

U.S. Customs and Border Protection



PROPOSED REVOCATION OF ONE RULING LETTER AND PROPOSED 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 proposed revocation of one ruling letter, and proposed 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) intends to revoke one ruling letter concerning tariff classification of polyester/rayon woven fabric 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 June 7, 2019.

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

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

SUPPLEMENTARY INFORMATION:**BACKGROUND**

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

Pursuant to 19 U.S.C. § 1625(c)(1), this notice advises interested parties that CBP is proposing to revoke one ruling letter pertaining to the tariff classification of a polyester/rayon woven fabric identified as pattern "Gridlock/K106117." Although in this notice, CBP is specifically referring to New York Ruling Letter ("NY") N015943, dated September 6, 2007 (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 N015943, 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." 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 proposing to revoke NY N015943 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter ("HQ") H188897, 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: April 19, 2019

YULIYA A. GULIS
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

ATTACHMENT A

N015943

September 6, 2007
CLA-2-54:RR:NC:TA:348
CATEGORY: Classification
TARIFF NO.: 5407.93.2090

Ms. STACI MORRISON
UTI
1900-G CENTER PARK DRIVE
CHARLOTTE, NC 28217

RE: The tariff classification of polyester/rayon woven fabric from China.

DEAR Ms. MORRISON:

In your letter dated August 13, 2007, on behalf of your client, P/ Kaufmann Inc., you requested a tariff classification ruling.

The submitted sample is identified as pattern "Gridlock/K106117". 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/m², this product will be imported in 140-centimeter widths. The sample submitted will be returned to you as requested.

The applicable subheading for the fabric, Gridlock/K106117, will be 5407.93.2090, Harmonized Tariff Schedule of the United States (HTSUS), 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 color, other, other, other other. The duty rate will be 12 percent.

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

This fabric falls within textile category 629. With the exception of certain products of China, quota/visa requirements are no longer applicable for merchandise that is the product of World Trade Organization (WTO) member countries. Quota and visa requirements are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information on quota and visa requirements applicable to this merchandise, we suggest you check, close to the time of shipment, the "Textile Status Report for Absolute Quotas" which is available on our web site at www.cbp.gov. For current information regarding possible textile safeguard actions on goods from China and related issues, we refer you to the web site of the Office of Textiles and Apparel of the Department of Commerce at otexa.ita.doc.gov.

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 at 646-733-3064.

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

ATTACHMENT B

HQ H188897
CLA-2 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.

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/m², 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.”

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 2018 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 Sys-

tem” 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 2018 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/.

EFFECT ON OTHER RULINGS:

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

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**WITHDRAWAL OF PROPOSED REVOCATION OF THREE
RULING LETTERS, PROPOSED MODIFICATION OF ONE
RULING LETTER, AND PROPOSED REVOCATION OF
TREATMENT RELATING TO THE TARIFF
CLASSIFICATION OF RIGID MOLDED PLASTIC
WATERPROOF CAMERA HOUSING**

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

ACTION: Withdrawal of notice of proposed revocation of three ruling letters, proposed modification of one ruling letter, and proposed revocation of treatment relating to tariff classification of rigid molded plastic waterproof camera housing.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), Customs and Border Protection (CBP) proposed to revoke three ruling letters, and modify one ruling letter, relating to the tariff classification of rigid molded plastic waterproof camera housings under the Harmonized Tariff Schedule of the United States (HTSUS). Notice of the proposed actions was published in the *Customs Bulletin*, Vol. 52, No. 27, on July 5, 2018. No comments were received in opposition to the proposed revocations and modification. After further review, we have determined that revocation and modification of the subject rulings is not appropriate.

EFFECTIVE DATE: This action is effective immediately.

FOR FURTHER INFORMATION CONTACT: 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 section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the *Customs Bulletin*, Vol. 52, No. 27, on July 5, 2018, proposing to revoke New York Ruling Letters (NYs) N240464, dated May 3, 2013, NY L83830, dated April 11, 2005, and NY I84647, dated August 7, 2002, and proposing to modify NY N222075 (with respect to item number 45824), dated July 9, 2012, with respect to the tariff classification of rigid molded plastic waterproof camera housings under heading 4202 of the Harmonized Tariff Schedule of the United States (HTSUS), specifically in subheading 4202.99.90, HTSUS, which provides for “trunks, suitcases, camera cases and similar containers, other, other, other.” In the notice of July 5, 2018, we proposed to classify the rigid molded plastic waterproof camera housing at issue in NY N240464 in heading 8529, HTSUS, specifically in subheading 8529.90.86, HTSUS, which provides for “[P]arts suitable for use solely or principally with the apparatus of headings 8525 to 8528: Other parts of articles of headings 8525 to 8527, except parts of cellular telephones: Other”, and to classify the rigid molded plastic waterproof camera housings at issue in NY L83830, NY I84647, and NY N222075 (item 45824) in heading 3926, HTSUS, specifically in subheading 3926.90.99, HTSUS, which provides for “[O]ther articles of plastics and articles of other materials of headings 3902 to 3914: Other.” Upon reconsideration of the matter, we have determined that the subject camera housings are properly classified as camera cases of heading 4202, HTSUS. An affirmation of NY N240464 will be issued in Headquarters Ruling Letter H287090.

Pursuant to 19 U.S.C. §1625(c), and 19 C.F.R. §177.7(a), which states, in pertinent part, that “[n]o ruling letter will be issued... in any instance in which it appears contrary to the sound administration of the Customs and related laws to do so”, CBP is withdrawing its proposed revocation of NY N240464, NY L83830, and NY I84647, and its proposed modification of NY N222075.

Dated: April 19, 2019

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

19 CFR PART 177**REVOCATION OF TEN RULING LETTERS AND
MODIFICATION OF ONE RULING LETTER, AND
REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF FILLABLE PLASTIC
CONTAINERS**

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

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

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking ten ruling letters and modifying one ruling letter concerning tariff classification of fillable plastic containers under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 52, No. 39, on September 26, 2018. Two comments were received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after July 8, 2019.

FOR FURTHER INFORMATION CONTACT: Albenia Peters, Chemicals, Petroleum, Metals and Miscellaneous Articles Branch, Regulations and Rulings, Office of Trade, at (202) 325–0321.

SUPPLEMENTARY INFORMATION:**BACKGROUND**

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

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

Pursuant to 19 U.S.C. § 1625(c)(1), a notice was published in the *Customs Bulletin*, Vol. 52, No. 39, on September 26, 2018, proposing to revoke nine ruling letters and to modify one ruling letter pertaining to the tariff classification of fillable plastic containers. 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. During the comment period, we became aware of Headquarters Ruling Letter (“HQ”) H044635, dated February 18, 2009, classifying substantially similar merchandise, and include its revocation here.

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”) N018731, dated November 8, 2007; NY N013622, dated July 25, 2007; NY N012286, dated July 5, 2007; NY N007698, dated March 30, 2007; NY N021076, dated January 16, 2008; NY H86212, dated January 14, 2002; NY N025433, dated April 25, 2008; NY D81320, dated September 8, 1998; NY C83630, dated February 4, 1998; HQ 961700, dated February 19, 1999; and HQ H044635, dated February 18, 2009, CBP classified the subject fillable plastic containers in heading 3924, HTSUS, specifically in subheading 3924.90.55/56, HTSUS, which provides for “Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics: Other: Other” or in subheading 3924.10.40, HTSUS, which provides for “Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics: Tableware and kitchenware: Other,” or in heading 9505, HTSUS, specifically in subheading 9505.90.60, HTSUS, which provides for “Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: Other: Other.” CBP has reviewed NY N018731, NY N013622, NY N012286, NY N007698, NY N021076, NY H86212, NY N025433, NY D81320, NY C83630, HQ 961700, and HQ H044635, and has determined the ruling letters

to be in error. It is now CBP's position that the subject fillable plastic containers are properly classified, in heading 3926, HTSUS, specifically in subheading 3926.40.0090, HTSUSA, which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Statuettes and other ornamental articles: Other."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY N018731, NY N013622, NY N012286, NY N021076, NY H86212, NY N025433, NY D81320, NY C83630, HQ 961700 and HQ H044635, modifying NY N007698, and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in HQ H043742, 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: April 19, 2019

ALLYSON R. MATTANAH
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachment

HQ H043742

April 19, 2019

OT:RR:CTF:CPMM H043742 APP

CATEGORY: Classification

TARIFF NO.: 3926.40.0090

MS. MARILYN-JOY CERNY

MR. ROBERT L. GRASING

SANDLER, TRAVIS & ROSENBERG, P.A.

24 SMITH STREET, BUILDING 2, SUITE 102

PAWLING, NY 12564

RE: Fillable plastic containers; Revocation of NY N018731, NY N013622, NY N012286, NY N021076, NY H86212, NY N025433, NY D81320, NY C83630, HQ 961700 and HQ H044635, and Modification of NY N007698

DEAR MS. CERNY AND MR. GRASING:

This is to inform you that U.S. Customs and Border Protection (“CBP”) has reconsidered New York Ruling Letter (“NY”) N018731, dated November 8, 2007 (issued to Williams-Sonoma, Inc.); NY N013622, dated July 25, 2007, NY N012286, dated July 5, 2007, and NY N007698, dated March 30, 2007 (issued to Easter Unlimited, Inc.); NY N021076, dated January 16, 2008 (issued to Intradeco Apparel, Inc.); NY H86212, dated January 14, 2002 (issued to Meijer Distributions); NY N025433, dated April 25, 2008 (issued to Atico International USA, Inc.); NY D81320, dated September 8, 1998 (issued to Paper Magic Group); NY C83630, dated February 4, 1998 (issued to Sun Hill Industries, Inc.); Headquarters Ruling Letter (“HQ”) H044635, dated February 18, 2009 (issued to PTI Group, Inc.); and HQ 961700, dated February 19, 1999 (issued to Four Star International Trading Company), regarding the classification, under the Harmonized Tariff Schedule of the United States (“HTSUS”), of fillable plastic containers. CBP classified the containers in heading 3924, HTSUS, which provides for “Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics” and in heading 9505, HTSUS, which provides for “Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof.”

We have determined that these rulings are in error. For the reasons set forth below, we hereby revoke NY N018731, NY N013622, NY N012286, NY N021076, NY H86212, NY N025433, NY D81320, NY C83630, HQ 961700 and HQ H044635, and we modify NY N007698.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), a notice was published in the *Customs Bulletin*, Volume 52, Number 39, on September 26, 2018, proposing to revoke NY N018731, NY N013622, NY N012286, NY N021076, NY H86212, NY N025433, NY D81320, NY C83630 and HQ 961700, and to modify NY N007698, and to revoke any treatment accorded to substantially identical transactions. Two comments in opposition to the instant action were received in response to the notice and are addressed below.

FACTS:

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

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

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

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

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

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

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

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

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

The plastic containers in NY D81320 are identified as “Pooh Filler Eggs, item #612416,” “Item #611532, 3 Piece Puzzle Eggs,” and “Easter Egg Clipable Candy Dispenser, item #612091.” The “Pooh Filler Eggs” item consists of six colored plastic egg-shaped containers. One side of the egg is decorated with the raised impression of the head of the “Pooh” character. Encircling “Pooh” are tiny pin holes. No string or chain is included. The eggs open lengthwise and are hollow inside. The “Pooh Filler Eggs” will be packaged in a polybag with header. The “3 Piece Puzzle Eggs” are hollow, plastic, colored egg-shaped containers packaged four to a bag with a header card. Each container is made of three sections, which vary in color. The sections pull apart and are interchangeable allowing to mix and match the pieces to obtain different color combinations. The containers contain a pin hole at one end for hanging. The “Easter Egg Clipable Candy Dispenser” is a plastic oval-shaped container measuring 4 inches in length and 2.75 inches in width, and packaged in a clear bag with cardboard header. A small panel slides down on the side allowing the container to be filled and emptied. The cover contains the raised impression of decorated eggs. A clip is affixed to the back, which allows it to be fastened onto bags, books, and similar items.

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

The goods in HQ H044635 are identified as empty, hollow, plastic containers, which are colored, printed, and shaped to resemble the characters of SpongeBob SquarePants, Dora the Explorer, Disney Princess, Disney/Pixar Cars, and Elmo. The treat containers each measure approximately 2 ½ to 3 inches in length. They are all formed by two equal halves designed to fit together to close and to pull apart to open. The containers are packaged three of the same character to a polybag for retail sale. The containers may be opened and filled with candy or a novelty item after purchase. The items are marketed and sold for Easter activities such as filling Easter baskets, Easter egg hunts, and Easter “gift giving.”

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

ISSUE:

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

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

LAW AND ANALYSIS:

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

GRI 3 provides, in relevant part, as follows:

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

- (a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.
- (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.
- (c) When goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

The HTSUS headings under consideration are the following:

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

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

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

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

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

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

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

- (a) consist of at least two different articles which are, *prima facie*, classifiable in different headings ...
- (b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and
- (c) are put up in a manner suitable for sale directly to end users without repacking (e.g., in boxes or cases or on boards).

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

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

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

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

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

EN 39.26 states, in relevant part:

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

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

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

(1) Festive decorations used to decorate rooms, tables, etc. (such as garlands, lanterns, etc.); decorative articles for Christmas trees (tinsel, coloured balls, animals and other figures, etc); cake decorations which are traditionally associated with a particular festival (e.g., animals, flags).

(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**.

(4) Throw-balls of paper or cotton-wool, paper streamers (carnival tape), cardboard trumpets, “blow-outs”, confetti, carnival umbrellas, etc.

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

(B) **Conjuring tricks and novelty jokes**, e.g., packs of cards, tables, screens and containers, specially designed for the performance of conjuring tricks; novelty jokes such as sneezing powder, surprise sweets, water-jet button-holes and “Japanese flowers”.

This heading also **excludes**:

...(c) Packagings of plastics or of paper, used during festivals (classified according to constituent material, for example, **Chapter 39 or 48**) ...

If the instant fillable plastic containers are properly classified under heading 9505, HTSUS, they cannot be classified under headings 3924 or 3926, HTSUS. See Note 2(y) to chapter 39, HTSUS. Therefore, we must first consider whether the instant containers are classifiable in heading 9505, HTSUS.

The two commenters argue that the subject containers are specifically provided for as festive or entertainment articles in heading 9505, HTSUS, and are excluded from classification in heading 3926, HTSUS. The two commenters assert that the containers are not excluded from chapter 95 by virtue of note 2(y) to chapter 39 and note 1(w) to chapter 95, HTSUS, and cite to HQ H044635, *supra*, that we are now revoking. The commenters claim that the containers are festive articles used in celebration of Easter consistent with the two-prong test in *Park B. Smith, Ltd. v. United States*, 347 F.3d 922, 927 (Fed. Cir. 2003), *citing Midwest of Cannon Falls v. United States*, 122 F.3d 1423, 1429 (Fed. Cir. 1997). Alternatively, the commenters argue that if

the containers are not deemed to be festive articles, they are classifiable as entertainment articles of heading 9505, HTSUS as in HQ H044635.

Heading 9505, HTSUS, provides, among other things, for festive, carnival, or other entertainment articles. EN 95.05 explains that such articles are typically made of non-durable material and include festive decorations used to decorate rooms, tables, or Christmas trees such as garlands, lanterns, tinsels, colored balls, and other figures. The heading excludes articles that contain a festive design, decoration, emblem or motif, and have a utilitarian function.

To be a festive article of heading 9505, HTSUS, an article must satisfy the “Federal Circuit Festive Article Test.”² According to the Court of Appeals for the Federal Circuit (“CAFC”), to be a festive article of heading 9505, a product must be: (1) closely associated with a festive occasion and (2) be used or displayed principally during that festive occasion. See *Park B. Smith, Ltd.*, 347 F.3d at 927, citing *Midwest of Cannon Falls*, 122 F.3d at 1429. “[C]losely associated with a festive occasion” requires that “the physical appearance of an article is so intrinsically linked to a festive occasion that its use during other time periods would be aberrant.” See *id.*

First, we need to determine whether the physical appearance of the subject plastic containers is “so intrinsically linked” to Easter, the Christian holiday celebrating the resurrection of Jesus from the dead, that “their use during other time periods would be aberrant.” *Id.* In *Midwest of Cannon Falls*, 20 CIT 123, 131–32 (CIT 1996), *rev’d on other grounds*, 122 F.3d 1423, 1429 (Fed. Cir. 1997), the Court of International Trade (“CIT”) determined that a ceramic article shaped as a turkey, hollowed in the middle, and used as a trinket dish, planter, or pen holder was not a festive article of heading 9505, HTSUS. Although it featured an animal that was associated with Thanksgiving or autumn, it was “not so peculiarly stylized so as to limit its use to [Thanksgiving].” *Id.* Also, in *Michael Simon Design*, 30 CIT at 1170, 452 F. Supp. 2d at 1326–27, the court concluded that sweaters and a shirt featuring black cats did not satisfy the first prong of the “Federal Circuit Festive Article Test” because the particular images of black cats were “not so *intrinsically* linked to Halloween that wearing those items at other times of the year would evoke thoughts of Halloween or seem aberrant.”

Similarly, the plastic containers that are egg-shaped or carrot-shaped, or in the shape of a bunny, and can be filled with small items, feature animals that are associated with Easter or the spring, but are not “so peculiarly stylized” to limit their use to Easter. *Midwest of Cannon Falls*, 20 CIT at 131–32. Even though these containers are egg-shaped, carrot-shaped, or in the shape of a bunny, their physical appearance does not limit their use to the Easter celebrations, and it would not be “aberrant” to use them throughout the year. On the other hand, the containers shaped to resemble the characters of SpongeBob SquarePants, Dora the Explorer, Disney Princess, Disney/Pixar Cars, and Elmo have nothing to do with Easter and do not evoke thoughts of Easter. In sum, even though color eggs are an Easter motif, the instant plastic containers are not so “intrinsically linked” to Easter that their use other times of the year would be “aberrant.”

² See *Midwest of Cannon Falls*, *supra* ; *Park Smith*, *supra*; *Michael Simon Design, Inc. v. United States*, 30 CIT 1160, 452 F. Supp. 2d 1316 (CIT 2006), *aff’d*, 501 F.3d 1303 (Fed. Cir. 2007).

Moreover, the containers do not satisfy the second prong of the “Federal Circuit Festive Article Test” because they are not used or displayed principally during the Easter religious holiday and celebrations. These containers hold various items such as coins and ponytail holders all year. They can be filled with candy, ponytail holders, cards, animal erasers, cookies, and small gifts to give away as prizes at children’s parties or parades any time during the year. Such types of containers are advertised as “fun for any occasion, they can be filled with surprises and special gifts,”³ as “easy to fill with candy, toys, and more,”⁴ and as “[p]erfect for Easter decorating, Easter baskets, prize boxes, giveaways, and so much more.”⁵ The containers are not sold exclusively and used principally during Easter.

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

Further, the instant egg-shaped containers are not festive, carnival, or other entertainment articles within the meaning heading 9505, HTSUS. Easter is a religious holiday, not a party, festival or carnival, and the egg hunt is a game, not a party favor. The instant egg-shaped containers are not festive decorations such as garlands or lanterns used to decorate rooms and tables. They are not decorative articles for Christmas or cake decorations traditionally used with a festival. *See* EN 95.05(A)(1). They are not articles traditionally used at Christmas festivities such as artificial Christmas trees, nativity scenes, Christmas stockings, or father Christmases. *See* EN 95.05(A)(2). They are not non-textile articles of fancy dress such as masks, false ears and noses, wigs, false beards and moustaches. *See* EN 95.05(A)(3). They are not carnival articles such as confetti, carnival umbrellas, cardboard trumpets, or throw-balls of paper or cotton-wool. *See* EN 95.05(A)(4). They are not conjuring tricks and novelty jokes such as packs of cards, sneezing powder, or surprise sweets. *See* EN 95.05(B). Egg-shaped containers can be used to hold various items. Like an egg-shaped carton that holds L’eggs brand pantyhose, they are not festive articles, party favors, or entertainment articles just because they are egg-shaped.

Therefore, the instant containers are not a festive or other entertainment article of heading 9505, HTSUS, and are not excluded from chapter 39, HTSUS, pursuant to note 2(y) to this chapter.

We will next determine whether they are classifiable under heading 3924, HTSUS, as household articles of plastics or under heading 3926, HTSUS, as other articles of plastics.

Heading 3924, HTSUS, covers tableware, kitchenware, and other household articles “such as ash trays, hot water bottles, matchbox holders, dustbins, buckets, watering cans, food storage containers, curtains, drapes, table

³ *See* Jumbo Easter Egg Plastic Egg Shaped Containers, at <https://www.amazon.com/Easter-Plastic-Shaped-Containers-Purple/dp/B01BTDW9EG> (last visited Dec. 13, 2018).

⁴ *See* Natoryian Jumbo Easter Egg Plastic Egg Shaped Containers, at <https://www.amazon.com/Easter-Plastic-Shaped-Containers-Assorted/dp/B00UL07DHM> (last visited Dec. 13, 2018).

⁵ *See id.*

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

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

Some of the containers are packaged in a polybag for retail sale (see HQ 044635, NY N013622, NY N012286, NY D81320, *supra*), in a reusable carry bag of vinyl with a zippered closure (see NY N013622, *supra*), in a clear bag with cardboard header (see NY D81320, *supra*), in a plastic net drawstring bag with stuffed textile representations of a rabbit’s head, feet, and legs attached in the appropriate places of the bag (see HQ 961700, *supra*), in a disposable netting (see NY N021076, *supra*), or contain ponytails (see NY N021076, *supra*). The disposable netting, polybags, and other plush appear to be packaging of the merchandise and under GRI 5, they are

classified with the goods. The drawstring bag, the reusable carry bag of vinyl, the clear bag with cardboard header, and ponytails are another component of the entire good, and thus, these items must be classified in accordance with GRI 3. Consistent with the EN (X) to GRI 3(b), the goods are put up in sets for retail sale because they consist of at least two different articles that are *prima facie* classifiable in different headings (for example: plastic containers in 3926, HTSUS, plastic bags in 4202, HTSUS, and ponytail holders in 6117, HTSUS); are put up together to facilitate the transportation of trinkets; and are put up in a manner suitable for sale directly to users without repacking. Thus, we need to address whether these bags are classified as part of the retail set or separately. Pursuant to GRI 3(b), if the fillable plastic containers provide the set with its essential character, then the entire set should be classified under the heading for the container, which we determined was heading 3926, HTSUS. If not, then the set should be classified according to that other item that provides the essential character.

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

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

Therefore, we conclude that the instant fillable plastic containers are provided for under subheading 3926.40.0090, Harmonized Tariff Schedule of the United States Annotated (“HTSUSA”), as “[o]ther articles of plastics ... [s]tatuettes and other ornamental articles: Other.”

HOLDING:

By application of GRIs 1, 3(b), 5, and 6, the subject fillable plastic containers (sold with or without bags, and with or without ponytail holders) are classified in heading 3926, HTSUS, specifically under subheading 3926.40.0090, HTSUSA, which provides for “Other articles of plastics and articles of other materials of headings 3901 to 3914: Statuettes and other ornamental articles: Other.” The 2019 rate of duty is 5.3% *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY N018731, dated November 8, 2007; NY N013622, dated July 25, 2007; NY N012286, dated July 5, 2007; NY N021076, dated January 16, 2008; NY H86212, dated January 14, 2002; NY N025433, dated April 25, 2008; NY D81320, dated September 8, 1998; NY C83630, dated February 4, 1998; HQ H044635, dated February 18, 2009, and HQ 961700, dated February 19, 1999, are hereby REVOKED.

NY N007698, dated March 30, 2007, is hereby MODIFIED.

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

Sincerely,

ALLYSON R. MATTANAH

for

MYLES B. HARMON,

Director

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**PROPOSED MODIFICATION OF ONE RULING LETTER,
REVOCATION OF ONE RULING LETTER, AND PROPOSED
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 proposed revocation of one ruling letter, modification of one ruling letter, and proposed 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) intends to revoke one ruling letter and modify one ruling letter concerning tariff classification of non-textile car covers 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 June 7, 2019.

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

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

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

Pursuant to 19 U.S.C. § 1625(c)(1), this notice advises interested parties that CBP is proposing to revoke one ruling letter and modify another ruling letter pertaining to the tariff classification of non-textile car covers. Although in this notice, CBP is specifically referring to New York Ruling Letter (“NY”) I89651, dated January 15, 2003 (Attachment A) and NY 866826, dated September 20, 1991 (Attachment B), this notice also covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the two identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the comment period.

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

In NY I89651 and NY 866826, 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 proposing to modify NY I89651 and revoke NY 866826 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H287397, 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: April 19, 2019

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachments

ATTACHMENT A

NY I89651

January 15, 2003

CLA-2-39:RR:NC:SP:221 I89651

CATEGORY: Classification

TARIFF NO.: 3926.90.9880; 8708.99.8080

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

RE: The tariff classification of car covers and general purpose covers from China.

DEAR MS. TU:

In your letter dated December 18, 2002, you requested a tariff classification ruling.

A sample was provided with your letter. 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.

The applicable subheading for the PEVA rectangular general purpose covers will be 3926.90.9880, Harmonized Tariff Schedule of the United States (HTS), which provides for other articles of plastics, other. The rate of duty will be 5.3 percent ad valorem.

The applicable subheading for the PEVA car covers will be 8708.99.8080, HTS, which provides for parts and accessories of the motor vehicles of headings 8701 to 8705: other parts and accessories: other: other: other: other...other. The rate of duty will be 2.5% ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Joan Mazzola at 646-733-3023.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity
Specialist Division

ATTACHMENT B

NY 866826

September 20, 1991

CLA-2-87:S:N:N1:101-866826

CATEGORY: Classification

TARIFF NO.: 8708.99.5085

MR. SANDY WONG
KOCHIU PACIFIC (S) PTE. LTD.
34 GENTING LANE
#03-03A KHENG SENG BLDG.
SINGAPORE 1334

RE: The tariff classification of car covers from Singapore

DEAR MR. WONG:

In your letter dated August 7, 1991 you requested a tariff classification ruling. You have submitted descriptive literature and samples of the fabric material. The fabric is produced in Taiwan and it is sewn together in Singapore.

The imported merchandise is car covers made of plastic related non-woven material. Sample (A) is the material for a polypropylene cover, sample (B) is the material for a vinyl car cover, and sample (C) is the material for a polyester/nylon car cover. The finished covers have a tough protective outer layer and a soft reinforced inner layer to protect the vehicle's finish.

The literature states that the covers come in eight sizes to fit various cars, including sports cars and classic cars. The car covers fit over the entire body of the vehicle (including the wheels), have electronically welded seams, have heat and air vents, and are completely waterproof. The covers feature a patented tie-down system with front and back elastic hooked ropes for secure fitting to the vehicle. The merchandise is used to protect the car from rain, snow, sun, dirt and various pollutants.

The applicable subheading for the car covers will be 8708.99.5085, Harmonized Tariff Schedule of the United States (HTS), which provides for other parts and accessories of motor vehicles. The rate of duty will be 3.1 percent ad valorem.

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

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

Sincerely,

JEAN F. MAGUIRE
Area Director
New York Seaport

ATTACHMENT C

HQ H287397

CLA-2 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.

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 2018 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.

(I) 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 is 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 2018 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/.

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.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division