NO.: 3926.90.99

MS. KATHERINE TU  
BUDGE INDUSTRIES, INC.  
1240 SOUTH BROAD STREET – SUITE 140  
LANSDALE, PA 19446

RE: Revocation of NY 866826; Modification of NY I89651; tariff classification of non-textile car covers

DEAR Ms. TU:

On January 15, 2003, U.S. Customs and Border Protection (“CBP”) issued to you New York Ruling Letter (“NY”) I89651. It concerned the tariff classification of a car cover and a general purpose cover under the Harmonized Tariff Schedule of the United States (“HTSUS”). We are modifying this ruling only insofar as the car cover is concerned.

CBP is also revoking NY 866826, dated September 20, 1991, in which three car covers were classified in heading 8708, HTSUS. In this ruling, we address the classification of the vinyl car cover in NY 866826. The classification of the non-woven polypropylene car cover and the non-woven polyester/nylon car covers are being addressed in a separate action because the component materials of the car covers are key to their proper tariff classification.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI (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 May 8, 2019, in Volume 53, Number 14, of the *Customs Bulletin*. No comments were received in response to this notice.

**FACTS:**

In NY I89651, the subject car cover was described as follows:

The covers will be imported in two basic shapes: rectangular and car-shaped. The sample is a rectangular cover composed of polyethylene vinyl acetate (PEVA) plastic. The rectangular covers are general purpose covers that will be imported in sizes ranging from 12 feet by 20 feet to 18 feet by 24 feet. The covers have a string running through the edges to secure the cover. The car-shaped covers are also composed of PEVA plastic and have a string for securing them to the car. The car-shaped covers will be imported in small, medium and large sizes.

In NY I89651, CBP classified the polyethylene vinyl acetate (“PEVA”) plastic car covers in heading 8708, HTSUS, and specifically under subheading 8708.99.8080, HTSUSA, which in the 2003 version of the HTSUS provided for “Parts and accessories of the motor vehicles of headings 8701 to 8705: Other parts and accessories: Other: Other: Other: Other.”



**ISSUE:**

Whether the subject car covers are classifiable in heading 3926, HTSUS, which provides for “Other articles of plastics and articles of other materials of headings 3901 to 3914,” or under heading 8708, HTSUS, which provides for “Parts and accessories of the motor vehicles of headings 8701 to 8705.”

**LAW AND ANALYSIS:**

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

The 2019 HTSUS provisions under consideration are as follows:

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

**8708** Parts and accessories of the motor vehicles of headings 8701 to 8705: Note 3 to Section XVII states as follows:

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

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

EN to Section XVII states, in pertinent part:

\* \* \*

**(III) PARTS AND ACCESSORIES**

\* \* \*

It should, however, be noted that these headings apply **only** to those parts or accessories which comply with **all three** of the following conditions:

(a) They must not be excluded by the terms of Note 2 to this Section (see paragraph (A) below).

and (b) They must be suitable for use solely or principally with the articles of Chapters 86 to 88 (see paragraph (B) below).

and (c) They must not be more specifically included elsewhere in the Nomenclature (see paragraph (C) below).

\* \* \*

EN to 87.08 states, in pertinent part:

This heading covers parts and accessories of the motor vehicles of headings 87.01 to 87.05, **provided** the parts and accessories fulfil **both** the following conditions:

- (i) They must be identifiable as being suitable for use solely or principally with the above-mentioned vehicles;
- and (ii) They must not be excluded by the provisions of the Notes to Section XVII (see the corresponding General Explanatory Note).

Parts and accessories of this heading include :

(A) Assembled motor vehicle chassis-frames (whether or not fitted with wheels **but without engines**) and parts thereof (side-members, braces, cross-members; suspension mountings; supports and brackets for the coachwork, engine, running-boards, battery or fuel tanks, etc.).

(B) Parts of bodies and associated accessories, for example, floor boards, sides, front or rear panels, luggage compartments, etc.; doors and parts thereof; bonnets (hoods); framed windows, windows equipped with heating resistors and electrical connectors, window frames; running-boards; wings (fenders), mudguards; dashboards; radiator cowlings; number-plate brackets; bumpers and over-riders; steering column brackets; exterior luggage racks; visors; non-electric heating and defrosting appliances which use the heat produced by the engine of the vehicle; safety seat belts designed to be permanently fixed into motor vehicles for the protection of persons; floor mats (**other than** of textile material or unhardened vulcanised rubber), etc. Assemblies (including unit construction chassis-bodies) **not** yet having the character of incomplete bodies, e.g., not yet fitted with doors, wings (fenders), bonnets (hoods) and rear compartment covers, etc., are classified in this heading and not in heading 87.07.

(C) Clutches (cone, plate, hydraulic, automatic, etc., but **not** the electromagnetic clutches of **heading 85.05**), clutch casings, plates and levers, and mounted linings.

(D) Gear boxes (transmissions) of all types (mechanical, overdrive, pre-selector, electro-mechanical, automatic, etc.); torque converters; gear box (transmission) casings; shafts (**other than** internal parts of engines or motors); gear pinions; direct-drive dog-clutches and selector rods, etc.

(E) Drive-axles, with differential; non-driving axles (front or rear); casings for differentials; sun and planet gear pinions; hubs, stub-axles (axle journals), stub-axle brackets.

(F) Other transmission parts and components (for example, propeller shafts, half-shafts; gears, gearing; plain shaft bearings; reduction gear assemblies; universal joints). But the heading **excludes** internal parts of engines, such as connecting-rods, push-rods and valvelifters of **heading 84.09** and crank shafts, cam shafts and flywheels of **heading 84.83**.

(G) Steering gear parts (for example, steering column tubes, steering track rods and levers, steering knuckle tie rods; casings; racks and pinions; servo-steering mechanisms).

(H) Brakes (shoe, segment, disc, etc.) and parts thereof (plates, drums, cylinders, mounted linings, oil reservoirs for hydraulic brakes, etc.); servo-brakes and parts thereof.

(J) Suspension shock-absorbers (friction, hydraulic, etc.) and other suspension parts (**other than** springs), torsion bars.

(K) Road wheels (pressed steel, wire-spoked, etc.), whether or not fitted with tyres; tracks and sets of wheels for tracked vehicles; rims, discs, hub-caps and spokes.

(L) Control equipment, for example, steering wheels, steering columns and steering boxes, steering wheel axles; gear-change and hand-brake levers; accelerator, brake and clutch pedals; connecting-rods for brakes, clutches.

(M) Radiators, silencers (mufflers) and exhaust pipes, fuel tanks, etc.

(N) Clutch cables, brakes cables, accelerator cables and similar cables, consisting of a flexible outer casing and a moveable inner cable. They are presented cut to length and equipped with end fittings.

(O) Safety airbags of all types with inflater system (e.g., driver-side airbags, passenger-side airbags, airbags to be installed in door panels for side-impact protection or airbags to be installed in the ceiling of the vehicle for extra protection for the head) and parts thereof. The inflater systems include the igniter and propellant in a container that directs the expansion of gas into the airbag. The heading **excludes** remote sensors or electronic controllers, as they are not considered to be parts of the inflater system.

\* \* \*

In *Bauerhin Techs. Ltd. P'ship. v. United States*, 110 F.3d 774 (Fed. Cir. 1997), the court identified two distinct lines of cases defining the word “part.” Consistent with *United States v. Willoughby Camera Stores, Inc.*, 21 C.C.P.A. 322, 324 (1933) (citations omitted), one line of cases holds that a part of an article “is something necessary to the completion of that article. . . . [W]ithout which the article to which it is to be joined, could not *function as such article*.” The other line of cases evolved from *United States v. Pompeo*, 43 C.C.P.A. 9, 14 (1955), which held that a device may be a part of an article even though its use is optional and the article will function without it, if the device is dedicated for use upon the article, and, once installed, the article will not operate without it. The definition of “parts” was also discussed in *Rollerblade, Inc. v. United States*, 282 F.3d 1349, 1353 (Fed. Cir. 2002), wherein the United States Court of Appeals for the Federal Circuit (“CAFC”) defined parts as “an essential element or constituent; integral portion which can be separated, replaced, etc.” *Id.* at 1353 (citing Webster’s New World Dictionary 984 (3d College Ed. 1988) (holding that inline roller skating protective gear is not an accessory because it “does not directly act on” or “contact” the roller skates)). This line of reasoning has been applied in previous CBP rulings. *See e.g.*, HQ H255093 (Jan. 14, 2015); HQ H238494 (June 26, 2014); HQ H027028 (Aug. 19, 2008).

Insofar as the term “accessory” is concerned, the Court of International Trade (“CIT”) has previously referred to the common meaning of the term because the term is not defined by the HTSUS or its legislative history. *See Rollerblade, Inc. v. United States*, 24 Ct. Int’l Trade 812, 815–819 (2000), *aff’d*, 282 F.3d 1349 (Fed. Cir. 2002)). We also employ the common and commercial meanings of the term “accessory”, as the CIT did in *Rollerblade, Inc.*, wherein the court derived from various dictionaries “that an accessory

must relate directly to the thing accessorized.” See *Rollerblade, Inc.*, 24 Ct. Int’l Trade at 817. In *Rollerblade, Inc.*, the CAFC noted that “an ‘accessory’ must bear a direct relationship to the primary article that it accessorizes.” 282 F.3d at 1352. In support of its finding that the protective gear was not an accessory to roller skates, the CAFC also noted that the “protective gear does not directly affect the skates’ operation.” *Id.* At 1353.

The subject merchandise in this case is not a “part” under any of the tests provided in the judicial decisions described above. It is not a “part” under the *Willoughby* test because a car can function without the instant cover. It is also not a “part” under the Pompeo test because firstly, it is secured onto the car using its attached string, which likely would not constitute being “installed”, but also because even if it were considered “installed”, the car can still operate without the cover. See also *Rollerblade, Inc.*, 282 F.3d at 1353 (the CAFC found that the protective gear was not a part to the roller skates because they did not “attach to or contact” the roller skates, they were “not necessary to make the skates ... work”, nor were “they necessary to make the skates ... work efficiently or safely.”) In any case, the subject merchandise is not a “part” because it is not essential, constituent or integral to the vehicle. See *id.*

The subject merchandise is also not an “accessory” of motor vehicles. Like the protective gear in *Rollerblade, Inc.* and the truck tents classified in HQ H242603 (April 3, 2015), the car cover at issue does not directly affect the car’s operation nor does it contribute to the car’s effectiveness. See *Rollerblade, Inc.*, 282 F.3d at 1353; HQ 960950 (Jan. 16, 1998) (stating that “[a]ccessories are of secondary importance,” but must “somehow contribute to the effectiveness of the principal article”). Instead, the instant car cover provides protection to a car when it is not in use. In fact, like the truck tents in HQ H242603, in order for the car cover to be usable thereon, the car must be parked. Also, like the truck tents in HQ H242603 (April 3, 2015), the car cover does not contribute to the car’s safe and efficient use.

Although the subject car cover is sometimes in contact with the car (unlike the protective gear in *Rollerblade, Inc.*, which was never in contact with roller skates), the car cover is not in contact with the car while the car is in use. In this regard, we note that the exemplars of parts and accessories provided in EN 87.08, such as mudguards, exterior luggage racks, number-plate brackets, and floor mats, stay on the motor vehicle when it is in use and when it not in use. Therefore, the car cover is neither a part nor an accessory because unlike the exemplars in the EN and unlike the articles in *Rollerblade*, it is in contact with the car only when the car is not in use and consequently cannot bear a direct relationship to the operation of the car. Since the subject merchandise is neither a “part” nor an “accessory” we need not consider General Explanatory Note (III) to Section XVII or the remainder of EN 87.08.

In HQ 953273, dated February 16, 1993, CBP cited to HQ 087596, dated January 31, 1991, wherein CBP distinguished between “loose” and fitted motor vehicle covers and classified fitted motor vehicle covers as parts and accessories for motor vehicles. In HQ 953273, CBP determined on the basis of EN 63.06, that “there is no reason to distinguish between ‘loose’ motor vehicle covers and fitted covers” and that “the authors of the Harmonized Commodity Description and Coding System did not intend for motor vehicle covers to be classified as parts and accessories for motor vehicles. Instead, automobile covers must be viewed as items related to tarpaulins.” CBP proceeded to note that motor vehicle covers are not classifiable as tarpaulins because they are

not flat, but “this fact does not transform the covers into parts and accessories. Rather, they are to be classified as other made up textile articles not more particularly described in the Nomenclature under heading 6307.” Ultimately, CBP classified the subject motor vehicle covers under subheading 6307.90.9986, HTSUS, which provided for “Other made up articles, including dress patterns: Other: Other: Other: Other: Other.” This same reasoning was used in HQ 953272 and HQ 953274, both dated February 16, 1993.

In the instant case, the subject merchandise is not made up of textile materials, therefore the merchandise is not classifiable in heading 6307, HTSUS. However, HQ 953272, HQ 953273, and HQ 953274 are instructive because CBP determined therein that car covers are not classifiable as parts and accessories for motor vehicles, in heading 8708, HTSUS.

The subject merchandise is composed of PEVA plastic. Heading 3926, HTSUS, provides for “[o]ther articles of plastics and articles of other materials of headings 3901 to 3914.” EN 39.26 indicates that heading 3926, HTSUS is a basket provision that is intended to “cover[] articles, not elsewhere specified or included, of plastics (as defined in Note 1 to the Chapter) or of other materials of headings 39.01 to 39.14.” According to the Court of International Trade, “[c]lassification of imported merchandise in a basket provision is appropriate only when there is no tariff category that covers the merchandise more specifically.” *Apex Universal, Inc. v. United States*, 22 Ct. Int’l Trade 465, 16 (1998). Since the subject merchandise is not provided for more specifically in a different tariff heading, we find that it is classified in heading 3926, HTSUS, and specifically under subheading 3926.90.99, HTSUS, which provides for “Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other.”

#### **HOLDING:**

Under the authority of GRIs 1 and 6, the subject non-textile car cover is classified in heading 3926, HTSUS, specifically under subheading 3926.90.99, HTSUS, which provides for “Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other.” The 2019 column one, general rate of duty is 5.3 percent *ad valorem*.

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

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

NY I89651, dated January 15, 2003, is MODIFIED.

NY 866826, dated September 20, 1991, is REVOKED only with respect to the non-woven vinyl car cover.

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*