

U.S. Customs and Border Protection



DEPARTMENT OF THE TREASURY

19 CFR Part 12

CBP Dec. 19-09

RIN 1515-AE48

IMPORT RESTRICTIONS IMPOSED ON ARCHAEOLOGICAL MATERIAL FROM ALGERIA

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

ACTION: Final rule.

SUMMARY: This final rule amends the U.S. Customs and Border Protection (CBP) regulations to reflect the imposition of import restrictions on certain archaeological material from the People's Democratic Republic of Algeria (Algeria). These restrictions are being imposed pursuant to an agreement between the United States and Algeria that has been entered into under the authority of the Convention on Cultural Property Implementation Act. The final rule amends CBP regulations by adding Algeria to the list of countries which have a bilateral agreement with the United States to impose cultural property import restrictions. The final rule also contains the Designated List that describes the types of archaeological material to which the restrictions apply.

DATES: August 14, 2019.

FOR FURTHER INFORMATION CONTACT: For legal aspects, Lisa L. Burley, Chief, Cargo Security, Carriers and Restricted Merchandise Branch, Regulations and Rulings, Office of Trade, (202) 325-0300, otrrculturalproperty@cbp.dhs.gov. For operational aspects, Christopher N. Robertson, Branch Chief, Commercial Targeting and Analysis Center, Trade Policy and Programs, Office of Trade, (202) 325-6586, CTAC@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION:

Background

The Convention on Cultural Property Implementation Act, Public Law 97– 446, 19 U.S.C. 2601 *et seq.* (“the Cultural Property Implementation Act”), implements the 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (823 U.N.T.S. 231 (1972)) (“the Convention”). Pursuant to the Cultural Property Implementation Act, the United States entered into a bilateral agreement with Algeria to impose import restrictions on certain Algerian archaeological material. This rule announces that the United States is now imposing import restrictions on certain archaeological material from Algeria.

Determinations

Under 19 U.S.C. 2602(a)(1), the United States must make certain determinations before entering into an agreement to impose import restrictions under 19 U.S.C. 2602(a)(2). On January 10, 2019, the Assistant Secretary for Educational and Cultural Affairs, United States Department of State, after consultation with and recommendation by the Cultural Property Advisory Committee, made the determinations required under the statute with respect to certain archaeological material originating in Algeria that are described in the Designated List set forth below in this document. These determinations include the following: (1) That the cultural patrimony of Algeria is in jeopardy from the pillage of archaeological material representing Algeria’s cultural heritage dating from approximately 2.4 million years up to 250 years ago, including material starting in the Paleolithic period and going into the Ottoman period (19 U.S.C. 2602(a)(1)(A)); (2) that the Algerian government has taken measures consistent with the Convention to protect its cultural patrimony (19 U.S.C. 2602(a)(1)(B)); (3) that import restrictions imposed by the United States would be of substantial benefit in deterring a serious situation of pillage and remedies less drastic are not available (19 U.S.C. 2602(a)(1)(C)); and (4) that the application of import restrictions as set forth in this final rule is consistent with the general interests of the international community in the interchange of cultural property among nations for scientific, cultural, and educational purposes (19 U.S.C. 2602(a)(1)(D)). The Assistant Secretary also found that the material described in the determinations meets the statutory definition of “archaeological or ethnological material of the State Party” (19 U.S.C. 2601(2)).

The Agreement

On August 15, 2019, the United States and Algeria entered into a bilateral agreement, “Memorandum of Understanding between the Government of the United States of America and the Government of the People’s Democratic Republic of Algeria Concerning the Imposition of Import Restrictions on Categories of Cultural Property of Algeria” (“the Agreement”), pursuant to the provisions of 19 U.S.C. 2602(a)(2). The Agreement enables the promulgation of import restrictions on categories of archaeological material representing Algeria’s cultural heritage that is at least 250 years old, dating from the Paleolithic (approximately 2.4 million years ago), Neolithic, Classical, Byzantine, and Islamic periods and into the Ottoman period to A.D. 1750. A list of the categories of archaeological material subject to the import restrictions is set forth later in this document.

Restrictions and Amendment to the Regulations

In accordance with the Agreement, importation of material designated below is subject to the restrictions of 19 U.S.C. 2606 and § 12.104g(a) of title 19 of the Code of Federal Regulations (19 CFR 12.104g(a)) and will be restricted from entry into the United States unless the conditions set forth in 19 U.S.C. 2606 and § 12.104c of the CBP regulations (19 CFR 12.104c) are met. CBP is amending § 12.104g(a) of the CBP Regulations (19 CFR 12.104g(a)) to indicate that these import restrictions have been imposed.

Import restrictions listed at 19 CFR 12.104g(a) are effective for no more than five years beginning on the date on which the Agreement enters into force with respect to the United States. This period may be extended for additional periods of not more than five years if it is determined that the factors which justified the Agreement still pertain and no cause for suspension of the Agreement exists. The import restrictions will expire five years from August 15, 2019, unless extended.

Designated List of Archaeological Material of Algeria

The Agreement between the United States and Algeria includes, but is not limited to, the categories of objects described in the Designated List set forth below. Importation of material on this list is restricted unless the material is accompanied by documentation certifying that the material left Algeria legally and not in violation of the export laws of Algeria.

The Designated List includes archaeological material in stone, ceramic, metal, bone, glass, and other categories ranging in date from

the Paleolithic period (beginning around 2.4 million years ago) to the middle of the Ottoman period in Algeria (A.D. 1750).

Archaeological Material

Approximate Chronology of Well-Known Archaeological Periods and Sites

(a) *Paleolithic period* (Oldowan, Aterian, Oranian, Capsian; c. 2.4 million years ago–6000 B.C.): Afalou bou Rhummel, Ain Hanech, Bir el Ater, Columnata, Taforalt, Tamar Hat, Tighenif.

(b) *Neolithic period* (c. 6000–2000 B.C.): Amekni, Capeletti Cave, Oued Guettara, Tassili n'Ajjer.

(c) *Classical period* (Phoenician, Roman, Punic; c. 1100 B.C.–A.D. 533): Ain Fakroun, Beni Ghename, Cherchell (Caesarea), Cirta, Cuicul, Djémila, Gouraya, Les Andalouses, Mersa Medakh, Siga, Rachgoun, Tébessa, Timgad, Tipasa.

(d) *Byzantine period* (c. A.D. 533–644): Al-Asnam, Guelma, Merouana, Timgad.

(e) *Islamic period* (Umayyad, Abbasid, Fatimid, Hammadid, Almoravid, Almohad, Zayyanid, Marinid; c. A.D. 698–1465): Al Qal'a of Beni Hammad, Algiers, El Kantara, M'Zab Valley, Nedroma, Rhoufi, Tlemcen.

(f) *Ottoman period* (c. A.D. 1555–1830¹): Algiers, Oran.

Categories of Material

A. Stone

1. Architectural elements—Doors, door frames, window fittings, columns, capitals, bases, lintels, jambs, friezes, pilasters, engaged columns, altars, *mihrrabs* (prayer niches), screens, fountains, inlays, and blocks from walls, floors, and ceilings of buildings. May be plain, molded, or carved. Often decorated with motifs and inscriptions. Marble, limestone, sandstone, and gypsum are most commonly used, in addition to porphyry and granite.

2. Mosaics—Floor mosaics made from stone cut into small bits (tesserae) and laid into a plaster matrix. Wall and ceiling mosaics are made with a similar technique but may include tesserae of both stone and glass. Subjects can include landscapes, scenes of deities, humans, or animals, and activities such as hunting and fishing or religious imagery. There may also be vegetative, floral, or geometric motifs and imitations of stone. Most date approximately from the 5th century B.C. to 4th century A.D.

¹ *Note:* Import restrictions concerning Ottoman period archaeological material apply only to those objects dating to 1750 A.D. and earlier.

3. Architectural and non-architectural relief sculptures—Types include carved slabs with figural, vegetative, floral, geometric, or other decorative motifs, carved relief vases, steles, and plaques, sometimes inscribed in Greek, Punic, Latin, or Arabic. Sculptures are also used also for architectural decoration of funerary, votive, or commemorative monuments. Marble, limestone, and sandstone are most commonly used.

4. Monuments—Types include votive statues, funerary and votive stelae, and bases and base revetments in marble, limestone, and other kinds of stone. These may be painted, carved with relief sculpture, decorated with moldings, and/or carry dedicatory or funerary inscriptions in Greek, Punic, Latin, or Arabic.

5. Statuary—Large- and small-scale, including deities, human, animal, and hybrid figures, as well as groups of figures in the round, primarily in marble, but also in limestone and sandstone. Common types are large-scale and free-standing statuary from approximately 1 m to 2.5 m (approximately 3 ft to 8 ft) in height, life-sized portrait or funerary busts (head and shoulders of an individual), and waist-length female busts that are either faceless (aniconic) and/or veiled (head or face). Prehistoric examples are small, 5 cm to 10 cm (approximately 2 in to 4 in), ornaments with carved designs.

6. Sepulchers—Types of burial containers include sarcophagi, caskets, and chest urns in marble, limestone, and other kinds of stone. May be plain or have figural, geometric, or floral motifs painted on them, be carved in relief, and/or have decorative moldings.

7. Vessels and containers—Bowls, cups, jars, jugs, lamps, and flasks, and also include smaller funerary urns, in marble and other stone. Funerary urns can be egg-shaped vases with button-topped covers and may have sculpted portraits, painted geometric motifs, inscriptions, scroll-like handles, and/or be ribbed.

8. Furniture—Types include thrones, tables, and beds, from funerary or domestic contexts.

9. Inscriptions—In Greek, Punic, Latin, or Arabic. Includes funerary stelae, votive plaques, tombstones, mosaic floors, and building plaques made of marble or limestone.

10. Tools and weapons—In flint, chert, obsidian, and other hard stones. Prehistoric and Protohistoric microliths (small stone tools). Chipped stone types include blades, borers, scrapers, sickles, cores, and arrow heads. Ground stone types include grinders (*e.g.*, mortars, pestles, millstones, whetstones), choppers, spherical-shaped hand axes, hammers, mace heads, and weights.

11. Jewelry—Includes seals, beads, finger rings, and other personal adornment in marble, limestone, and various semi-precious stones, including rock crystal, amethyst, jasper, agate, steatite, and carnelian.

12. Seals and stamps—Small devices with at least one side engraved with a design for stamping or sealing. They can be discoid, cuboid, conoid, or in the shape of animals or fantastic creatures (*e.g.*, a scarab).

B. Ceramic

1. Architectural elements—Baked clay (terracotta) elements used to decorate buildings. Examples include acroteria, antefixes, painted and relief plaques, revetments, carved and molded brick, and tile wall ornaments and panels.

2. Statuary—Includes deities, human and animal figures, human body parts, and groups of figures in the round. May be brightly colored. Small- and large-scale, ranging from approximately 10 cm to 1 m (4 in to 3 ft) in height.

3. Figurines—Terracotta statues and statuettes, including deities, human, and animal figures, as well as groups of figures in the round.

4. Vessels—Types, forms, and decoration vary among archaeological styles and over time. Includes painted and unpainted forms, which can be either handmade or wheel-made, and decorated with burnish, glazes, or carvings; imagery of humans, deities, animals, floral decorations, or inscriptions. Some of the most well-known types are highlighted below:

a. Neolithic—In a variety of shapes from simple bowls and vases to large storage jars. Handmade, often decorated with a lustrous burnish, decorated with applique and/or incision, sometimes with added paint. So-called “wavy line pottery” from the Saharan region is characteristic of the period.

b. Greek—Includes both local and imported fine and coarse wares and amphorae. Also imported Attic Black Figure, Red Figure, and White Ground pottery—these are made in a specific set of shapes (*e.g.*, amphorae, kraters, hydriae, oinochoi, kylikes) decorated with black painted figures on a clear clay ground (Black Figure), decorative elements in reserve with background fired black (Red Figure), and multi-colored figures painted on a white ground (White Ground). Includes imported painted pottery made in Corinth in a specific range of shapes for perfume and unguents and for drinking or pouring liquids. The very characteristic painted and incised designs depict human and animal figural scenes, rows of animals, and floral decoration. Approximate date: 8th century B.C. to 6th century B.C.

c. Punic and Roman—Includes fine and coarse wares, including terra sigillata and other red gloss wares, cooking wares and mortaria, and storage and shipping amphorae.

d. Byzantine—Includes undecorated plain wares, lamps, utilitarian tableware, serving and storage jars, amphorae, and special shapes such as pilgrim flasks. Can be matte painted or glazed, including incised “sgraffito” and stamped with elaborate polychrome decorations using floral, geometric, human, and animal motifs.

e. Islamic and Ottoman—Includes plain or utilitarian wares as well as painted wares in a variety of types.

5. Lamps—Rounded bodies with a hole on the top and in the nozzle, handles or lugs, and figural motifs such as beading, rosettes, or silphium plant. Inscriptions may also be found on the body. Later periods include glazed ceramic lamps, which may have a straight or round bulbous body with flared top, and several branches.

6. Objects of daily use—Includes game pieces, loom weights, and toys.

C. Metal

1. Statuary—Large- and small-scale, including deities, human, and animal figures, as well as groups of figures in the round in bronze, iron, silver, or gold. Common types are large-scale, free-standing statuary from approximately 1 m to 2.5 m (approximately 3 ft to 8 ft) in height and life-size busts (head and shoulders of an individual).

2. Reliefs—Including plaques, appliques, steles, and masks, often in bronze. May include Greek, Punic, Latin, and Arabic inscriptions.

3. Inscribed or decorated sheet—Engraved inscriptions, “curse tablets,” and thin metal sheets with engraved or impressed designs often used as attachments to furniture. Primarily in bronze or lead.

4. Vessels and containers—Forms include bowls, cups, jars, jugs, strainers, cauldrons, and oil lamps, as well as vessels in the shape of an animal or part of an animal. Also includes scroll and manuscript containers, as well as reliquaries. In bronze, silver, and gold. May portray deities, humans, or animals, as well as floral motifs in relief. Objects from the Islamic period may be inscribed in Arabic.

5. Jewelry—Necklaces, chokers, pectorals, rings, beads, pendants, belts, belt buckles, earrings, diadems, straight pins and fibulae, bracelets, anklets, girdles, belts, mirrors, wreaths and crowns, make-up accessories and tools, metal strigils (scrapers), crosses, and lamp-holders. In iron, bronze, silver, and gold. Metal can be inlaid (with items such as red coral, colored stones, and glass).

6. Seals—Types include finger rings, amulets, and seals with shank in lead, tin, copper, bronze, silver, and gold.

7. Tools—Types include hooks, weights, axes, scrapers, trowels, keys and the tools of crafts persons such as carpenters, masons and metal smiths, in copper, bronze, and iron.

8. Weapons and armor—Body armor, including helmets, cuirasses, shin guards, and shields, and horse armor often decorated with elaborate engraved, embossed, or perforated designs. Both launching weapons (spears and javelins) and weapons for hand-to-hand combat (swords, daggers, *etc.*).

9. Coins—Pre-Roman mints in Algeria include Cirta, Hippo Regius, Caesarea (Iol), Lix, Siga, and Timici. Roman provincial mints in Algeria include Caesarea, Cartenna, and Hippo Regius. Helpful reference books include: *Corpus nummorum Numidiae Mauretaniaeque*, 1955, J. Mazard, et al., Arts et metiers graphiques, Paris; *Le Tré sor de Guelma*, 1963, R. Turcan, Arts et Métiers Graphiques, Paris; *Etude sur la numismatique et l'histoire monétaire du Maroc: Corpus des dirhams idrissites et contemporains*, 1971, D. Eustache, Banque du Maroc, Rabat; *Corpus des Monnaies Alaouites*, 1984, D. Eustache, Banque du Maroc, Rabat; *The Roman Provincial Coinage*, multiple volumes, 1992-, A. Burnett, et al., The British Museum Press, London. Some of the best-known types are described below:

a. Greek—In silver, bronze, and gold, struck in Algeria and in nearby mints (Cyrene, Carthage).

b. Roman Provincial—In bronze, struck at Roman and Roman provincial mints and found throughout Algeria.

c. Numidian and Mauretanian—Associated with Numidian kings such as Micipsa, Jugurtha, Hiempsal II, and Juba I, and Mauretanian kings such as Syphax, Juba II, Ptolemy II of Mauretania, Bocchus I, and Bocchus II.

d. Byzantine—In bronze, silver, and gold, struck in nearby mints like Carthage or mobile mints in Arab-Byzantine period Ifriqiya.

e. Islamic—In silver and gold struck at various mints including Algiers, Bijaya, Biskra, Qusantina, and Tlemcen. Examples include any coins of the following dynasties: Almohad, Hafsid, Marinid, and Ziyaniid.

f. Ottoman—Ottoman coins of Algeria in silver, gold, billon, and copper, struck at various mints including Algiers, Qusantina, Tagdemt, and Tlemcen. Also Spanish coins of Oran in billon or copper, produced in Toledo or Madrid for use in Spanish Oran between 1618 and 1691.

D. Bone, Ivory, Shell, and Other Organic Materials

1. Small statuary and figurines—Includes human, animal, and hybrid figures, and parts thereof as well as groups of figures in the round. These range from approximately 10 cm to 1 m (4 in to 40 in) in height.

2. Reliefs, plaques, steles, and inlays—Carved and sculpted. May have figurative, floral, and/or geometric motifs.

3. Jewelry—Types include amulets, combs, pins, spoons, bracelets, buckles, and beads (for example, prehistoric perforated shells) in bone, ivory, and spondylus shell.

4. Seals and stamps—Small devices with at least one side engraved with a design for stamping or sealing. They can be discoid, cuboid, conoid, or in the shape of animals or fantastic creatures (*e.g.*, a scarab).

5. Vessels and luxury objects—Include small containers and decorated vessels made of ostrich eggshell. Ivory, bone, and shell were used either alone or as inlays in luxury objects, including furniture, chests and boxes, writing and painting equipment, musical instruments, games, cosmetic containers, combs, jewelry, amulets, and seals.

6. Tools—Including bone points and awls, mounted fish jaws for arrow points, and fish hooks.

7. Manuscripts—Written or painted on specially prepared animal skins (cattle, sheep/goat, camel) known as parchment. They occur in single leaves or bound as a book or codex. They date primarily from the late Classical or Byzantine periods and later.

8. Human remains—Skeletal remains from the human body, preserved in burials or other contexts.

E. Glass, Faience, and Semi-Precious Stone

1. Architectural elements—Includes glass tesserae pieces from floor and wall mosaics and glass windows.

2. Vessels and containers—Shapes include small jars, bowls, animal shaped, goblet, spherical, candle holders, perfume jars (*unguentaria*), and lamps. Ancient examples may be engraved and/or colorless or blue, green, or orange, while those from the Islamic period may include animal, floral, and/or geometric motifs.

3. Jewelry—Colored beads, including multi-colored eye beads. Glass bracelets, usually in very dark glass, sometimes twisted.

4. Lamps—Primarily from the Islamic period. May have a straight or round bulbous body with flared top, and several branches.

F. Painting and Plaster

1. Rock art—Painted and/or incised drawings on natural rock surfaces. Common motifs include humans, animals, geometric, and/or floral elements.

2. Wall painting—With figurative (deities, humans, animals), floral, and/ or geometric motifs, as well as funerary scenes. These are painted on stone, mud plaster, lime plaster (wet—*buon fresco*—and dry—*secco fresco*), sometimes to imitate marble.

3. Stucco—A fine plaster used for coating wall surfaces or molding into architectural decorations such as reliefs, plaques, steles, and inlays.

G. Textiles, Basketry, and Rope

1. Textiles—Linen cloth was used in Greco-Roman times for mummy wrapping, shrouds, garments, and sails. Islamic period textiles in linen and wool, including garments and hangings.

2. Basketry—Plant fibers were used to make baskets and containers in a variety of shapes and sizes, as well as sandals and mats.

3. Rope—Rope and string were used for a great variety of purposes, including binding, lifting water for irrigation, fishing nets, measuring, and stringing beads for jewelry and garments.

Inapplicability of Notice and Delayed Effective Date

This amendment involves a foreign affairs function of the United States and is, therefore, being made without notice or public procedure (5 U.S.C. 553(a)(1)). For the same reason, a delayed effective date is not required under 5 U.S.C. 553(d)(3).

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Executive Orders 12866 and 13771

CBP has determined that this document is not a regulation or rule subject to the provisions of Executive Order 12866 or Executive Order 13771 because it pertains to a foreign affairs function of the United States, as described above, and therefore is specifically exempted by section 3(d)(2) of Executive Order 12866 and section 4(a) of Executive Order 13771.

Signing Authority

This regulation is being issued in accordance with 19 CFR 0.1(a)(1) pertaining to the Secretary of the Treasury's authority (or that of

his/her delegate) to approve regulations related to customs revenue functions.

List of Subjects in 19 CFR Part 12

Cultural property, Customs duties and inspection, Imports, Prohibited merchandise, Reporting and recordkeeping requirements.

Amendment to CBP Regulations

For the reasons set forth above, part 12 of Title 19 of the Code of Federal Regulations (19 CFR part 12), is amended as set forth below:

PART 12—SPECIAL CLASSES OF MERCHANDISE

■ 1. The general authority citation for part 12 and the specific authority for § 12.104g continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

Sections 12.104 through 12.104i also issued under 19 U.S.C. 2612;

* * * * *

■ 2. In § 12.104g, paragraph (a), the table is amended by adding Algeria to the list in alphabetical order to read as follows:

§ 12.104g Specific items or categories designated by agreements or emergency actions.

(a) * * *

State party	Cultural property	Decision No.
Algeria	Archaeological material representing Algeria's cultural heritage that is at least 250 years old, dating from the Paleolithic (approximately 2.4 million years ago), Neolithic, Classical, Byzantine, and Islamic periods and into the Ottoman period to A.D. 1750.	CBP Dec. 19-09.
*	*	*

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Dated: August 13, 2019.

ROBERT E. PEREZ,
Deputy Commissioner,
U.S. Customs and Border Protection.

TIMOTHY E. SKUD,
Deputy Assistant
Secretary of the Treasury.

NEW DATE FOR THE OCTOBER 2019 CUSTOMS BROKER'S LICENSE EXAMINATION

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

ACTION: General notice.

SUMMARY: This document announces that U.S. Customs and Border Protection has changed the date on which the semi-annual examination for an individual broker's license will be held in October 2019.

DATES: The customs broker's license examination scheduled for October 2019 will be held on Thursday, October 17, 2019.

FOR FURTHER INFORMATION CONTACT: Randy Mitchell, Director, Commercial Operations, Revenue and Entry, Office of Trade, (202) 325-6532, or *brokermanagement@cbp.dhs.gov*.

SUPPLEMENTARY INFORMATION:

Background

Section 641 of the Tariff Act of 1930, as amended (19 U.S.C. 1641), provides that a person (an individual, corporation, association, or partnership) must hold a valid customs broker's license and permit in order to transact customs business on behalf of others, sets forth standards for the issuance of brokers' licenses and permits, and provides for the taking of disciplinary action against brokers that have engaged in specified types of infractions. This section also provides that an examination may be conducted to assess an applicant's qualifications for a license.

The regulations issued under the authority of section 641 are set forth in Title 19 of the Code of Federal Regulations, part 111 (19 CFR 111). Part 111 sets forth the regulations regarding the licensing of, and granting of permits to, persons desiring to transact customs business as customs brokers. These regulations also include the qualifications required of applicants and the procedures for applying for licenses and permits. Section 111.11 of the CBP regulations (19 CFR 111.11) sets forth the basic requirements for a broker's license, and in paragraph (a)(4) of that section provides that an applicant for an individual broker's license must attain a passing grade (75 percent or higher) on a written examination.

Section 111.13 of the CBP regulations (19 CFR 111.13) sets forth the requirements and procedures for the written examination for an individual broker's license and states that written customs broker's license examinations will be given on the fourth Wednesday in April

and October unless the regularly scheduled examination date conflicts with a national holiday, religious observance, or other foreseeable event.

Due to an unforeseen impediment to optimal conditions for administering the test, CBP has decided to change the regularly scheduled date of the examination. This document announces that CBP has scheduled the October 2019 customs broker's license examination for Thursday, October 17, 2019.

Dated: August 12, 2019.

BRENDA B. SMITH,
*Executive Assistant Commissioner,
Office of Trade.*

[Published in the Federal Register, August 19, 2019 (84 FR 42942)]



**COPYRIGHT, TRADEMARK, AND TRADE NAME
RECORDATIONS**

(No. 7 2019)

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

SUMMARY: The following copyrights, trademarks, and trade names were recorded with U.S. Customs and Border Protection in July 2019. A total of 190 recordation applications were approved, consisting of 14 copyrights and 176 trademarks. The last notice was published in the Customs Bulletin Vol. 53, No. 25, July 24, 2019.

Corrections or updates may be sent to: Intellectual Property Rights Branch, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, 90 K Street, NE., 10th Floor, Washington, D.C. 20229-1177, or via email at iprrquestions@cbp.dhs.gov.

FOR FURTHER INFORMATION CONTACT: LaVerne Watkins, Paralegal Specialist, Intellectual Property Rights Branch, Regulations and Rulings, Office of Trade at (202) 325-0095.

Dated: August 20, 2019

CHARLES R. STEUART
*Chief,
Intellectual Property Rights Branch
Regulations and Rulings, Office of Trade*

CBP IPR RECORDATION — JULY 2019

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnsm	Owner Name	GM Restricted
TMK 01-00608	07/31/2019	08/18/2029	LEGO	LEGO JURIS A/S	No
TMK 02-00053	07/31/2019	05/23/2029	MINDSTORMS	LEGO JURIS A/S	No
TMK 02-00999	07/31/2019	01/17/2030	SF (Stylized)	SAN FRANCISCO GIANTS BASEBALL CLUB LLC	No
TMK 03-00024	07/31/2019	12/26/2029	SD (Stylized)	PADRES L.P.	No
TMK 05-00440	07/31/2019	01/17/2030	DESIGN ONLY (M)	THE BASEBALL CLUB OF SEATTLE, LLLP	No
TMK 05-00841	07/31/2019	01/24/2030	ATLANTA (stylized) and Tomahawk Design	ATLANTA NATIONAL LEAGUE BASEBALL CLUB, LLC	No
TMK 08-00183	07/26/2019	07/01/2028	ROCHESTER ELECTRONICS	Rochester Electronics, LLC	No
TMK 08-00184	07/26/2019	06/25/2028	RE ROCHESTER ELECTRONICS & Design	Rochester Electronics, LLC	No
TMK 08-00236	07/26/2019	07/01/2028	LEADERS ON THE "TRAILING EDGE OF TECHNOLOGY"	Rochester Electronics, LLC	No
TMK 09-00383	07/26/2019	05/24/2029	RE (Stylize) and Design	Rochester Electronics, LLC	No
TMK 09-00763	07/11/2019	09/02/2029	SF and Design (Stylized)	FORTY NINERS FOOTBALL COMPANY LLC	No
TMK 09-01050	07/11/2019	07/14/2029	RECLAST	Novartis AG	No
TMK 10-00031	07/16/2019	04/13/2029	SPEEDMASTER	OMEGA SA (OMEGA AG) (OMEGA LTD.)	No
TMK 10-00240	07/02/2019	03/14/2020	Mach3 (Stylized)	THE GILLETTE COMPANY LLC	No

CBP IPR RECORDATION — JULY 2019

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tm/Trm	Owner Name	GM Restricted
TMK 10-00613	07/22/2019	09/02/2029	DUNHILL LONDON (Stylized)	Alfred Dunhill Limited	No
TMK 10-00757	07/31/2019	09/13/2029	FIESTAS	OLEM SHOE CORPORATION	No
TMK 10-00767	07/08/2019	06/14/2029	FASHIONFLEX	OLEM SHOE CORPORATION	No
TMK 10-00847	07/26/2019	10/27/2029	DESIGN ONLY	LOUIS VUITTON MALLETIER	No
TMK 10-00886	07/02/2019	04/28/2027	CODABOW	CODABOW INTERNATIONAL, LLC	No
TMK 10-00897	07/09/2019	08/05/2029	CASIO (Stylized)	Casio Keisanki Kabushiki Kaisha DBA Casio Computer Co., Ltd.	No
TMK 11-00420	07/18/2019	09/02/2029	DESIGN ONLY	PomWonderful LLC	No
TMK 11-00423	07/11/2019	06/08/2027	MIDO (Stylized)	MIDO AG (MIDO SA) (MIDO LTD)	No
TMK 11-00531	07/02/2019	03/29/2029	Hermes (Stylized)	HERMES INTERNATIONAL	No
TMK 11-00690	07/18/2019	08/12/2029	DESIGN ONLY	Greenland Trading Corp.	No
TMK 11-00939	07/31/2019	09/22/2029	CORTECH	Helmet House, Inc.	No
TMK 12-00106	07/26/2019	04/27/2028	SOCCER BALL AND STRIPES DESIGN	MAJOR LEAGUE SOCCER LLC	No
TMK 12-00110	07/26/2019	11/05/2028	COLORADO RAPIDS 96 & Design	Major League Soccer, LLC	No
TMK 12-00113	07/26/2019	11/05/2028	LA GALAXY & Design	Major League Soccer, LLC	No
TMK 12-00129	07/26/2019	07/03/2027	FC DALLAS 96 and Design	MAJOR LEAGUE SOCCER, L.L.C.	No
TMK 12-01133	07/02/2019	11/04/2029	CACIQUE	Cacique, Inc.	No
TMK 12-01195	07/17/2019	08/03/2029	STITT	STITT SPARK PLUG COMPANY	No
TMK 13-00138	07/31/2019	07/21/2029	PMAG	Magpul Industries Corp.	No
TMK 13-00253	07/30/2019	10/13/2029	WITE-OUT	BIC CORPORATION	No

CBP IPR RECORDATION — JULY 2019

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tm	Owner Name	GM Restricted
TMK 13-00278	07/30/2019	10/06/2029	BIC & BOY Design	BIC CORPORATION	No
TMK 13-00398	07/18/2019	07/13/2029	SUN XTENDER	Concorde Battery Corporation	No
TMK 13-00749	07/31/2019	01/13/2030	MBUS	Magpul Industries Corp.	No
TMK 13-01330	07/16/2019	06/27/2029	FINLANDIA	BROWN-FORMAN FINLAND LTD.	No
TMK 14-00746	07/02/2019	06/17/2029	SOBEL WESTEX	Sobel Westex	No
TMK 14-00906	07/18/2019	07/21/2029	BALIYO	Spyderco, Inc.	No
TMK 14-00994	07/23/2019	09/08/2029	PIAGET	Richemont International S.A.	No
TMK 15-00026	07/31/2019	07/21/2029	MOE	Magpul Industries Corp.	No
TMK 15-00803	07/31/2019	12/01/2021	LIZ CLAIBORNE	J. C. PENNEY PURCHASING CORPO- RATION	No
TMK 15-01152	07/08/2019	07/07/2029	TRUE FIT	Bell Sports, Inc.	No
TMK 16-00637	07/18/2019	05/24/2029	DESIGN ONLY	Ford Motor Company	No
TMK 17-00019	07/15/2019	07/22/2029	HENNESSY	MOET HENNESSY USA, INC.	No
TMK 18-00596	07/17/2019	08/10/2029	NUTRAMIGEN	MEAD JOHNSON & COMPANY, LLC	No
TMK 18-01035	07/08/2019	07/14/2029	KINDER BUENO	FERRERO S.p.A.	No
TMK 19-00152	07/25/2019	12/26/2029	TUFFY	VIP PRODUCTS, LLC	No
TMK 19-00707	07/02/2019	10/08/2024	MAGIC TOWEL	Southern States Marketing, Inc. DBA Peachtree Playthings	No
TMK 19-00708	07/02/2019	09/20/2027	Design Only	CARLOS ALBERTO MONSALVE AGRAZ	No

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Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tm	Owner Name	GM Restricted
TMK 19-00709	07/02/2019	12/06/2026	DESIGN ONLY (Color Mark claiming the color combination orange and cream as applied to aerial work platforms (boom lifts))	JLG Industries, Inc.	No
TMK 19-00710	07/02/2019	12/06/2026	DESIGN ONLY (Color Mark claiming the color combination orange and cream as applied to aerial work platforms (scissor lifts))	JLG Industries, Inc.	No
TMK 19-00711	07/02/2019	01/18/2027	DESIGN ONLY (Color Mark claiming the color combination orange and cream as applied to telehandlers)	JLG Industries, Inc.	No
TMK 19-00712	07/02/2019	12/15/2028	SENNA	Senna Cosmetics, Inc.	No
TMK 19-00713	07/02/2019	07/26/2021	GOTUKOLA & Design	SOULDIER FIT LLC	No
TMK 19-00714	07/03/2019	03/13/2022	U.S. MARINE CORPS	U.S. Marine Corps	No
TMK 19-00715	07/03/2019	03/13/2022	UNITED STATES MARINE CORPS	U.S. Marine Corps	No
TMK 19-00716	07/03/2019	11/20/2023	SEMPER FI	U.S. Marine Corps	No
TMK 19-00717	07/03/2019	04/07/2024	USMC	U.S. Marine Corps	No
TMK 19-00718	07/03/2019	06/24/2025	MARINES	U.S. Marine Corps	No
TMK 19-00719	07/03/2019	06/12/2029	V and design	Valley Tool & Die, Inc.	No
TMK 19-00720	07/03/2019	05/16/2030	SPUDWARE	Excellent Packaging & Supply	No

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Recordation No.	Effective Date	Expiration Date	Name of Cop/TmK/TmM	Owner Name	GM Restricted
TMK 19-00721	07/03/2019	03/09/2025	PACE Technologies & Design	Pace Technologies Corporation	No
TMK 19-00722	07/03/2019	02/18/2024	PERLICK	Perlick Corporation	No
TMK 19-00723	07/07/2019	05/14/2027	P Design (STYLIZED)	Perlick Corporation	No
TMK 19-00724	07/07/2019	06/06/2022	PERLICK	PERLICK CORPORATION	No
TMK 19-00725	07/07/2019	01/09/2029	ADDYI & Design	Sprout Pharmaceuticals, Inc.	No
TMK 19-00726	07/08/2019	11/30/2026	CYMA	CYMA INTERNATIONAL LTD	No
TMK 19-00727	07/08/2019	05/23/2023	ROLEX	Rolex Watch U.S.A., Inc.	No
TMK 19-00728	07/10/2019	05/26/2029	DESIGN ONLY (Red and White Cross and Shield)	Victorinox AG	No
TMK 19-00729	07/10/2019	06/26/2029	I AM MMLJ and Design	Pitre, Anita	No
TMK 19-00730	07/10/2019	07/16/2029	YOUNG HORMONES	Women's Midlife Specialist, Inc.	No
TMK 19-00731	07/10/2019	08/30/2027	PLOOM	JT International SA	No
TMK 19-00732	07/10/2019	04/08/2029	C Costa (Stylized) and Design	Costa Del Mar, Inc.	No
TMK 19-00733	07/11/2019	02/15/2027	BAVENCIO	MERCK KGAA	No
TMK 19-00734	07/11/2019	03/22/2026	WE USA and Design	WE MODEL CO., LIMITED	No
TMK 19-00735	07/11/2019	09/25/2029	VALCO	Valley Tool & Die, Inc.	No
TMK 19-00736	07/11/2019	11/01/2027	MAVENCLAD	Merck KGaA	No
TMK 19-00737	07/11/2019	07/03/2028	DULCERIA RODRIGUEZ and Design	La Dulceria, Inc.	No
TMK 19-00738	07/11/2019	08/06/2024	HARRY WINSTON	Harry Winston SA	No
TMK 19-00739	07/12/2019	08/06/2024	HW LOGO	Harry Winston SA	No

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TMK 19-00740	07/12/2019	04/18/2025	INSAN	CHOI, Eun-A	No
TMK 19-00741	07/12/2019	09/10/2028	INSAN & Design	CHOI, Eun-A	No
TMK 19-00742	07/15/2019	07/15/2020	H (and Design)	HAYWARD INDUSTRIES, INC.	No
TMK 19-00743	07/15/2019	05/08/2027	HAYWARD	HAYWARD INDUSTRIES, INC.	No
TMK 19-00744	07/15/2019	01/17/2027	TURBO CELL	HAYWARD INDUSTRIES, INC.	No
TMK 19-00745	07/15/2019	08/31/2021	HAYWARD	Hayward Industries, Inc.	No
TMK 19-00746	07/15/2019	11/23/2021	H (and Design)	Hayward Industries, Inc.	No
TMK 19-00747	07/15/2019	07/13/2020	BEAUTY 360	CVS Pharmacy, Inc.	No
TMK 19-00748	07/15/2019	06/27/2022	H HAYWARD (and Design)	Hayward Industries, Inc.	No
TMK 19-00749	07/15/2019	01/17/2028	BEAUTY 360	CVS Pharmacy, Inc.	No
TMK 19-00750	07/15/2019	07/23/2029	TOTES BABIES	TB Industries LLC	No
TMK 19-00751	07/15/2019	04/10/2027	BEAUTY 360	CVS Pharmacy, Inc.	No
TMK 19-00752	07/15/2019	05/28/2027	BEAUTY 360: REINVENTING BEAUTY	CVS Pharmacy, Inc.	No
TMK 19-00753	07/15/2019	07/18/2027	CVS HEALTH & Design	CVS Pharmacy, Inc.	No
TMK 19-00754	07/15/2019	05/13/2028	CVSHEALTH & Design	CVS Pharmacy, Inc.	No
TMK 19-00755	07/15/2019	10/07/2022	CVS	CVS PHARMACY, INC.	No
TMK 19-00756	07/15/2019	04/23/2028	JUST	JUST GOODS, INC.	No
TMK 19-00757	07/16/2019	02/28/2028	GOOGLE ASSISTANT Logo	Google Inc.	No
TMK 19-00758	07/16/2019	06/08/2026	JUST	JUST GOODS, INC.	No
TMK 19-00759	07/16/2019	04/16/2028	JUST	JUST GOODS, INC.	No

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TMK 19-00760	07/16/2019	03/27/2027	Made in Texas Put In Cups Chain Link Fence Art and Design	Hunt, Randall	No
TMK 19-00761	07/17/2019	03/11/2023	ZAGG	ZAGG INTELLECTUAL PROPERTY HOLDING CO., INC.	No
TMK 19-00762	07/17/2019	12/24/2023	S (Stylized) and Design (AUDI S DESIGN WITH RHOMBUS)	AUDI AG JOINT STOCK COMPANY	No
TMK 19-00763	07/17/2019	12/07/2020	NIGHT OWL	NIGHT OWL SP, LLC	No
TMK 19-00764	07/18/2019	06/29/2026	INVISIBLE SHIELD	ZAGG Intellectual Property Holding Co., Inc	No
TMK 19-00765	07/18/2019	07/03/2022	IFROGZ	ZAGG INTELLECTUAL PROPERTY HOLDING CO., INC.	No
TMK 19-00766	07/18/2019	10/19/2025	HIRE PERFORMANCE WHEELS	Phoenix Wheel Co., Inc. DBA HRE Performance Wheels	No
TMK 19-00767	07/18/2019	09/18/2029	BLJUVA	TherapeuticsMD, Inc.	No
TMK 19-00768	07/18/2019	04/03/2027	DESIGN ONLY (Invisible Shield Logo)	Zagg Intellectual Property Holding Co., Inc.	No
TMK 19-00769	07/18/2019	04/15/2023	HIRE	Phoenix Wheel Co., Inc. DBA HRE Performance Wheels	No
TMK 19-00770	07/18/2019	08/21/2029	POPGRIP	PopSockets LLC	No

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Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 19-00771	07/18/2019	11/13/2023	FLOWFORM	Phoenix Wheel Co., Inc. DBA HRE Performance Wheels	No
TMK 19-00772	07/18/2019	02/22/2029	LOEWE	LOEWE S.A.	No
TMK 19-00773	07/18/2019	02/06/2027	Loewe (Stylized)	LOEWE, S. A.	No
TMK 19-00774	07/19/2019	06/18/2023	LOEWE	Loewe S.A.	No
TMK 19-00775	07/19/2019	02/24/2026	ADDYI	Sprout Pharmaceuticals, Inc.	No
TMK 19-00776	07/19/2019	10/10/2028	JAQUET DROZ	Montres Jaquet Droz SA (Montres Jaquet Droz AG) (Montres Jaquet Droz Ltd)	No
TMK 19-00777	07/19/2019	03/13/2027	V V (Stylized)	Hyper Ice, Inc.	No
TMK 19-00778	07/22/2019	07/02/2026	WELLNESS FORMULA	THRESHOLD ENTERPRISES LTD.	No
TMK 19-00779	07/22/2019	05/09/2020	LIFE FORCE	THRESHOLD ENTERPRISES, LTD.	No
TMK 19-00780	07/22/2019	06/13/2028	PLANETARY HERBALS	Threshold Enterprises Ltd.	No
TMK 19-00781	07/23/2019	07/02/2029	BOSE	Bose Corporation	No
TMK 19-00782	07/23/2019	07/26/2021	MOPHIE	MOPHIE, INC.	No
TMK 19-00783	07/23/2019	08/08/2022	ZAGG	ZAGG INTELLECTUAL PROPERTY HOLDING CO.,	No
TMK 19-00784	07/23/2019	08/23/2027	M & Design	Mophie, Inc.	No
TMK 19-00785	07/23/2019	12/28/2020	DESIGN ONLY (MAZZEI INJECTOR)	Mazzei Injector Corporation	No
TMK 19-00786	07/23/2019	04/03/2027	ATLANTA UNITED FC and Design	Major League Soccer, L.L.C.	No
TMK 19-00787	07/24/2019	01/06/2026	DermaClip	DERMACLIP US, LLC	No

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Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 19-00788	07/25/2019	09/09/2025	C-TPAT Customs - Trade Partnership Against Terrorism and Design	U.S. Department of Homeland Security	No
TMK 19-00789	07/25/2019	10/29/2024	U.S. DEPARTMENT OF HOMELAND SECURITY, SCIENCE AND TECHNOLOGY SAFETY ACT DESIGNATED WWW.SAFETYACT.GOV and Design	United States Department of Homeland Security	No
TMK 19-00790	07/25/2019	04/13/2025	U.S. DEPARTMENT OF HOMELAND SECURITY SCIENCE AND TECHNOLOGY SAFETY ACT DEVELOPMENTAL TESTING AND EVALUATION DESIGNATION WWW.SAFETYACT.GOV and Design	United States Department of Homeland Security	No
TMK 19-00791	07/25/2019	02/24/2026	RIC-M RADIO INTERNET-PROTOCOL COMMUNICATIONS MODULE and Design	United States Department of Homeland Security	No
TMK 19-00792	07/25/2019	08/10/2026	RIC - M	United States Department of Homeland Security	No
TMK 19-00793	07/25/2019	10/29/2024	U.S. DEPARTMENT OF HOMELAND SECURITY, SCIENCE AND TECHNOLOGY, SAFETY ACT CERTIFIED, WWW.SAFETYACT.GOV and DESIGN	United States Department of Homeland Security	No

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Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tm	Owner Name	GM Restricted
TMK 19-00794	07/25/2019	06/10/2025	NATIONAL INTELLECTUAL PROPERTY RIGHTS COORDINATION CENTER IPR CENTER PROTECTION IS OUR TRADEMARK and Design	United States Department of Homeland Security	No
TMK 19-00795	07/25/2019	01/18/2027	E and Design	United States Department of Homeland Security	No
TMK 19-00796	07/25/2019	03/27/2022	UNITED STATES COAST GUARD 1790 and Design	United States Department of Homeland Security	No
TMK 19-00797	07/25/2019	07/14/2025	UNITED STATES COAST GUARD 1790 and Design	United States Department of Homeland Security	No
TMK 19-00798	07/25/2019	07/30/2023	GLOBAL ENTRY; TRUSTED TRAVELER NETWORK and Design	United States Department of Homeland Security	No
TMK 19-00799	07/25/2019	01/09/2029	ASK TSA and Design	Department of Homeland Security	No
TMK 19-00800	07/25/2019	10/01/2024	TSA PRE and Checkmark Design	United States Department of Homeland Security	No
TMK 19-00801	07/25/2019	03/22/2026	COLUMBUS CREW SC 96 & Design	Major League Soccer, L.L.C.	No
TMK 19-00802	07/25/2019	11/29/2027	D.C. UNITED & Design	Major League Soccer, L.L.C.	No
TMK 19-00803	07/25/2019	04/22/2029	LOS ANGELES LA FOOTBALL CLUB & Design	Major League Soccer, L.L.C.	No
TMK 19-00804	07/25/2019	10/08/2024	DESIGN ONLY (MINNESOTA UNITED FC)	MAJOR LEAGUE SOCCER, L.L.C.	No

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Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tm	Owner Name	GM Restricted
TMK 19-00805	07/25/2019	08/10/2026	NEW YORK CITY FOOTBALL CLUB NYC and Design	Major League Soccer, L.L.C.	No
TMK 19-00806	07/25/2019	03/22/2026	ORLANDO CITY & Design	Major League Soccer, L.L.C.	No
TMK 19-00807	07/25/2019	12/08/2025	RSL & Design	Major League Soccer, LLC	No
TMK 19-00808	07/25/2019	08/12/2025	QUAKES SAN JOSE 1974 and Design	Major League Soccer, LLC	No
TMK 19-00809	07/25/2019	09/06/2027	ENHANCEMENTS LASH BOOST	Rodan & Fields, LLC	No
TMK 19-00810	07/25/2019	12/19/2027	REDEFINE	Rodan & Fields, LLC	No
TMK 19-00811	07/25/2019	01/31/2027	RODAN + FIELDS	RODAN & FIELDS, LLC	No
TMK 19-00812	07/25/2019	04/01/2022	MAJOR LEAGUE SOCCER	MAJOR LEAGUE SOCCER, L.L.C.	No
TMK 19-00813	07/25/2019	10/14/2025	MLS and Design	Major League Soccer, L.L.C.	No
TMK 19-00814	07/25/2019	08/21/2029	DESIGN ONLY (Triple Stitch Sneaker Trade Dress)	CONSITEX S.A.	No
TMK 19-00815	07/25/2019	10/05/2026	ALLEN SCHWARTZ	Aquarius Rags, LLC	No
TMK 19-00816	07/26/2019	11/14/2028	EG-PRO	WINTERS, VINCENT J.	No
TMK 19-00817	07/26/2019	01/04/2027	AEER and Design	United States Department of Homeland Security	No
TMK 19-00818	07/26/2019	10/19/2021	IDEA FACTORY INNOVATE. COLLABO- RATE. SUCCEED. and Design	United States Department of Homeland Security	No
TMK 19-00819	07/29/2019	09/12/2028	OLLYBALL	Burke, Joseph	No
TMK 19-00820	07/29/2019	06/01/2026	BALAJI	BALAJI WHOLESALE FOODS, LLC	No

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Recordation No.	Effective Date	Expiration Date	Name of Cop/TmK/TmM	Owner Name	GM Restricted
TMK 19-00821	07/30/2019	05/09/2026	JEAN PAUL	Infinity Electronics, Inc.	No
TMK 19-00822	07/30/2019	08/01/2028	HUDABEAUTY (Stylized)	Huda Beauty Limited	No
TMK 19-00823	07/31/2019	12/17/2023	ZENÚ	LATINFOOD U.S. CORP.	No
TMK 19-00824	07/31/2019	10/24/2028	MEATME	Lerner, Sandy	No
TMK 19-00825	07/31/2019	10/10/2028	G7 COFFEE INSTANT COFFEE (Stylized) and Design	CONG TY CO PHAN DAU TU TRUNG NGUYEN (also trading as TRUNG NGUYEN INVESTMENT CORPORATION)	No
TMK 19-00826	07/31/2019	06/13/2028	FOREVER STEEL HOSE	InvenTel Products, LLC	No
TMK 19-00827	07/31/2019	06/13/2028	FOREVER STEEL HOSE (stylized) and Design	InvenTel Products, LLC	No
TMK 19-00828	07/31/2019	11/30/2021	MYCHARGE	RFA BRANDS, LLC	No
TMK 92-00120	07/11/2019	10/11/2029	GUESS? and Triangle Design	Guess? IP Holder L.P.	No
TMK 98-00361	07/26/2019	07/29/2027	MLS	MAJOR LEAGUE SOCCER, L.L.C.	No
TMK 99-00066	07/31/2019	01/24/2030	ATLANTA BRAVES	ATLANTA NATIONAL LEAGUE BASEBALL CLUB, LLC	No
TMK 99-00449	07/11/2019	07/17/2029	PRESCRIPTIVES	ESTEE LAUDER INC.	No
TMK 99-00572	07/10/2019	09/23/2029	CATERPILLAR (Stylized/Design)	Caterpillar Inc.	No
TMK 99-00580	07/12/2019	09/23/2029	CAT and Design	Caterpillar Inc.	No
COP 19-00092	7/2/2019	7/2/2039	Untitled	ScienceCare	No

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Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tm	Owner Name	GM Restricted
COP 19-00093	7/8/2019	7/8/2039	Poopsie Slime Surprise! S19 Packaging & Merchandising Guide.	MGA Entertainment, Inc.	No
COP 19-00094	7/8/2019	7/8/2039	1-001 Crystal Queen (V), et al.	MGA Entertainment, Inc.	No
COP 19-00095	7/15/2019	7/15/2039	Mickey and Friends N47	Vera Bradley Designs, Inc.	No
COP 19-00096	7/15/2019	7/15/2039	Disney Dandelions N48.	Vera Bradley Designs, Inc.	No
COP 19-00097	7/15/2019	7/15/2039	Mickey's Floral Celebration M86.	Vera Bradley Designs, Inc.	No
COP 19-00098	7/15/2019	7/15/2039	Mickey's Paisley Celebration M85.	Vera Bradley Designs, Inc.	No
COP 19-00099	7/22/2019	7/22/2039	Juvalips Website Banner Photo 1.	Juvalips, LLC	No
COP 19-00100	7/22/2019	7/22/2039	Juvalips User Guide.	Juvalips, LLC	No
COP 19-00101	7/31/2019	7/31/2039	Latinfood Zenu Ranchera Sausage Design.	Latinfood U.S. Corp. d.b.a. Zenu Products Co.	No
COP 19-00102	7/31/2019	7/31/2039	Latinfood Zenu Ham Design.	Latinfood U.S. Corp. d/b/a Zenu Products Co.	No
COP 19-00103	7/31/2019	7/31/2039	Latinfood Zenu Sausage Design.	Latinfood U.S. Corp. d/b/a Zenu Products Co.	No
COP 99-00203	7/8/2019	7/8/2039	Basic minifigures.	Interlego, AG, a.k.a. LEGO Group	No
COP 99-00214	7/31/2019	7/31/2039	Pokemon trading card game.	Nintendo of America, Inc.	No

19 CFR PART 177

REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF CERTAIN SOLAR KITS

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

ACTION: Notice of revocation of treatment relating to the tariff classification of certain solar kits.

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 the treatment accorded to transactions of the importer identified in Headquarters Ruling Letter (“HQ”) H298151 concerning the tariff classification of certain solar kits 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. 15, on May 15, 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 November 4, 2019.

FOR FURTHER INFORMATION CONTACT: Dwayne Rawlings, Electronics, Machinery, Automotive and International Nomenclature Branch, Regulations and Rulings, Office of Trade, at (202) 325–0092.

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)(2), a notice was published in the *Customs Bulletin*, Vol. 53, No. 15, on May 15, 2019, proposing to revoke the treatment accorded to transactions of the importer identified in HQ H298151 (attached), and to revoke or modify any ruling not specifically identified, to reflect the analysis contained in proposed HQ H298151 concerning the tariff classification of certain solar kits. 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, also 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.

Under the above-referenced treatment, CBP classified certain solar kits in heading 8541, HTSUS, specifically in subheading 8541.40.60, HTSUS, which provides for "Diodes, transistors and similar semiconductor devices; photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light-emitting diodes (LED); mounted piezoelectric crystals; parts thereof: Photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light-emitting diodes (LED): Other diodes." CBP has reviewed the treatment and has determined the treatment to be in error. It is now CBP's position that the solar kits are properly classified, in heading 8501, HTSUS, specifically in subheading 8501.31.80, HTSUS, which provides for "Electric motors and generators (excluding generating sets): Other DC motors: DC generators: Of an output not exceeding 750 W: Generators."

Pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking the treatment concerning the classification of the subject solar kits, and to revoke or modify any ruling not specifically identified, to reflect the analysis contained in HQ H287802, set forth as an attachment to this notice. Additionally, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: August 14, 2019

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

Attachment

HQ H298151

August 14, 2019

CLA-2 OT:RR:CTF:EMAIN H298151 DSR

CATEGORY: Classification

TARIFF NO.: 8501.31.80

MR. LARRY T. ORDET

SANDLER, TRAVIS & ROSENBERG, P.A.

1000 NW 57TH COURT, SUITE 600

MIAMI, FL 33126

RE: Revocation of treatment under 19 C.F.R. 177.12(c)(1); notice and comment requirements of 19 U.S.C. §1625(c)(2); various solar kits

DEAR MR. ORDET:

This is in response to your letter of June 26, 2017, on behalf of Sunforce Products, Inc., (Sunforce) concerning the classification of various solar kits under the Harmonized Tariff Schedule of the United States (HTSUS).

On July 24, 2008, U.S. Customs and Border Protection (CBP) – the Port of Champlain – issued a CBP Form 28 (CF-28) Request for Information to Sunforce relating to a single entry of a solar kit. CBP reviewed the information provided by Sunforce and liquidated the entry as entered in subheading 8541.40.60, HTSUS, which provides for “Diodes, transistors and similar semiconductor devices; photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light-emitting diodes (LED); mounted piezoelectric crystals; parts thereof: Photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light-emitting diodes (LED): Other diodes.” Sunforce alleges that it continued to use subheading 8541.40.60, HTSUS, for subsequent imports of such solar kits, as well as for similar solar kits, based upon having received “CBP’s approval regarding the classification of these goods and consistent with the company’s historic classification practice.”

In addition, on December 30, 2009, the Port of Champlain issued a CF-28 concerning the classification of “various solar products” on a line of a single entry dated December 11, 2009. The entry line included nine separate part numbers, including three items previously reviewed by CBP pursuant to the 2008 request, *supra*. CBP reviewed the information provided by Sunforce and liquidated the entry as entered in subheading 8541.40.60, HTSUS.

Sunforce asserts that it continued to use subheading 8541.40.60, HTSUS, for subsequent imports of such solar panels and kits, as well as substantially similar solar panels and kits between 2011 and 2012. The table below summarizes the entry dates, liquidation dates and HTSUS numbers that Sunforce assigned at entry to the items that are the subject of this protest:

Entry Date	Liquidation Date	Port of Entry	HTSUS subheading
9/15/2011	7/27/2012	3802	8541.40.60
9/7/2011	7/20/2012	3802	8541.40.60
8/5/2011	6/15/2012	3802	8541.40.60
4/25/2012	8/3/2012	3802	8541.40.60
4/27/2012	8/3/2012	3802	8541.40.60
5/18/2012	8/3/2012	3802	8541.40.60

Entry Date	Liquidation Date	Port of Entry	HTSUS subheading
6/15/2012	7/23/2012	3802	8501.31.80
7/26/2012	8/21/2012	3802	8501.31.80
7/30/2012	8/21/2012	3802	8501.31.80

Upon liquidation, U.S. Customs and Border Protection (CBP) classified all of the items as electric generators under subheading 8501.31.80, HTSUS, which provides for “Electric motors and generators (excluding generating sets): Other DC motors: DC generators: Of an output not exceeding 750 W: Generators.” We note that Sunforce alleges that it classified the last three entries listed under subheading 8501.31.80, HTSUS, in accordance with CBP’s guidance.

Sunforce describes the items as “solar panels, which are sometimes referred to battery maintainers, trickle chargers or battery chargers ... all designed solely to supply power to a battery, which can then be used to provide power to another, primary device.” Sunforce states that each panel includes a backflow, or blocking, diode that allows the electric current to flow in one direction, thus preventing the current from flowing from the battery to the solar panel, and although some of the larger panels, *e.g.*, those over 15W, include such a diode, a separate charge controller is typically used to protect the battery and the panel from overcharging or undercharging. The following table summarizes the items at issue:

Part No.	Description
50012	1.8W Solar Battery Charger
50013	1W Powersport Charger
50022	5W Solar Battery Trickle Charger
50032	15W Solar Battery Charger
50033	Four 15W Kits in Pop Display
58012	Coleman 2W Solar Battery Charger
58013	Coleman 1W Powersport Charger
58022	Coleman 6W Solar Battery Trickle Charger
58025	Coleman 10W Solar Power Panel
58033	Coleman 18W Solar Battery Charger Kit & Controller
58050	Coleman 55W Solar Charging Kit
58232	Coleman 36W Folding Solar Panel & 7 Amp Controller

Item 50012 – the 1.8W Solar Battery Charger – includes a wire connected to solar panel, extra wire, battery clamps, an O-Ring Connector and fuse, and “Quick Connect Technology.” It also has a built-in blocking diode to prevent discharge from the battery and integrated circuitry to prevent discharge and overcharge.

Item 50013 – the 1W Powersport Charger – includes a solar charger, a set of O-Rings, and a set of battery clamps. It may be attached directly to a battery and contains a blocking diode that prevents discharge and overcharge.

Item 50022 – the 5W Solar Battery Trickle Charger – includes a 12V DC Plug, alligator clamps, an 11.5 foot wire, a solar panel, and four stainless steel mounting screws. It may be installed by connecting its 12V DC plug into a

vehicle's DC socket to charge the vehicle's battery, or by directly connecting it to a vehicle's battery by using the alligator clamps. The solar panel has a built-in blocking diode to prevent reverse discharge.

Item 50032 – the 15W Solar Battery Charger – includes a 12V DC plug, alligator clamps, an 11.5 foot wire, a solar panel and four stainless steel mounting screws. It may be installed by connecting its 12V DC plug into a vehicle's DC socket to charge the vehicle's battery, or by directly connecting it to a vehicle's battery by using the alligator clamps. The solar panel has a built-in blocking diode to prevent reverse discharge. The set also includes a voltage tester.

Item 50033 – the “4 15W Kits with Pop Display” – includes a seven amp charge controller, 12V DC plug, alligator clamps, an 11.5 foot wire, a solar panel, and four stainless steel mounting screws. The kit also includes a voltage tester. The charge controller is attached to a vehicle's battery via the included alligator clips and cuts voltage, thereby ensuring no overcharging of the battery. The solar panel itself is connected to the charge controller via the included 11.5 foot wire. The solar panel contains a built-in blocking diode that protects the battery from reverse discharge.

Item 58012 – the Coleman 2W Solar Battery Maintainer – includes a solar panel, alligator battery clamps, and a 12V DC plug. It may be installed by connecting its 12V DC plug into a vehicle's DC socket to charge the vehicle's battery, or by directly connecting it to the battery by using the alligator clamps. The solar panel has a built-in blocking diode to prevent reverse discharge.

Item 58013 – the Coleman 1W Powersport Charger – is described thusly: “The 12 Volt Power Sports Charger may be attached directly to your battery using either of the accessories included with the charger. Included with the charger are a set of ‘O’ Rings as well as a set of battery clamps. Both are equipped with quick connect technology to allow quick and easy connections.” The panel contains a blocking diode that prevents discharge and overcharge.

Item 58022 – the Coleman 6W Solar Battery Trickle Charger – includes a 12V DC plug, alligator battery clamps, a ten-foot wire, a solar panel and four stainless steel mounting screws. It may be installed by connecting its 12V DC plug into a vehicle's DC socket to charge the vehicle's battery, or by directly connecting it to the battery by using the alligator clamps. The panel also includes a blocking diode to prevent battery drain and reverse discharge.

Item 58025 – the Coleman 10W Solar Power Panel – includes a 12V DC plug, battery clamps, four stainless steel mounting screws and a ten-foot wire. The kit may be installed by connecting its 12V DC plug into a vehicle's DC socket to charge the vehicle's battery, or by directly connecting it to a vehicle's battery by using the battery clamps. The panel also includes a built-in blocking diode to prevent reverse discharge.

Item 58033 – Coleman 18W Solar Battery – includes a 12V DC plug, alligator battery clamps, a twelve-foot wire, a solar panel, four stainless steel mounting screws and an LED voltage indicator light. We note that the product page for the item depicts a 7A charge controller as being included in the kit, along with a voltage tester. The kit may be installed by connecting its 12V DC plug into a vehicle's DC socket to charge the vehicle's battery, or by directly connecting it to the battery by using the battery clamps. The panel also includes a built-in blocking diode to prevent reverse discharge.

Item 58050 – the Coleman 55W Solar Charging Kit – includes the following:

1. Three x 18 Watt Amorphous Solar Panels with blocking diodes
2. 7 Amp Solar Charge Controller
3. ‘Quick connect’ extension cable
4. 12 Volt plug
5. Female 12 Volt connector
6. 12 Volt inverter plug
7. 3 in 1 cable connector
8. ‘Stripped’ wire charge controller connector
9. 200 watt power Inverter
10. Support frame

Item 58232 – the Coleman 36W Folding Solar Panel & 7A Controller – includes the following items:

1. 12 Volt plug
2. 1 Set of Alligator Battery Clamps
3. Solar Panel
4. Brackets (4)
5. Screws (15)
6. LED Voltage Indicator
7. Support rods (3)
8. Stripped wire for connection to charge controller
9. 7 amp charge controller

ISSUES:

Are the sets described above classifiable under heading 8501, HTSUS, which provides for electric generators, or under heading 8541, HTSUS, which provides for photosensitive semiconductor devices?

Has CBP accorded a treatment to Sunforce for the classification of these goods under subheading 8541.40.60, HTSUS?

LAW AND ANALYSIS:

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

- 8501 Electric motors and generators (excluding generating sets):
 * * *
- Other DC motors: DC generators:
- 8501.31 Of an output not exceeding 750 W:
 * * *
- 8501.31.80 Generators.
* * *

8541 Diodes, transistors and similar semiconductor devices; photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light-emitting diodes (LED); mounted piezoelectric crystals; parts thereof:

* * *

8541.40 Photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light-emitting diodes (LED):

* * *

8541.40.60 Other diodes.

* * *

The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the HTSUS. While not legally binding or dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989). Legal Note 4 to Section XVI (which contains Chapter 85) states that:

Where a machine (including a combination of machines) consists of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices) intended to contribute together to a clearly defined function covered by one of the headings in chapter 84 or chapter 85, then the whole falls to be classified in the heading appropriate to that function.

Explanatory Note (“EN”) 85.01(II) describes two categories of items that are specifically included in heading 8501, HTSUS. To wit, the EN states:

(II) ELECTRIC GENERATORS

Machines that produce electrical power from various energy sources (mechanical, solar, etc.) are classified here [in heading 8501], provided they are not more specifically covered by any other heading of the Nomenclature.

*** The heading also covers photovoltaic generators consisting of panels of photocells combined with other apparatus, e.g., storage batteries and electronic controls (voltage regulator, inverter, etc.) and panels or modules equipped with elements, however simple (for example, diodes to control the direction of the current), which supply the power directly to, for example, a motor, an electrolyser.

In these devices, electricity is produced by means of solar cells which convert solar energy directly into electricity (photovoltaic conversion).

EN 85.41 provides, in pertinent part:

(B) PHOTSENSITIVE SEMICONDUCTOR DEVICES

This group comprises photosensitive semiconductor devices in which the action of visible rays, infra-red rays or ultra-violet rays causes variations in resistivity or generates and electromotive force, by the internal photoelectric effect.

*** The main types of photosensitive semiconductor devices are:

*** (2) Photovoltaic cells, which convert light directly into electrical energy without the need for an external source of current. [...]

Special categories of photovoltaic cells are:

- (i) Solar cells, silicon photovoltaic cells which convert sunlight directly into electric energy. They are usually used in groups such as source of electric power, e.g., in rockets or satellites employed in space research, for mountain rescue transmitters.

The heading also covers solar cells, whether or not assembled in modules or made into panels. However the heading does not cover panels or modules equipped with elements, however simple, (for example, diodes to control the direction of current), which supply the power directly to, for example, a motor, an electrolyser (heading 85.01).

Thus, per the ENs, panels or modules with elements that can supply the power directly to an external load, are precluded from classification in heading 8541, HTSUS, and are classified in heading 8501, HTSUS.

The subject items are “goods put up in sets for retail sale” per GRI 3(b) and are goods of different headings particular for use in charging a vehicle battery. The included solar panels provide the essential character of the sets. Therefore, the sets must be classified according to the classification of the solar panels.

Sunforce asserts that the sets are classified under subheading 8541.40.60, HTSUS, based upon an interpretation of Headquarters Ruling Letter (“HQ”) H084604, dated May 3, 2010 (revoking New York Ruling Letter (“NY”) N047472, dated January 9, 2009). In HQ H084604, CBP noted that “a solar module is not precluded from classification under heading 8541, HTSUS, simply because it contains ‘elements’ (e.g., diodes which control the direction of the current). Those elements must also ‘supply power directly’ to an external load, such as a motor or an electrolyser.” See EN 85.41(B)(2)(i). CBP then classified the device as a photosensitive semiconductor device in subheading 8541.40.60, HTSUS, because the device lacked blocking diodes and inverters to convert DC power produced by the solar panels into AC power usable by items such as appliances. What is determinative in such cases is whether or not the device under consideration consisting of panels of photo-cells is combined with elements that enable the device to supply power directly and irreversibly to another device. The module in question in HQ H084604 could only connect to other solar modules in order to create a single solar panel and could not connect to external devices or an electrical grid. CBP explicitly noted the lack of such connectors in the underlying, and revoked, ruling New York Ruling Letter (NY) N047472 but that fact was not explicitly acknowledged in HQ H084604. In addition, although CBP noted that “[t]he vast majority of applications require that the DC produced by the module be converted into alternating current (‘AC’) by an inverter” and the module in question did not generate AC power, that does not completely illuminate the delineation between headings 8501 and 8541, HTSUS. In any event, CBP correctly concluded that the module was classified in heading 8541 as a solar cell because it could not supply power to an external load.

The pertinent facts of HQ H084604 are distinguishable from the facts at hand. Here, each set’s essential character is determined by the classification of the solar panel components, and those solar panel components include apparatus (such as battery clamps, DC socket plugs and a blocking diode) that allow the components to supply power to a vehicle’s battery. The sets are therefore excluded from heading 8541, HTSUS, and classified in heading

8501, HTSUS, as generators. See HQ H136116 (March 2, 2011) and HQ H255441 (August 30, 2016), classifying similar solar generators in heading 8501, HTSUS.

However, Sunforce also claims that CBP was precluded from liquidating the subject articles in heading 8501, HTSUS, as opposed to heading 8541, HTSUS, because such an action runs afoul of the notice and comment requirements of 19 U.S.C. §1625(c). That provision provides that:

A proposed interpretive ruling or decision which would –

- (1) modify (other than to correct a clerical error) or revoke a prior interpretive ruling or decision which has been in effect for at least 60 days; or
- (2) have the effect of modifying the treatment previously accorded by the Customs Service to substantially identical transactions;

shall be published in the Customs Bulletin. The Secretary shall give interested parties an opportunity to submit, during not less than the 30-day period after the date of such publication, comments on the correctness of the proposed ruling or decision. After consideration of any comments received, the Secretary shall publish a final ruling or decision in the Customs Bulletin within 30 days after the closing of the comment period. The final ruling or decision shall become effective 60 days after the date of its publication.

Section 1625(c)(1) applies only to a proposed ruling that would be inconsistent with a “prior interpretive ruling or decision.” Such a prior interpretive ruling or decision cannot also be considered to be “treatment” covered by 19 U.S.C. §1625(c)(2). See *Motorola, Inc. v. United States*, 30 C.I.T. 1766, 1780, 462 F.Supp. 2d 1368, 1380 (2006); *aff’d by Motorola Inc. v. United States*, 509 F.3d 1368 (Fed. Cir. 2007) (“... a more logical reading of [19 USC 1625] is that Congress intended subsections (c)(1) and (c)(2) to have the same impact, but under different situations, the former when a prior interpretative ruling . . . has been issued, and the latter when no previous interpretative ruling or decision has been issued.’ ... Reading subsection (c)(2) as including interpretative rulings ... would render subsection (c)(1) redundant.” (quoting Def. Brief). Sunforce has not demonstrated that CBP has issued a pertinent “prior interpretive ruling or decision” within the meaning 19 U.S.C. §1625(c)(1), and Sunforce’s claim regarding that provision fails.

However, with regard to 19 U.S.C. §1625(c)(2) and Sunforce’s treatment claim, Title 19 of the Code of Federal Regulations (CFR) sets forth the evidentiary standards for determining whether treatment was previously accorded to substantially similar transactions. Section 177.12(c)(1) of the regulations (19 C.F.R. 177.12(c)(1)) provides that the following rules will apply for purposes of determining whether a “treatment” was previously accorded by CBP:

- (i) There must be evidence to establish that:
 - (A) There was an actual determination by a Customs officer regarding the facts and issues involved in the claimed treatment;
 - (B) The Customs officer making the actual determination was responsible for the subject matter on which the determination was made; and

- (C) Over a 2-year period immediately preceding the claim of treatment, Customs consistently applied that determination on a national basis as reflected in liquidations of entries or reconciliations or other Customs actions with respect to all or substantially all of that person's Customs transactions involving materially identical facts and issues.

19 C.F.R. 177(c)(1)(ii) provides that the determination will be made on a case-by-case basis and will involve an assessment of all relevant factors. In particular, CBP will focus on past transactions to determine whether there was an examination of the merchandise by CBP or the extent to which those transactions were reviewed by CBP to determine the proper application of the CBP laws and regulations. Diminished weight will be given to transactions involving small quantities or values, and no weight to informal entries or transactions processed without examination or CBP officer review.

Further, 19 C.F.R. 177.12(c)(1)(iv) provides that "(t)he evidentiary burden as regards the existence of the previous treatment is on the person claiming the treatment. ..." and:

The evidence of previous treatment by Customs must include a list of all materially identical transactions by entry number (or other Customs assigned number), the quantity and value of merchandise covered by each transaction (where applicable), the ports of entry, the dates of final action by Customs, and, if known, the name and location of the Customs officer who made the determination on which the claimed treatment is based. In addition, in cases in which an entry is liquidated without any Customs review (for example, the entry is liquidated automatically as entered), the person claiming a previous treatment must be prepared to submit to Customs written or other appropriate evidence of the earlier actual determination of a Customs officer that the person relied on in preparing the entry and that is consistent with the liquidation of the entry.

Here, Sunforce asserts that an "actual determination" was made by CBP regarding substantially similar transactions in 2008 and 2009 "following a review of detailed product information provided in response to specific questions made by the Port of Champlain." In support, Sunforce cites to the following actions:

1. On July 24, 2008, the Port of Champlain issued a CBP Form 28 ("CF-28") Request for Information to Sunforce relating to a single entry of a solar panel kit. After CBP reviewed the information provided by Sunforce, the entry was liquidated as entered in subheading 8541.40.60, HTSUS, which provides for solar cells assembled into modules or made up into panels. Sunforce asserts that it continued to use subheading 8541.40.60, HTSUS, for subsequent imports of such solar panels and kits, as well as similar solar panels and kits, based upon having received "CBP's approval regarding the classification of these goods and consistent with the company's historic classification practice."
2. On December 30, 2009, the Port of Champlain issued a CF-28 concerning the classification of "various solar products" on a line of a single entry dated December 11, 2009. The entry line included nine separate part numbers, including three items previously reviewed by CBP pursuant to the 2008 request, *supra*. After CBP reviewed the information provided by Sunforce, the entry was liquidated as entered in subhead-

ing 8541.40.60, HTSUS. Sunforce asserts that it continued to use subheading 8541.40.60, HTSUS, for subsequent imports of such solar panels and kits, as well as substantially similar solar panels and kits.

Given the above, Sunforce claims that CBP's reclassification and liquidations of the subject items in 2012 violates the notice and comment requirements of 19 U.S.C. §1625(c)(2) because CBP had previously made "actual determinations" on a national basis when classifying substantially similar items imported by Sunforce in subheading 8541.40.60, HTSUS, during at least the two years prior. In support, Sunforce has submitted a spreadsheet that identifies over 200 entries filed from June 22, 2010 through September 12, 2011 (after CBP issued the two CF-28's) and liquidated in subheading 8541.40.60, HTSUS. The entries contain over 3000 items that Sunforce attests are substantially similar to the items that are the subject of this protest. The spreadsheet shows the model numbers and values of the merchandise, the ports of entry (Champlain, NY; Alexandria Bay, NY; and Port Huron, MI) and the dates of liquidation. Sunforce has also submitted an affidavit affirming the veracity of the information presented in the spreadsheet. Sunforce concludes that the aforementioned "treatment" can only be revoked or modified pursuant to the procedures outlined in 19 U.S.C. §1625(c)(2).

Given the volume of evidence submitted by Sunforce (and notwithstanding that the subject items are correctly classifiable in heading 8501, HTSUS, as electric generators) we find that Sunforce has shown that CBP has consistently applied the determination that the subject items were classified in subheading 8541.40.60, HTSUS, on a national basis as reflected in liquidations of entries or reconciliations or other CBP actions with respect to all or substantially all of Sunforce's CBP transactions involving materially identical facts and issues. Therefore, we find that the notice and comment requirements of 19 U.S.C. §1625(c)(2) are applicable to the matter at hand and Sunforce has shown that those requirements were not met when CBP liquidated the entries that are the subject of Sunforce's protest.

Under the facts presented, we conclude under 19 C.F.R. 177.12(c), that a treatment does, in fact, exist in classifying Sunforce's solar kits under subheading 8541.40.60, HTSUS, which provides for "Diodes, transistors and similar semiconductor devices; photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light-emitting diodes (LED); mounted piezoelectric crystals; parts thereof. Photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light-emitting diodes (LED): Other diodes."

HOLDING:

Under the authority of GRI 1, the subject solar kits are provided for in heading 8501, HTSUS, specifically in subheading 8501.31.80, HTSUS, which provides for "Electric motors and generators (excluding generating sets): Other DC motors: DC generators: Of an output not exceeding 750 W: Generators."

On January 23, 2018, Presidential Proclamation 9693 imposed safeguard measures on imports of crystalline silicon photovoltaic (CSPV) cells and certain products incorporating CSPV cells in the form of additional tariffs or tariff rate quotas for a period of three years. Products classified under subheading 8501.31.80, HTSUS, unless specifically excluded, are subject to the

additional duties. *See* Note 20 to Chapter 99 and subheading 9903.45.25, HTSUS.

Pursuant to 19 U.S.C. § 1625(c)(2), the treatment previously accorded Sunforce's importations of this merchandise is revoked.

Sincerely,

GREG CONNOR

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

19 CFR PART 177**MODIFICATION OF A RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE COUNTRY OF ORIGIN MARKING FOR MARKING PURPOSES OF THE TEMS™ POCKET NETWORK TESTING DEVICE**

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

ACTION: Notice of modification of a ruling letter and revocation of treatment with respect to the country of origin marking determination of the TEMS™ Pocket network testing device.

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 a ruling with respect to the country of origin marking determination, pursuant to 19 U.S.C. §1304, of the TEMS™ Pocket network testing device. 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. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 53, No. 12, on April 24, 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 November 4, 2019.

FOR FURTHER INFORMATION CONTACT: Anthony L. Shurn, Tariff Classification and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325–0218.

SUPPLEMENTARY INFORMATION:**Background**

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

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

Accordingly, the law imposes a greater obligation on CBP to provide the public with improved 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. 12, on April 24, 2019, proposing to modify a ruling letter pertaining to the tariff classification of the TEMS™ Pocket network testing device. 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 HQ H014068, dated October 7, 2007, CBP ruled that the country of origin of the TEMS™ Pocket network testing device to be Sweden. CBP has reviewed HQ H014068 and has determined the ruling letter to be in error. It is now CBP's position that the country of origin of the TEMS™ Pocket network testing device is "China or Malaysia or any other country of manufacture where an article recognizable as a mobile telephone is created."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is modifying HQ H014068 with respect to the country of origin determination and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in HQ H243924, set forth as an attachment to this

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

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

Dated: August 14, 2019

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

Attachment

HQ H243924

August 14, 2019

OT: RR: CTF: TCM H243924 ALS

CATEGORY: Country of Origin Marking

MR. GEORGE ROWE
SUPPLY DIRECTOR
ASCOM TEMS
1943 ISAAC NEWTON SQUARE
RESTON, VIRGINIA 20190

RE: Country of Origin Marking; Mobile Telephone with Specialized Software;
TEMS™ Pocket network testing device; 19 U.S.C. §1304; 19 CFR 134;
Modification of HQ H014068

DEAR MR. ROWE:

This letter is a reconsideration of our October 9, 2007 ruling letter, CBP Ruling HQ H014068, to Ericsson, Inc., the previous owner and importer of the TEMS™ Pocket network testing device. Your company is receiving this letter because you and Ericsson have informed us that Ascom now owns the TEMS™ Pocket network testing device, it having been sold to Ascom in 2009. The reconsideration concerns the country of origin marking of the TEMS™ Pocket network testing device.

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, Vol. 53, No. 12, on April 24, 2019, proposing to revoke CBP Ruling HQ H014068 (October 9, 2007), and revoke any treatment accorded to substantially identical transactions. One comment was received in response to the notice, to which we respond below. Our decision is set forth below.

FACTS:

The facts as stated in H014068 are as follows:

The TEMS Pocket is a commercially available fully functional cellular phone onto which TEMS network testing software has been loaded. According to the information submitted, TEMS software allows a cellular phone to function as a testing tool for telecommunication networks. The TEMS Pocket is used by network engineers to verify, maintain and troubleshoot mobile networks as well as for basic cell planning tasks. Collected data can be stored in the handset for later transfer to a computer. The product literature lists some of the key features of the TEMS Pocket as:

Includes a Sony Ericsson K790i, K790a, K800i or Nokia N80 mobile phone. Measures WCDMA 2100 MHz and GSM/GPRS/EDGE 850/900/1800/1900 MHz. Records logfiles for later post-processing analysis. Generates network event notifications. Clearly presents essential network information on the mobile standby display. Also displays channel information and performance measurements during WAP browsing. Measures EGPRS and WCDMA data performance. Provides cell control options including locking on RAT, locking on cell, channel and band, and modifying cell barred behavior. Supports FTP for networking troubleshooting and logfile transfer. Automates call handling, logfile recording, and trans-

fer to server via FTP. Allows data collection in places that are hard to reach with traditional drive-test tools and methods.

The cellular phone handset is designed in Sweden and is typically assembled in China or Malaysia. The phone incorporates a camera, music and video player, and an FM radio, and can connect to the Internet. After assembly, the handset is shipped to Sweden where the TEMS software is loaded on to it and tested. According to Ericsson, the TEMS software adds approximately \$2500 worth of value to the phone. A sample of the TEMS Pocket has been provided for our review.

During our teleconference, Ericsson informed CBP that the TEMS Pocket connects to a cellular network as an ordinary phone and that this is the only way in which it can connect to the network to be tested. When the phone is turned on, technical information concerning the network is immediately displayed. CBP was also informed that some of the displayed information is calculated aggregated data. For example, information concerning signal strength for a particular channel is shown as a ratio of signal strength to interference. In order to use the TEMS Pocket as a cellular phone, the TEMS software has to be manually disabled.

According to the product literature, the TEMS Pocket has several data presentation views. Combined views display information valid for all radio access technology. For example, the PDP context view displays PDP addresses and PDP context settings for each address, including the NSAPI and APN. The WCDMA views display cell and network identity along with Universal Terrestrial Radio Access (UTRA) carrier RSSI (Received Signal Strength Indication). For example, the WCDMA Cells view displays UARFCN, cell status, scrambling code, RSCP, Ec/No and path loss for each cell in active set and serving/monitored cells. The GSM/GPRS views contain serving cell ARFCN, BSIC and RxLev, and cell and network identity in addition to other information listed in the literature.

In addition, the TEMS Pocket has several functions that allow the user to control the operation of the phone. According to the literature, these functions are essential for troubleshooting and verification in the field. From the Cell Control menu the user can select multiple actions such as:

- Lock to RAT (Off/WCDMA/GSM)
- Lock Cell WCDMA (Off/Set UARFCN/SC)
- Lock ARFCN GSM (Off/Set ARFCN)
- Lock to Band GSM (Off/850/900/1800/1900)
- Ignore cell barred (Off/On)
- Reset control settings to default off state

The TEMS Pocket is imported packaged together with a memory stick, battery and charger, USB cable, lanyard, hands free headset and software user guides.

In addition to the facts noted above, you have confirmed that the TEMS Pocket software was developed in Sweden.

ISSUE:

What is the country of origin of the TEMS™ Pocket network testing device for the purpose of marking in accordance with 19 U.S.C. §1304 and 19 CFR 134?

LAW AND ANALYSIS:

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. §1304), 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 a manner as to indicate to the ultimate purchaser in the United States the English name of the country of origin of the article. Congressional intent in enacting section 1304 was that the ultimate purchaser should be able to know by an inspection of the marking on the imported goods the country of origin of the goods. “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 at 302 (1940).

Part 134, Customs and Border Protection (CBP) Regulations (19 CFR Part 134), implements the country of origin marking requirements and exceptions of 19 U.S.C. §1304. Section 134.1(b), CBP Regulations (19 CFR 134.1(b)), defines “country of origin” as “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 [the marking laws and regulations].”

For country of origin marking purposes, a substantial transformation of an article occurs when it is used in manufacture, which results in an article having a name, character, or use differing from that of the article before the processing. However, if the manufacturing or combining process is merely a minor one that leaves the identity of the article intact, a substantial transformation has not occurred. *Uniroyal, Inc. v. United States*, 3 CIT 220, 542 F. Supp. 1026, 1029 (1982), aff’d, 702 F.2d 1022 (Fed. Cir. 1983).

In *Texas Instruments v. United States*, 681 F.2d 778, 782 (CCPA 1982), the court observed that the substantial transformation issue is a “mixed question of technology and customs law.” In C.S.D. 84–85, 18 Cust. B. & Dec. 1044, CBP stated:

We are of the opinion that the rationale of the court in the *Data General* case may be applied in the present case to support the principle that the essence of an integrated circuit memory storage device is established by programming;... [W]e are of the opinion that the programming (or reprogramming) of an EPROM results in a new and different article of commerce which would be considered to be a product of the country where the programming or reprogramming takes place.

In *Data General v. United States*, 4 CIT 182 (1982), the court determined for purposes of determining eligibility under item 807.00, Tariff Schedules of the United States, the predecessor to subheading 9802.00.80, Harmonized Tariff Schedule of the United States (HTSUS), that the programming of a foreign PROM (Programmable Read-Only Memory chip) in the United States substantially transformed the PROM into a U.S. article. Accordingly, the programming of a device that defines its use generally constitutes substantial transformation.

As we stated in H014068, citing CBP Ruling HQ 968000 (February, 14, 2006),

...to determine whether a substantial transformation occurs when components of various origins are assembled into completed products, CBP considers the totality of the circumstances and makes such determinations on a case-by-case basis. The country of origin of the item's components, extent of the processing that occurs within a country, and whether such processing renders a product with a new name, character, or use are primary considerations in such cases. Additionally, factors such as the resources expended on product design and development, extent and nature of post-assembly inspection and testing procedures, and worker skill required during the actual manufacturing process will be considered when determining whether a substantial transformation has occurred; however, no one factor is determinative.

Upon further review in consideration of all the circumstances of manufacture, we find that the installation of Swedish-developed TEMS software in Sweden into the pre-existing mobile telephones that were assembled in China or Malaysia did not substantially transform the use and function of the mobile telephones. Despite the fact that the TEMS software was developed in Sweden and subsequently installed into the mobile telephones in Sweden, the mobile telephones were manufactured in China or Malaysia and became identifiable as such in China or Malaysia. In fact, the mobile telephones were identifiable by their commercial names, Nokia N80 and Ericsson K790i, K790a, and K800i, upon assembly in China or Malaysia and before the TEMS software was installed. Furthermore, the development of the TEMS software in Sweden had no bearing on the manufacturing of the subject articles as mobile telephones.

The initial function of the subject mobile devices remains intact and is only enhanced, not changed, to produce additional functions. The article in *Data General*, however, was substantially transformed from a non-programmed individual integrated circuit to a programmed integrated circuit with discrete and immutable functionality. In essence, the article in *Data General* did not become a programmed integrated circuit until it was transformed into such in the United States. It is only at that point when the article's use became defined, unlike the TEMS Pocket, whose use became defined upon its manufacture into a mobile telephone before the TEMS software was installed.

The above-noted comment argues that the loading of the TEMS software onto to the mobile telephones is a substantial transformation. The commenter specifically argues that the TEMS software changed the mobile telephones from cellular phones to network testing devices, which the change in tariff classification represents. The commenter also argues that the necessity to manually disable the TEMS software before making a telephone call with a TEMS Pocket suggests that the TEMS Pocket is no longer a mobile telephone. We disagree for the reasons put forth above. The TEMS software indeed provides the subject merchandise with its principal function per Note 3 to Section XVI, HTSUS. That the software is permanently added to the device and that it is must be manually disabled before any other application can be used (i.e. before the product can be used as a mobile phone) is why the functionality was considered in determining its classification. This differs from other mobile phones, which by their nature feature applications that run simultaneously and be uploaded or deleted by the user, and thus are classified without consideration being given to their principal function. How-

ever, the change in classification in this case does not result in a new article from the perspective of assessing whether the programming effects a substantial transportation.

In CBP Ruling HQ H284523 (August 22, 2017), CBP ruled that specialized software downloaded to a tablet computer to allow the computer to collect health data did not substantially transform the tablet computer. The downloaded software disabled other applications that would typically be used on the tablet computer. In the ruling, CBP made the following conclusion:

It is clear that loading the specialized software onto the tablet computer that remains fully functional as a computer would be insufficient to constitute a new and different article of commerce, since all of the functionality of the original computer would be retained. In this case, however, in addition to the addition of the software, we are being asked to consider the effect of disabling the general applications that have been programmed onto the tablet. In our judgment, this added factor does not cause or require a different result. The functions of the original tablet produced in Vietnam that are necessary to receive and transmit data are in essence still present on the modified tablet, as aided by the software. While the tablet is no longer a freely programmable machine, we find the imposition of this limitation is insufficient to constitute a substantial transformation of the imported tablets.

Thus, because the TEMS software application constitutes an additional, albeit principal, function and not the device's singular function, its programming does not substantially transform the mobile phone imported into Sweden. Incidentally, in a case similar to HQ H284523, also involving health care data software downloaded to a tablet computer, CBP noted that "the issue decided in [another case cited by the ruling requester] was a question of tariff classification, not substantial transformation, and is therefore, not applicable [with regard to the country of origin determination]." See CBP Ruling HQ H284617 (February 21, 2018).

Given the foregoing, we find that the installation of the Swedish-developed TEMS software onto existing functioning mobile telephones represents an enhancement of the mobile telephones' functionality that does not substantially transform the mobile telephones into an article having a name, character, or use differing from that of the article before the software installation. Simply put, the subject articles are manufactured into mobile telephones before the software was installed in Sweden and irrespective of the software's development in Sweden, and they remained mobile telephones after the TEMS software was installed, albeit with more functionality. Therefore, the country of origin of the TEMS Pocket™ is China or Malaysia or any other country of manufacture where an article recognizable as a mobile telephone is created.

HOLDING:

The country of origin of the TEMS Pocket™ is, in accordance with 19 U.S.C. §1304 and 19 CFR 134, China or Malaysia or any other country of manufacture where an article recognizable as a mobile telephone is created.

EFFECT ON OTHER RULINGS:

CBP Ruling HQ H014068 (October 7, 2007) is hereby MODIFIED only with respect to the country of origin issue.

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

Sincerely,

GREG CONNOR

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**PROPOSED REVOCATION OF A RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF ANTI-REFLECTION COATED
SILICON WAFERS**

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

ACTION: Notice of proposed revocation of two ruling letters, and revocation of treatment relating to the tariff classification of anti-reflection coated silicon wafers.

SUMMARY: Pursuant to section 625(c), 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), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke a ruling letter concerning tariff classification of anti-reflection coated silicon wafers under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments on the correctness of the proposed actions are invited.

DATE: Comments must be received on or before October 4, 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: Tom P. Beris, Electronics, Machinery, Automotive, and International Nomenclature Branch, Regulations and Rulings, Office of Trade, at (202) 325–0292.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

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

Pursuant to 19 U.S.C. § 1625(c)(1), this notice advises interested parties that CBP is proposing to revoke a ruling letter pertaining to the tariff classification of anti-reflection coated silicon wafers. Although in this notice, CBP is specifically referring to Headquarters Ruling Letter ("HQ") 957189, dated January 11, 1995 (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 HQ 957189, CBP classified anti-reflection coated silicon wafers in heading 8541, HTSUS, specifically in subheading 8541.90.00, HTSUS, which provides for "Diodes, transistors and similar semiconductor devices; photosensitive semiconductor devices, including photovoltaic cells, whether or not assembled in modules or made up into panels; light-emitting diodes; mounted piezoelectric crystals; parts thereof... Parts." CBP has reviewed HQ 957189 and has determined the ruling letter to be in error. It is now CBP's position that anti-reflection coated silicon wafers are properly classified, by application of General Rules of Interpretation 1, 2(a) and 6, in subheading 8541.40.60, HTSUSA (Annotated) which provides for "Diodes, transistors and similar semiconductor devices; photosensitive semicon-

ductor devices, including photovoltaic cells, whether or not assembled in modules or made up into panels; light-emitting diodes; mounted piezoelectric crystals; parts thereof... Other diodes.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke HQ 957189 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H301201, set forth as Attachment B to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: August 20, 2019

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

Attachments

ATTACHMENT A

HQ 957189

January 11, 1995

CLA-2 CO:R:C:M 957189 KCC

CATEGORY: Classification

TARIFF NO.: 8541.90.00

DR. BO DENYSYK
GLOBAL USA, INC.
SUITE 650
2121 K STREET, N.W.
WASHINGTON, D.C. 20037

RE: Anti-reflection coated silicon wafer; 3818.00.00; EN 38.18; doped silicon wafer; solar panel; Article 509; NAFTA; T.D. 94-1; 19 CFR 181.92(b)(5) and (6)

DEAR DR. DENYSYK:

This is in regards to your letter dated September 16, 1994, to Customs in New York, on behalf of Kyocera International, Inc., concerning the country or origin, applicability of the North American Free Trade Agreement (NAFTA) and tariff classification of solar panels under the Harmonized Tariff Schedule of the United States (HTSUS). A flow diagram of the production process was submitted for our examination.

FACTS:

Kyocera presently manufactures its solar panels in Japan. However, it is considering establishing a solar panel manufacturing plant in the U.S. For the proposed manufacturing operation, Kyocera will import Japanese manufactured multi-crystalline silicon wafers. The manufacturing operation in Japan consists of:

1. silicon wafer fabrication;
2. surface treatment;
3. p/n junction formation;
4. back n type layer etching;
5. back surface field formation; and
6. anti-reflection coating.

After importation into the U.S., the anti-reflection coated silicon wafers will be further manufactured into a complete solar panel. The manufacturing operations to be performed in the U.S. entail:

1. patterning;
2. metalization;
3. solder coating;
4. cell inspection;
5. lead wiring;
6. string formation;
7. lamination;
8. curing;
9. framing;
10. joint box fixing; and
11. inspection.

The complete solar panels will then be exported to Mexico and/or Canada.

ISSUE:

- I. What is the tariff classification of the silicon wafer with anti-reflection coating under the HTSUS?
- II. What is the tariff classification of the completed solar panels under the HTSUS?
- III. Are the completed solar panels eligible for preferential tariff treatment under the NAFTA when exported from the U.S.?
- IV. What are the country of origin and the proper marking requirements applicable to the solar panels when exported from the U.S.?

LAW AND ANALYSIS:*Tariff Classification*

The classification of merchandise under the HTSUS is governed by the General Rules of Interpretation (GRI's). GRI 1, HTSUS, states, in part, that "for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes...."

You contend that the imported silicon wafer with anti-reflection coating is classified under subheading 3818.00.00, HTSUS, as a doped silicon wafer, or under subheading 8541.90.00, HTSUS, as a part of a semiconductor device. The competing subheadings are as follows:

- | | |
|------------|---|
| 3818.00.00 | Chemical elements doped for use in electronics, in the form of discs, wafers or similar forms; chemical compounds doped for use in electronics.... |
| 8541.90.00 | Diodes, transistors and similar semiconductor devices; photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light-emitting diodes; mounted piezoelectric crystals; parts thereof...Parts. |

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System ENs may be utilized. The ENs, although not dispositive, provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of the HTSUS. See, T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989). EN 38.18 (pg. 539) states, in part, that heading 3818, HTSUS, covers:

- (1) The chemical elements of Chapter 28 (for example, silicon and selenium) doped with, for example, boron or phosphorus, generally in a proportion of the order of one part per million, provided they are in the form of discs, wafers or similar forms. When in forms worked as drawn, or in the form of cylinders or rods, they are classified in Chapter 28....

Those more extensively worked (e.g., by selective diffusion) fall in heading 85.41 as semiconductor devices (emphasis in original).

We are of the opinion that the imported silicon wafer with anti-reflection coating is not classifiable under subheading 3818.00.00, HTSUS. At importation the silicon wafer is not merely a doped silicon wafer, but is more extensively worked by the surface treatment, p/n junction formation, back n type layer etching, back surface field formation and anti-reflection coating operations performed in Japan. Based on the manufacturing operation performed in Japan, we are of the opinion that the silicon wafer is classified under subheading 8541.90.00, HTSUS, as part of a semiconductor device.

The U.S. Customs Service is not authorized to issue an advance ruling to you with regards to the tariff classification of the completed solar panels under the HTSUS. Pursuant to Part 177, Customs Regulations (19 CFR Part 177), Customs may issue an advance tariff classification ruling letter for prospective transactions of articles entering the U.S. As you have requested a tariff classification ruling for articles to be manufactured in the U.S. and then exported to Canada or Mexico, we cannot properly issue a prospective ruling pursuant to 19 CFR Part 177.

NAFTA

Additionally, we cannot issue a NAFTA advance ruling letter pursuant to 181.92 (b)(5) and (6), Customs Regulations (19 CFR 181.92(b)(5) and (6)), which sets forth who may request a NAFTA advanced ruling and which issues may be covered by the NAFTA ruling. As presented, your request does not fall within the subject matter of 19 CFR 181.92(b)(5) and (6). As you will be exporting completed solar panels to Mexico and/or Canada, you should direct your NAFTA inquiry to either government. You may contact the Mexican NAFTA Help Desk at (525) 211-3545, or the Canadian NAFTA Help Desk at (613) 941-0965 for information concerning Mexico's and Canada's procedures for Advance NAFTA

Rulings.

HOLDING:

The silicon wafer is classified under subheading 8541.90.00, HTSUS, as part of a semiconductor device. Articles classified under this tariff provision enter the U.S. duty free.

Sincerely,

JOHN DURANT,

Director

Commercial Rulings Division

ATTACHMENT B

HQ H301201
CLA-2 OT:RR:CTF:EMAIN H301201 TPB
CATEGORY: Classification
TARIFF NO.: 8541.40.60

DR. BO DENYSYK
GLOBAL USA, INC.
SUITE 650
2121 K STREET, N.W.
WASHINGTON, D.C. 20037

RE: Revocation of HQ 957189; Classification of anti-reflection coated silicon wafers

DEAR DR. DENYSYK:

This concerns your letter dated September 16, 1994, on behalf of Kyocera International, Inc., requesting, *inter alia*, the classification of anti-reflection silicon wafers under the Harmonized Tariff Schedule of the United States (“HTSUS”). In response, you were issued Headquarters (HQ) Ruling Letter 957189, dated January 11, 1995, which classified the anti-reflection coated silicon wafers under subheading 8541.90.00, HTSUS, as “Diodes, transistors and similar semiconductor devices; photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light-emitting diodes; mounted piezoelectric crystals; parts thereof...Parts.”

We have reviewed HQ 957189 and found it to be in error for the reasons set forth below.

FACTS:

In HQ 957189, the anti-reflection silicon wafers were described as follows:

“... Kyocera will import Japanese manufactured multi-crystalline silicon wafers [into the United States]. The manufacturing operation in Japan consists of:

1. silicon wafer fabrication;
2. surface treatment;
3. P/N junction formation;
4. back N type layer etching;
5. back surface field formation; and
6. anti-reflection coating.

After importation into the U.S., the anti-reflection coated silicon wafers will be further manufactured into a complete solar panel. The manufacturing operations to be performed in the U.S. entail:

1. patterning;
2. metalization;
3. solder coating;
4. cell inspection;
5. lead wiring;
6. string formation;
7. lamination;
8. curing;
9. framing;

10. joint box fixing; and
11. inspection.

The complete solar panels will then be exported to Mexico and/or Canada.”

ISSUE:

Whether the anti-reflection coated silicon wafers are classified as unfinished diodes or parts of unfinished diodes under the HTSUS.

LAW AND ANALYSIS:

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

In determining the classification of the articles at issue, HQ 957189 determined that the anti-reflection coated silicon wafers were classified under heading 8541 rather than heading 3818 by application of GRI 1. That determination is affirmed in this ruling. With regard to classification under heading 8541, HQ 957189 classified the goods under subheading 8541.40.90, a “parts” provision for photosensitive semiconductor devices. However, considering the condition the anti-reflection coated silicon wafers are in when presented to Customs, an analysis should be made as to whether these are incomplete or unfinished articles, as described by GRI 2(a), which reads:

2. (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this Rule), presented unassembled or disassembled.

In this case, we must determine whether the articles, as presented to Customs, have the essential character of the complete or finished article. As described above, the articles are imported from Japan having already undergone extensive work, including P/N junction formation, back N type layer etching, back surface field formation, and the addition of the anti-reflection coating. As such, the subject merchandise are in a state that can convert solar energy into electrical energy, which is the essence of the goods of subheading 8541.40.60. Therefore, in the view of this office, the articles have the essential character of a photosensitive semiconductor devices and should be classified as such, by application of GRI 2(a), under subheading 8541.40.60, HTSUS.

HOLDING:

By application of GRIs 1, 2(a) and 6, the anti-reflection coated silicon wafers are classified under heading 8541, HTSUS, and specifically under subheading 8541.40.60, HTSUS, which provides for “Diodes, transistors and similar semiconductor devices; photosensitive semiconductor devices, including photovoltaic cells, whether or not assembled in modules or made up into panels; light-emitting diodes; mounted piezoelectric crystals; parts thereof... Other diodes.” The column one, general rate of duty is free.

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

EFFECT ON OTHER RULINGS:

HQ 957189, dated January 11, 1995, is hereby REVOKED.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**PROPOSED REVOCATION OF TWO RULING LETTERS
AND PROPOSED REVOCATION OF TREATMENT
RELATING TO THE TARIFF CLASSIFICATION OF
PLYWOOD**

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

ACTION: Notice of proposed revocation of two ruling letters and proposed revocation of treatment relating to the tariff classification of surface covered plywood.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke two ruling letters concerning tariff classification of surface covered plywood under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments on the correctness of the proposed actions are invited.

DATE: Comments must be received on or before October 4, 2019.

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

FOR FURTHER INFORMATION CONTACT: Karen S. Greene, Chemicals, Petroleum, Metals & Miscellaneous Articles Branch, Regulations and Rulings, Office of Trade, at (202) 325–0041.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

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

Pursuant to 19 U.S.C. § 1625(c)(1), this notice advises interested parties that CBP is proposing to revoke two ruling letters pertaining to the tariff classification of plywood. Although in this notice, CBP is specifically referring to New York Ruling Letter (“NY”) L86523, dated August 18, 2005 (Attachment A), and NY N027781, dated June 4, 2008 (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 ruling letter 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 L86523, CBP classified birch plywood that is surface covered on the back ply with fiberboard in heading 4412, HTSUS, specifically in subheading 4412.14.0560, HTSUS (now found in subheading 4412.33.0670, after the 2018 amendments to the HTSUS). The language of the subheading changed to: “Plywood, veneered panels and similar laminated wood: Other plywood consisting solely of sheets of wood (other than bamboo), each ply not exceeding 6 mm in thickness: Other, with at least one outer ply of nonconiferous wood of the species alder (*Alnus* spp.), ash (*Fraxinus* spp.), beech (*Fagus* spp.), birch (*Betula* spp.), cherry (*Prunus* spp.), chestnut (*Castanea* spp.), elm (*Ulmus* spp.), eucalyptus (*Eucalyptus* spp.), hickory (*Carya* spp.), horse chestnut (*Aesculus* spp.), lime (*Tilia* spp.), maple (*Acer* spp.), oak (*Quercus* spp.), plane tree (*Platanus* spp.), poplar and aspen (*Populus* spp.), robinia (*Robinia* spp.), tulipwood (*Liriodendron* spp.),

or walnut (*Juglans* spp.): Not surface covered, or surface covered with a clear or transparent material which does not obscure the grain, texture or markings of the face ply: With a face ply of birch (*Betula* spp.): Other.”

In NY N027781, CBP classified poplar plywood with a fiberboard covered back ply in heading 4412, HTSUS, specifically in subheading 4412.32.3170, HTSUS, (now found in subheading 4412.33.3285, after the 2018 amendments to the HTSUS). The language of the subheading changed to: “Plywood, veneered panels and similar laminated wood: Other plywood consisting solely of sheets of wood (other than bamboo), each ply not exceeding 6 mm in thickness: Other, with at least one outer ply of nonconiferous wood of the species alder (*Alnus* spp.), ash (*Fraxinus* spp.), beech (*Fagus* spp.), birch (*Betula* spp.), cherry (*Prunus* spp.), chestnut (*Castanea* spp.), elm (*Ulmus* spp.), eucalyptus (*Eucalyptus* spp.), hickory (*Carya* spp.), horse chestnut (*Aesculus* spp.), lime (*Tilia* spp.), maple (*Acer* spp.), oak (*Quercus* spp.), plane tree (*Platanus* spp.), poplar and aspen (*Populus* spp.), robinia (*Robinia* spp.), tulipwood (*Liriodendron* spp.), or walnut (*Juglans* spp.): Not surface covered, or surface covered with a clear or transparent material which does not obscure the grain, texture or markings of the face ply: Other: Other: Other: Other: Other.”

It is now CBP’s position that the plywood described above are properly classified in heading 4412, HTSUS, specifically in subheading 4412.33.57, HTSUS, which provides for: “Plywood, veneered panels and similar laminated wood: Other plywood consisting solely of sheets of wood (other than bamboo), each ply not exceeding 6 mm in thickness: Other, with at least one outer ply of nonconiferous wood of the species alder (*Alnus* spp.), ash (*Fraxinus* spp.), beech (*Fagus* spp.), birch (*Betula* spp.), cherry (*Prunus* spp.), chestnut (*Castanea* spp.), elm (*Ulmus* spp.), eucalyptus (*Eucalyptus* spp.), hickory (*Carya* spp.), horse chestnut (*Aesculus* spp.), lime (*Tilia* spp.), maple (*Acer* spp.), oak (*Quercus* spp.), plane tree (*Platanus* spp.), poplar and aspen (*Populus* spp.), robinia (*Robinia* spp.), tulipwood (*Liriodendron* spp.), or walnut (*Juglans* spp.): Other.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY L86523 and NY N027781, and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed HQ 266918, set forth as Attachment C to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: August 20, 2019

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

Attachments

ATTACHMENT A

NY L86523

August 18, 2005

CLA-2-44:RR:NC:2:230 L86523

CATEGORY: Classification

TARIFF NO.: 4412.14.0560

MR. P. W. BRADING
NEAT CONCEPTS LIMITED
F25, HASTINGWOOD TRADING ESTATE
HARBET ROAD
LONDON, N18 3HU
ENGLAND

RE: The tariff classification of birch plywood with a fiberboard covered back from England

DEAR MR. BRADING:

In your letter dated July 13, 2005 you requested a tariff classification ruling.

The ruling was requested on Neatflex™, a wood panel composed of fiberboard bonded to plywood. A representative sample and a product brochure were submitted.

Neatflex™ consists of 15 mm thick medium density fiberboard (MDF) laminated to a three-ply 4 mm thick birch plywood. The fiberboard is laminated to the back ply of the plywood. The fiberboard is deeply grooved at 5/16" intervals to facilitate the bending of the plywood. The literature describes the product as "Neatflex™ bendy birch - the ultimate material for curved surfaces - consisting of S grade birch plywood face on an MDF Lite platform". The size of the panel is given as 19 mm x 1220 mm x 2440 mm.

You believe that the Neatflex™ panel is similar to the Neatform™ panel, a veneered fiberboard, which was previously classified in ruling NY F81578 of February 2, 2000. However, the Neatflex™ is distinguishable from the veneered Neatform™ in that the Neatflex™ is a plywood panel laminated with a fiberboard, whereas the Neatform™ is a veneer laminated with a fiberboard forming, for tariff purposes, a veneered panel.

The subject Neatflex™ is plywood that has been "surface covered" as the term is defined by Chapter 44, Additional U.S. Note 1 (c) of the Harmonized Tariff Schedule of the United States:

The term "*surface covered*," as applied to articles of headings 4411 and 4412, means that one or more exterior surfaces of a product have been treated with creosote or other wood preservatives, or with fillers, sealers, waxes, oils, stains, varnishes, paints or enamels, or have been overlaid with paper, fabric, plastics, base metal or other material.

The Neatflex™ has been surface covered on the back with fiberboard. However, the face ply of the birch plywood has not been surface covered.

The applicable subheading for the Neatflex™ birch plywood with a fiberboard covered back will be 4412.14.0560, Harmonized Tariff Schedule of the United States Annotated (HTSUSA) which provides for plywood, veneered panels and similar laminated wood; plywood consisting solely of sheets of wood, each ply not exceeding 6 mm in thickness; other, with at least one outer ply of nonconiferous wood, not surface covered, or surface covered with a clear or transparent material which does not obscure the grain, texture or mark-

ings of the face ply; with a face ply of birch (*Betula* spp.), other, other. The rate of duty will be free.

You also inquired on how to proceed in correcting the classification of previous shipments of Neatflex™ that may have been inadvertently misclassified. Questions concerning current or completed entry transactions should be directed to the Port Directors having jurisdiction over the particular entries of your merchandise.

A copy of this ruling should be provided to each Port Director.

The holding set forth above applies only to the specific factual situation and merchandise description as identified in the ruling request. This position is clearly set forth in 19 CFR 177.9(b)(1). This section states that a ruling letter is issued on the assumption that all of the information furnished in the ruling letter, either directly, by reference, or by implication, is accurate and complete in every material respect.

This ruling is being issued under the assumption that the subject goods, in their condition as imported into the United States, conform to the facts and the description as set forth both in the ruling request and in this ruling. In the event that the facts or merchandise are modified in any way, you should bring this to the attention of U.S. Customs and Border Protection (CBP) and you should resubmit for a new ruling in accordance with 19 CFR 177.2. You should also be aware that the material facts described in the foregoing ruling may be subject to periodic verification by the CBP.

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 Paul Garretto at 646-733-3035.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

ATTACHMENT B

N027781

June 4, 2008

CLA-2-44:OT:RR:NC:2:230

CATEGORY: Classification

TARIFF NO.: 4412.32.3170

MR. MARTIN JAMES
NEAT CONCEPTS LIMITED
F25, HASTINGWOOD TRADING ESTATE
HARBET ROAD
LONDON N18 3HU
ENGLAND

RE: The tariff classification of poplar plywood with a fiberboard covered back from England

DEAR MR. JAMES:

In your letter dated May 1, 2008 you requested a tariff classification ruling.

The ruling was requested on Neatflex™ panels with revised specifications. Neatflex™ panels, consisting of birch plywood with a fiberboard covered back, were previously ruled on in ruling NY L86523.

You state that the construction of the Neatflex™ panels has been changed. The revised Neatflex™ panels consist of poplar plywood with a fiberboard covered back. Specifically, the revised panels consist of a three-ply 3 mm thick poplar plywood with a 15 mm thick medium density fiberboard (MDF) laminated to the back ply. The fiberboard is deeply grooved at 5/16" intervals to facilitate the bending of the plywood. The Neatflex™ panels measure 18 mm x 1220 mm x 2440 mm.

The applicable subheading for the revised Neatflex™ panels, consisting of poplar plywood with a fiberboard covered back, will be 4412.32.3170, Harmonized Tariff Schedule of the United States (HTSUS), which provides for: Plywood, veneered panels and similar laminated wood: Other plywood, consisting solely of sheets of wood, each ply not exceeding 6 mm in thickness: Other, with at least one outer ply of nonconiferous wood: Not surface covered, or surface covered with a clear or transparent material which does not obscure the grain, texture or markings of the face ply: Other (than with a face ply of an enumerated species): Other (than not surface covered). The rate of duty will be 8 percent ad valorem.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Paul Garretto at 646-733-3035.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

ATTACHMENT C

HQ H266918
OT:RR:CTF:CPMM H266918 KSG
CATEGORY: Classification
TARIFF NO.: 4412.33.57

MARTIN JAMES
NEAT CONCEPTS LIMITED
F25, HASTINGWOOD TRADING ESTATE
HARBET ROAD
LONDON, ENGLAND N18 3HU

RE: Revocation of NY L86523, and NY N027781; tariff classification of surface covered plywood; back ply covered

DEAR MR. JAMES:

This letter is in reference to two New York Ruling Letters (NY) L86523, dated August 18, 2005, and NY N027781, dated June 4, 2008, regarding the tariff classification of surface covered plywood known as Neatflex™ panels under the Harmonized Tariff Schedule of the United States (HTSUS).

In NY L86523, U.S. Customs & Border Protection (CBP) classified the birch plywood with fiberboard laminate to the back ply under subheading 4412.14.0560, HTSUS, which provided for not surface covered plywood with a face ply of birch. In NY N027781, CBP classified poplar plywood with a fiberboard covered back ply in subheading 4412.32.3170 HTSUS, which provided for not surface covered plywood with a face ply of other than certain species. Amendments to the HTSUS replaced subheading 4412.14.0560 with 4412.33.0670, HTSUS, and subheading 4412.32.3170, HTSUS with subheading 4412.33.3285, HTSUS. However, the terms “Not surface covered, or surface covered with a clear or transparent material which does not obscure the grain, texture or markings of the face ply” remain the same.

We have reviewed NY L86523 and NY N027781 and determined that the rulings are in error. Accordingly, for the reasons set forth below, CBP is revoking NY L86523 and NY N027781.

FACTS:

In NY L86523, CBP classified a wood panel consisting of 15 mm thick medium density fiberboard (MDF) laminated to the back of a three-ply 4 mm thick plywood with a birch face ply. The fiberboard is deeply grooved at 5/16” intervals to facilitate the bending of the plywood.

In NY N027781, CBP classified a wood panel consisting of a three-ply 3 mm thick poplar plywood with a 15 mm thick MDF laminated to the back ply. The fiberboard is deeply grooved at 5/16” intervals.

ISSUE:

Whether the surface covered plywood described above are properly classified in subheading 4412.33.06, HTSUS, and in subheading 4412.33.32, HTSUS, or in subheading 4412.33.57, HTSUS.

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 lan-

guage or context which requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law for all purposes. GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI's 2 through 6 may then be applied in order.

The 2018 HTSUS subheadings at issue are as follows:

- 4412: Plywood, veneered panels and similar laminated wood:
 Other plywood consisting solely of sheets of wood (other than bamboo), each ply not exceeding 6 mm in thickness:
- 4412.33 Other, with at least one outer ply of nonconiferous wood of the species alder (*Alnus* spp.), ash (*Fraxinus* spp.), beech (*Fagus* spp.), birch (*Betula* spp.), cherry (*Prunus* spp.), chestnut (*Castanea* spp.), elm (*Ulmus* spp.), eucalyptus (*Eucalyptus* spp.), hickory (*Carya* spp.), horse chestnut (*Aesculus* spp.), lime (*Tilia* spp.), maple (*Acer* spp.), oak (*Quercus* spp.), plane tree (*Platanus* spp.), poplar and aspen (*Populus* spp.), robinia (*Robinia* spp.), tulipwood (*Liriodendron* spp.), or walnut (*Juglans* spp.):
 Not surface covered, or surface covered with a clear or transparent material which does not obscure the grain, texture or markings of the face ply:
- 4412.33.06 With a face ply of birch (*Betula* spp.):
 Other:
- 4412.33.32 Other:
 Other:
 Other:
 Other:
- 4412.33.57 Other:

The term “surface covered” as applied to articles of headings 4411 and 4412, is defined in Additional U.S. Note 1(c), Chapter 44, HTSUS, as “one or more exterior surfaces of a product have been treated with creosote or other wood preservatives, or with fillers, sealers, waxes, oils, stains, varnishes, paints or enamels, or have been overlaid with paper, fabric, plastics, base metal or other material.”

In NY L86523, CBP correctly concluded that the plywood was surface covered as defined by Additional U.S. Note 1(c), Chapter 44, but then incorrectly classified it at the eight-digit level in a subheading for articles that are not surface covered or if surface covered, the surface cover must be clear or transparent material that does not obscure the grain, texture, or markings of the face ply (as opposed to the back ply). In fact, the plywood was surface covered on the back ply with a surface covering that was not clear or transparent. Additional U.S. Note 1(c), Chapter 44 relates to the surface covering of the exterior surface; it is not limited to the face surface. Accordingly, the plywood described in NY L86523 is properly classified in subheading 4412.33.57, HTSUS.

Likewise in NY N027781, the plywood is surface covered as defined by Additional U.S. Note 1(c), Chapter 44, and was incorrectly classified in a subheading for articles that are not surface covered or if surface covered, the

surface cover must be clear or transparent material that does not obscure the grain, texture, or markings of the face ply. In this case, the plywood was also surface covered on the back ply with a surface covering that is not clear or transparent. Accordingly, the plywood described in NY N027781 is properly classified in subheading 4412.33.57, HTSUS.

HOLDING:

Pursuant to GRIs 1 and 6, the plywood known as Neatflex™ panels described in NY L86523, dated August 18, 2005, and in NY N027781, dated June 4, 2008, is classified in subheading 4412.33.57, HTSUS. The column one, general rate of duty is eight percent *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY L86523 and NY N027781 are revoked in accordance with the above analysis.

Sincerely,
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division