

# U.S. Customs and Border Protection



## 19 CFR PART 177

### **MODIFICATION OF ONE RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF PLASTIC STETHOSCOPE COVERS**

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

**ACTION:** Notice of modification of one ruling letter and revocation of treatment relating to the tariff classification of plastic stethoscope covers.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is modifying one ruling letter concerning the tariff classification of plastic stethoscope covers under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 53, No. 39, on October 30, 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**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after March 2, 2020.

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

**SUPPLEMENTARY INFORMATION:****BACKGROUND**

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

Pursuant to 19 U.S.C. § 1625(c)(1), a notice was published in the *Customs Bulletin*, Vol. 53, No. 39, on October 30, 2019, proposing to modify one ruling letter pertaining to the tariff classification of plastic stethoscope covers. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

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

In HQ 967233, CBP affirmed the classification of two styles of stethoscope covers the subject of New York Ruling Letters ("NY") K83122, dated February 20, 2004, and NY K83786, dated March 24, 2004. Specifically, HQ 967233 affirmed the classification of a Stethocap™ in subheading 9018.90.80, HTSUS, which provides for, in pertinent part, accessories of instruments and appliances used in the medical field, and the classification of a Stethocap™ treated with antimicrobial agent in subheading 3808.90.70, HTSUS, which provides for, in pertinent part, insecticides, rodenticides, fungicides, herbicides, antisprouting products and plant-growth regulators, disinfectants and similar products, put up in forms or packings for retail sale or as preparations or articles. CBP has reviewed HQ 967233 and has determined the ruling letter to be partially in error as regards the

classification of the plastic stethoscope cover without antimicrobial agent. It is now CBP's position that the plastic stethoscope cover without antimicrobial agent is properly classified in heading 3926, HTSUS, specifically subheading 3926.90.99, HTSUS, which provides for "[O]ther articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is modifying HQ 967233 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in the proposed HQ H304940, set forth as an attachment to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is to revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: December 10, 2019

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

Attachment

HQ H304940

December 10, 2019

OT:RR:CTF:EMAIN H304940 SK

CATEGORY: Classification

TARIFF NO.: 3926.90.99

MR. CRAIG LEWIS, ESQ.  
HOGAN & HARTSON, LLP  
555 13TH STREET, N.W.  
WASHINGTON, DC 20004-1109

RE: Modification of HQ 967233; stethoscope cover without antimicrobial agent; Stethocap™; other made up articles.

DEAR MR. LEWIS:

In HQ 967233, issued to you on February 18, 2005, on behalf of your client The Buzz Group LLC (Buzz Group), U.S. Customs and Border Protection (CBP) affirmed the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of two styles of stethoscope covers the subject of New York Ruling Letters (NY) K83122, dated February 20, 2004, and K83786, dated March 24, 2004. Specifically, HQ 967233 affirmed the classification of a Stethocap™ in subheading 9018.90.80, HTSUS, which provides for, in pertinent part, accessories of instruments and appliances used in the medical field, and the classification of a Stethocap™ with antimicrobial agent in subheading 3808.90.70, HTSUS, which provides for, in pertinent part, insecticides, rodenticides, fungicides, herbicides, anti-sprouting products and plant-growth regulators, disinfectants and similar products, put up in forms or packings for retail sale or as preparations or articles.

Upon review, CBP has determined HQ 967233 to be partially in error as regards the classification of the Stethocap™ without antimicrobial agent. CBP is modifying HQ 967233 according to the analysis set forth below.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice proposing to modify HQ 967233 was published on October 30, 2019, in Volume 53, Number 39 of the Customs Bulletin. No comments were received in opposition to the proposed action.

#### **FACTS:**

Two styles of stethoscope covers were at issue in HQ 967233. This modification concerns only the Stethocap™ style presented without an antimicrobial agent.

In HQ 967233, the Stethocap™ (without antimicrobial agent) is described as consisting of a blister pack containing two, circular, plastic caps, each measuring 2" in diameter. The cap is designed to be snapped onto the diaphragm of a standard manual stethoscope, prior to auscultating the patient, to prevent the transmission of microorganisms - and the risk of infection - from the diaphragm to the patient.

#### **LAW AND ANALYSIS:**

Classification under the HTSUS is in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be

classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

The HTSUS subheadings under consideration are as follows:

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

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

Notes 1 and 2 to Chapter 39, HTSUS, provide, in pertinent part:

1. Throughout the tariff schedule the expression "plastics" means those materials of headings 3901 to 3914 which are or have been capable, either at the moment of polymerization or at some subsequent stage, of being formed under external influence (usually heat and pressure, if necessary with a solvent or plasticizer) by molding, casting, extruding, rolling or other process into shapes which are retained on the removal of the external influence.

\* \* \*

2. This chapter does not cover:

\* \* \*

(u) Articles of Chapter 90 (for example, optical elements, spectacle frames, drawing instruments);

\* \* \*

Note 2 to Chapter 90, HTSUS, provides:

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

- (a) Parts and accessories which are goods included in any of the headings of this chapter or of chapter 84, 85 or 91 (other than heading 8485, 8548 or 9033) are in all cases to be classified in their respective headings;
- (b) Other parts and accessories, if suitable for use solely or principally with a particular kind of machine, instrument or apparatus, or with a number of machines, instruments or apparatus of the same heading (including a machine, instrument or apparatus of heading 9010, 9013, or 9031) are to be classified with the machines, instruments or apparatus of that kind;
- (c) All other parts and accessories are to be classified in heading 9033.

The Harmonized Commodity Description and Coding System Explanatory Notes (EN's) constitute the official interpretation of the Harmonized System. While not legally binding on the contracting parties, and therefore not dispositive, the EN's provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the system. CBP believes the EN's should always be consulted. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The EN to heading 9018, HTSUS, states, in pertinent part:

This heading covers a very wide range of instruments and appliances which, in the vast majority of cases, are used only in professional practice (e.g., by doctors, surgeons, dentists, veterinary surgeons, midwives), either to make a diagnosis, to prevent or treat an illness or to operate, etc. Instruments and appliances for anatomical or autoptic work, dissection, etc., are also included, as are, under certain conditions, instruments and appliances for dental laboratories (see Part (II) below). The instruments of the heading may be made of any material (including precious metals).

As Chapter 39 Note 2(u) excludes articles of Chapter 90, our initial analysis is whether the subject merchandise is classifiable as an accessory of instruments and appliances used in medical, surgical, dental or veterinary sciences of heading 9018, HTSUS.

The term “accessory” is not defined in the HTSUS or in the ENs. This office has previously stated that the term “accessory” is generally understood to mean an article that must directly contribute to the effectiveness of the principal article (e.g., facilitate the use or handling of the particular article, widen the range of its uses, or improve its operation). See HQ 301594, dated December 18, 2018; HQ 958710, dated April 8, 1996; and, HQ 950166, dated November 8, 1991. We also employ the common and commercial meanings of the term “accessory,” as per *Rollerblade v. United States*, wherein the Court of International Trade (C.I.T.) derived from various dictionaries that an accessory must relate directly to the thing accessorized. See *Rollerblade, Inc. v. United States*, 116 F.Supp. 2d 1247 (Ct. Int’l Trade 2000), *aff’d*, 282 F.3d 1349 (Fed. Cir. 2002) (holding that inline roller skating protective gear is not an accessory because the protective gear does not directly act on the roller skates).

In applying the court’s standard to the instant facts, we must examine whether the subject covers directly contribute to the effectiveness of a stethoscope’s function. A stethoscope is a medical instrument for “detecting sounds produced in the body that are conveyed to the ears of the listener through rubber tubing connected with a piece placed upon the area to be examined.” See <https://www.merriam-webster.com/dictionary/stethoscope> (last visited August 2019). In HQ 967233, the subject stethoscope caps are described as providing a barrier to prevent contamination of a stethoscope. As such, they do not directly add to or enhance a stethoscope’s function of detecting sounds in the body. Therefore, the subject stethoscope covers do not rise to the level of an accessory of a medical instrument or appliance of heading 9018, HTSUS.

As the subject articles are not accessories of heading 9018, HTSUS, Note 2(b) to Chapter 90 is inapplicable. The subject plastic stethoscope covers are also not included under any other more specific provision in Chapter 39, and therefore they fall to heading 3926, HTSUS, specifically subheading 3926.90, HTSUS, as other articles of plastic. We further note that CBP has historically classified various styles of protective barriers used in the medical arena to cover medical apparatus according to their constituent material. In NY 883919, dated April 13, 1993, CBP classified plastic disposable banded bags, used to cover non-sterile items in the operating room, and surgical drapes, under subheading 3926.90, HTSUS, as other articles of plastic. In NY C81283, dated November 28, 1997, CBP classified a protective drape designed to protect equipment in an operating room under subheading 3926.90,

HTSUS. *See also* NY 8708868, dated February 13, 1992, in which CBP classified protective barriers designed to shield C-arm and mobile X-ray drapes, microscope, laser and video camera drapes, and x-ray cassette drapes” under 3926.90, HTSUS. In NY N041298, dated November 3, 2008, CBP classified a general purpose probe cover used to shield medical apparatus in subheading 3926.90, HTSUS.

**HOLDING:**

By application of GRIs 1 and 6, the Stethocap™ without antimicrobial is classifiable under subheading 3926.90.99, HTSUS, which provides for “[O]ther articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other.” The column one, general duty rate of duty is 5.3 percent *ad valorem*.

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

**EFFECT ON OTHER RULINGS:**

HQ 967233, dated February 18, 2005 is hereby MODIFIED in accordance with the above analysis.

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

*Sincerely,*

GREG CONNOR

*for*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

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**PROPOSED REVOCATION AND MODIFICATION OF FIVE  
RULING LETTERS AND REVOCATION OF TREATMENT  
RELATING TO THE TARIFF CLASSIFICATION OF  
EMBROIDERED MOTIFS**

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

**ACTION:** Notice of proposed modification of three ruling letters and revocation of two ruling letters and revocation of treatment relating to the tariff classification of embroidered motifs.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to modify three ruling letters and revoke two ruling letters concern-

ing tariff classification of embroidered motifs 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 January 31, 2020.

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

#### **SUPPLEMENTARY INFORMATION:**

##### **BACKGROUND**

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

Pursuant to 19 U.S.C. §1625(c)(1), this notice advises interested parties that CBP is proposing to modify three ruling letters and revoke two ruling letters pertaining to the tariff classification of embroidered motifs. Although in this notice, CBP is specifically referring to New York Ruling Letter (“NY”) B85277, dated May 13, 1997 (Attachment A), NY 801210, dated August 22, 1994 (Attachment B), NY 889565, dated August 26, 1993 (Attachment C), NY 800463, dated July 24, 1994 (Attachment D), and NY 881559, dated January 6, 1993

(Attachment E), 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 four 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 B85277, NY 801210, NY 889565, NY 800463, and NY 881559, CBP classified embroidered motifs imported in strips in heading 5810, HTSUS, specifically in subheading 5810.92.0040, HTSUS, or its successor subheading 5810.92.1000, HTSUS, which provides for "Embroidery in the piece, in strips or in motifs: Other embroidery: Of man-made fibers: Badges, emblems and motifs." CBP has reviewed NY B85277, NY 801210, NY 889565, NY 800463, and NY 881559, and has determined the ruling letters to be in error. It is now CBP's position that embroidered motifs are properly classified in subheading 5810.92.90, HTSUS, which provides for "Embroidery in the piece, in strips or on motifs: Other embroidery: Of man-made fibers: Other: Other: Other."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to modify NY B85277, NY 801210, and NY 889565, and revoke NY 800463 and NY 881559, and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter ("HQ") H301424, set forth as Attachment F 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: December 11, 2019

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

Attachments

ATTACHMENT A

NY B85277

May 13, 1997

CLA-2-58:RR:NC:TA:351 B85277

CATEGORY: Classification

TARIFF NO.: 5810.92.1000

MR. W.J. GONZALEZ  
GENERAL MANAGER  
TRANS-UNION CUSTOMS SERVICE, INC.  
11941 S. PRAIRIE AVENUE  
HAWTHORNE, CA 90250

RE: The tariff classification of motifs from China

DEAR MR. GONZALEZ:

In your letter dated May 2, 1997 you requested a tariff classification ruling on behalf of your client Silk Bead Incorporated.

You have submitted three samples of motifs that will be used for decorating dresses. Samples M5 and M357 are designs constructed out of plastic beads and sequins stitched to a backing of 100% polyester. Each sample measures approximately 9 by 4 inches. Sample St-7777 is also made of glass beads and sequins stitched to a backing of man-made fiber. This item will be imported in continuous lengths, but can be easily cut apart into individual pieces of approximately 1 by 1 inch separate articles that can stand alone as individual appliques.

The applicable subheading for the motifs will be 5810.92.1000, Harmonized Tariff Schedule of the United States (HTS), which provides for embroidery in the piece, in strips or in motifs; other embroidery; of man-made fibers; badges, emblems and motifs. The rate of duty will be 7.1 percent ad valorem. This HTS subheading will not be subject to visa/quota requirements.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Jeff Konzet at 212-466-5885.

*Sincerely,*

PAUL K. SCHWARTZ

*Chief,*

*Textiles & Apparel Branch  
National Commodity  
Specialist Division*

## ATTACHMENT B

NY 801210

August 22, 1994

CLA-2-58:S:N:N6:351 801210

CATEGORY: Classification

TARIFF NO.: 5810.92.0040; 5810.92.0080;  
5808.90.0010; 9606.29.6000

MR. ALEX KANG  
WTS CUSTOMS BROKERAGE  
5730 W. MANCHESTER BLVD., SUITE 280  
LOS ANGELES, CA 90045

RE: The tariff classification of embroidered fabrics, buttons and tassels from China.

DEAR MR. KANG:

In your letter dated August 11, 1994, on behalf of Jacob Supplies, you requested a classification ruling.

You have submitted five samples of decorative textile items, as follows: (1) style # AS/JC 1006, beaded motifs; (2) style # AS/RP 1003/100, a beaded fabric strip in continuous lengths; (3) style # FR/KC 009, a 1 3/16 inch diameter flat button made of 100% rayon cords; (4) style # FR/TT2, a 100% rayon tassel; and (5) style # FR/KC 016, a 1 inch diameter dome-shaped button made of 100% rayon cords. The beaded motifs, (1), are made with imitation pearls and sequins sewn on to a sheer woven ground fabric assumed to be of man-made fibers. They consist of star-shaped motifs with 2 inch long dangling beads. These motifs are imported by the yard for the convenience of transportation, and they can be easily cut apart. The 1 1/8 inch wide fully beaded strip, (2), has sequins and other beads embroidered to a 1 1/2 inch wide sheer woven ground fabric that appears to be made of multifilament yarns. The tassel, (4), measures 3 1/2 inches in length including a 1 3/8 inch disc-shaped top portion made of twisted cord. Please note that the tassel, (4), and the two buttons, (3) and (5), are not Chinese frog buttons as described in your letter.

The applicable subheading for the first item, style # AS/JC 1006, will be 5810.92.0040, Harmonized Tariff Schedule of the United States (HTS), which provides for embroidery in the piece, in strips or motifs; other embroidery; of man-made fibers; badges, emblems and motifs. The duty rate will be 8.4 percent ad valorem.

The second item, style # AS/RP 1003/100, will be classifiable under the provision for embroidery in the piece, in strips or in motifs; other embroidery; of man-made fibers; other; other, in subheading 5810.92.0080, HTS. The rate of duty will be 17 percent ad valorem.

The fourth item, style # FR/TT2, will be classifiable under the provision for tassels, pompons and similar articles; other; of man-made fibers, in subheading 5808.90.0010, HTS. The rate of duty will be 7.8 percent ad valorem.

The third and fifth items, style # FR/KC 009 and # FR/KC 016, will be classifiable under the provision for buttons, press-fasteners, snap-fasteners and press-studs, button molds and other parts of these articles; buttons; other; other; other, in subheading 9606.29.6000, HTS. The rate of duty will be 5.7 percent ad valorem.

The second and fourth items, # AS/RP 1003/100 and # FR/TT2, fall within textile category designation 229. Based upon international textile trade agreements, products of China are subject to quota and the requirement of a visa.

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

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

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

*Sincerely,*

JEAN F. MAGUIRE  
*Area Director*  
*New York Seaport*

## ATTACHMENT C

NY 889565

August 26, 1993

CLA-2-58:S:N:N6:351 889565

CATEGORY: Classification

TARIFF NO.: 5810.92.0040; 7018.90.5000

Ms. CECILIA CASTELLANOS  
WITHROW, ZERWEKH & Co.  
P.O. BOX 368  
WILMINGTON, CA 90748

RE: The tariff classification of four beaded embroidered motifs imported in strip form and one glass beaded fringe, from China.

DEAR Ms. CASTELLANOS:

In your letter dated August 16, 1993, on behalf of your client ABM Enterprises, you requested a tariff classification ruling.

You have submitted four samples of fully beaded embroidered motifs imported in strip form, item nos. BT-501, WT-235, WT-222 and WT-237; and one sample of beaded fringe, item no. BF-901. In your letter, item no. BT-501 is described as a gold colored beaded ornament trim with beads and sequins. It measures approximately 3 1/4 inches by 2 1/2 inches. Item no. WT-235 is a black leaf-shaped motif measuring 2 inches by 2 inches. Item no. WT-222 is a bow tie-shaped motif with dangling imitation plastic pearl beads. Item no. WT-227 is a cluster motif with various sizes of imitation plastic pearls sewn on to the ground fabric or dangling. The above four motifs have beads embroidered to their sheer plain woven ground fabrics, which are continuous strips attaching the motifs for the convenience of transportation and to facilitate attachment. The ground fabrics, which are assumed to be of man-made fibers, can be cut without damaging the appliques. Since the motifs can be cut apart and sold separately, they will be classifiable according to their individual character. Item no. BF-901 is a continuous decorative fringe article with dangling glass beads. The fringe is approximately 2 inches long. The glass beads are sewn on to a 3/8 inch wide utilitarian narrow woven fabric for the convenience of transportation. The fabric tape will be completely obscured after the trimming is sewn on to a garment. All five items will be used as decoration on ladies' wearing apparel.

The applicable subheading for item nos. BT-501, WT-235, WT-222 and WT-227 will be 5810.92.0040, Harmonized Tariff Schedule of the United States (HTS), which provides for embroidery in the piece, in strips or in motifs; other embroidery; of man-made fibers; badges, emblems and motifs. The rate of duty will be 8.4 percent ad valorem.

Item no. BF-901 will be classifiable under the provision for glass beads, imitation pearls, imitation precious or semiprecious stones and similar glass smallwares and articles thereof other than imitation jewelry; ...; other; other; in subheading 7018.90.5000, HTS. The rate of duty will be 6.6 percent ad valorem.

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

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

*Sincerely,*

JEAN F. MAGUIRE  
*Area Director*  
*New York Seaport*

## ATTACHMENT D

NY 800463

July 27, 1994

CLA-2-58:S:N:N6:351 800463

CATEGORY: Classification

TARIFF NO.: 5810.92.0040

MR. W.J. GONZALEZ  
TRANS-UNION CUSTOMS SERVICE, INC.  
11941 S. PRAIRIE AVENUE  
HAWTHORNE, CA 90250

RE: The tariff classification of beaded embroidered motifs imported in strip form, from China.

DEAR MR. GONZALEZ:

In your letter dated July 20, 1994, on behalf of your client Formal Classic Inc., you requested a tariff classification ruling.

You have submitted a sample of fully beaded embroidered motifs imported in strip form in 10 yard lengths. No item number is indicated in your letter or on the sample. The motifs have imitation plastic pearls and white beads sewn on to their sheer plain woven ground fabric, which is a continuous strip attaching the motifs for the convenience of transportation and to facilitate attachment. The ground fabric, which is assumed to be of man-made fibers, can be cut without damaging the appliques. Since the motifs can be cut apart in groups of two leaf-shapes, measuring approximately 5 inches by 2 inches, and sold separately; they will be classifiable according to their individual character.

The applicable subheading for the motif imported in strip form will be 5810.92.0040, Harmonized Tariff Schedule of the United States (HTS), which provides for embroidery in the piece, in strips or in motifs; other embroidery; of man-made fibers; badges, emblems and motifs. The rate of duty will be 8.4 percent ad valorem.

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

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

*Sincerely,*

JEAN F. MAGUIRE  
*Area Director*  
*New York Seaport*

ATTACHMENT E

NY 881559

January 6, 1993  
CLA-2-58:S:COM:N6:351 881559  
CATEGORY: Classification  
TARIFF NO.: 5810.92.0040

MR. MICHAEL GULUZZI  
EXCEL INTERNATIONAL CO.  
147-48 182ND ST., SUITE 201  
JAMAICA, NY 11413

RE: The tariff classification of beaded motifs imported in strip form, from Haiti or China.

DEAR MR. GULUZZI:

In your letter dated December 28, 1992, on behalf of Royal Craft Trimming Corp., you requested a tariff classification ruling.

You have submitted two samples of fully beaded motifs, importer's style numbers 4648 and 5603. Both motifs have nylon woven ground fabrics. Item No. 4648 is a leaf-shaped motif with green plastic sequins. It measures 2 inches by 2 inches. Item No. 5603 is a circular-shaped beaded applique measuring 1 inch in diameter, and it has a large imitation gemstone surrounded by smaller plastic beads.

The samples are embroidered motifs in continuous strips. The strips of embroidery consist of a series of motifs connected by small sections of ground fabrics between each motif to form the strips. You indicate in your letter that after importation the motifs are to be cut and applied to dresses, gowns, etc. in order to enhance the appearance of the garment.

The applicable subheading for the embroidered motifs fall will be 5810.92.0040, Harmonized Tariff Schedule of the United States (HTS), which provides embroidery in the piece, in strips or in motifs; other embroidery; of man-made fibers; badges, emblems and motifs. The rate of duty will be 8.4 percent ad valorem.

In your request you questioned whether or not this merchandise will be subject to visa or export license requirements when imported from Haiti or China. Merchandise classified in HTS 5810.92.0040 is presently not subject to any visa or quota restrictions.

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

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

*Sincerely,*  
JEAN F. MAGUIRE  
*Area Director*  
*New York Seaport*

## ATTACHMENT F

HQ H301424  
OT:RR:CTF:FTM H301424 TJS  
CATEGORY: Classification  
TARIFF NO.: 5810.92.90

MR. W.J. GONZALEZ  
GENERAL MANAGER  
TRANS-UNION CUSTOMS SERVICE, INC  
11941 S. PRAIRIE AVENUE  
HAWTHORNE, CA 90250

RE: Modification of NY B85277, NY 801210, and NY 889565; Revocation of NY 800463 and NY 881559; Classification of Embroidered Motifs Imported in Continuous Lengths

DEAR MR. GONZALEZ,

This is to inform you that U.S. Customs and Border Protection (“CBP”) has reconsidered New York Ruling Letter (“NY”) B85277, issued to you on May 13, 1997 and NY 800463, issued to you on July 24, 1994, in addition to NY 801210, dated August 22, 1994, NY 889565, dated August 26, 1993; and NY 881559, dated January 6, 1993, regarding the tariff classification of certain embroidered motifs under the Harmonized Tariff Schedule of the United States (“HTSUS”). In those rulings, CBP classified certain embroidered motifs under subheading 5810.92.0040, HTSUS, or its current successor provision 5810.92.1000, HTSUS, which provides for “Embroidery in the piece, in strips or in motifs: Other embroidery: Of man-made fibers: Badges, emblems and motifs.” We have determined that NY B85277, NY 801210, and NY 889565 are partially incorrect, and NY 800463 and NY 881559 are incorrect. For the reasons set forth below, we hereby modify NY B85277, NY 801210, and NY 889565, and revoke NY 800463 and NY 881559.

**FACTS:**

The subject merchandise consists of various styles of embroidered motifs imported in continuous lengths. NY B85277 addressed the classification of three samples of motifs used for decorating dresses, but only one is at issue here. Sample St-7777 consisted of glass beads and sequins stitched to a backing of man-made fiber. The item was to be imported in continuous lengths, but could be easily cut apart into individual pieces of approximately one inch by one inch separate articles that could stand alone as individual appliqués.

NY 801210 classified five samples of decorative textile items, but only one style is at issue here. Style # AS/JC 1006 was beaded motifs made with imitation pearls and sequins sewn onto a sheer woven ground fabric assumed to be of man-made fibers. They consisted of star-shaped motifs with two inch long dangling beads. These motifs were imported by the yard for the convenience of transportation and could be easily cut apart.

NY 889565 classified four styles of fully beaded embroidered motifs imported in strip form and one style of beaded fringe. At issue here was the classification of the embroidered motifs, items BT-501, WT-235, WT-222 and WT-227. BT-501 was a gold-colored ornament trim with beads and sequins, measuring approximately 3 ¼ inches by 2 ½ inches. WT-235 was a black leaf-shaped motif measuring two inches by two inches. WT-222 was a bow

tie-shaped motif with dangling plastic imitation pearl beads. WT-227 was a cluster motif with various sizes of imitation plastic pearls sewn onto the ground fabric or dangling. These four motifs had beads embroidered to their sheer plain woven ground fabrics, which were continuous strips attaching the motifs for the convenience of transportation and to facilitate attachment. The ground fabrics, which were assumed to be of man-made fibers, could be cut without damaging the appliqué.

NY 800463 concerned fully beaded embroidered motifs imported in strip form in ten yard lengths. The motifs had imitation plastic pearls and white beads sewn onto their sheer plain woven ground fabric, which was a continuous strip attaching the motifs for the convenience of transportation and to facilitate attachment. The ground fabric, which was assumed to be of man-made fibers, could be cut without damaging the appliqué. The motifs could be cut apart in groups of two leaf-shapes, measuring approximately five inches by two inches, and sold separately.

NY 881559 concerned two fully beaded motifs, Item Nos. 4648 and 5603. Both motifs had nylon woven ground fabrics. Item No. 4648 was a leaf-shaped motif with green plastic sequins and measured two inches by two inches. Item No. 5603 was a circular-shaped beaded appliqué measuring one inch in diameter, and had a large imitation gemstone surrounded by smaller plastic beads. The provided samples were embroidered motifs in continuous strips. The strips of embroidery consisted of a series of motifs connected by small sections of ground fabrics between each motif to form the strips. After importation, the motifs were to be cut and appliqué to dresses, gowns, etc., in order to enhance the appearance of the garment.

NY B85277, NY 801210, NY 889565, NY 800463, and NY 881559 classified the subject embroidered motifs under subheading 5810.92.0040, HTSUS, or its successor provision 5810.92.1000, HTSUS, which provides for “Embroidery in the piece, in strips or in motifs: Other embroidery: Of man-made fibers: Badges, emblems and motifs.”

## ISSUE:

Whether the embroidered motifs imported in strips are classified in subheading 5810.92.1000, HTSUS, as embroidery in the form of motifs, or 5810.92.90, HTSUS, as embroidery in the piece.

## LAW AND ANALYSIS:

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

The HTSUS provisions under consideration are as follows:

- |             |   |
|-------------|---|
| 5810.92:    | Embroidery in the piece, in strips or in motifs: Other embroidery:<br>Of man-made fibers: |
| 5810.92.10: | Badges, emblems and motifs. . .   |
| 5810.92.90: | Other. . .  |

\* \* \* \*

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

EN 58.10 provides, in relevant part:

### (III) APPLIQUE WORK

This consists of a ground of textile fabric or felt on which are sewn, by embroidery or ordinary stitches:

- (A) Beads, sequins or similar ornamental accessories; these accessories are generally made of glass, gelatin, metal or wood, and are sewn so as to produce a pattern or a scattered design on the ground fabric.
- (B) Ornamental motifs of textile or other materials. These motifs are usually a textile fabric (including lace), of a texture different from that of the ground fabric and cut in various patterns which are sewn to the ground fabric; in certain cases, the ground fabric is removed at the places covered by the applied motif.
- (C) Braid, chenille yarn or other trimmings, etc., in the form of a design on the ground fabric.

All varieties of embroidery described remain within this heading when in the following forms:

- (1) **In the piece or in strips of various widths.** These pieces or strips may bear a series of identical designs, whether or not intended for subsequent separation to be made up into finished articles (e.g., strips of embroidered labels for marking articles of apparel, or pieces embroidered at regular intervals intended to be cut up and made up into bibs).
- (2) **In the form of motifs,** i.e., individual pieces of embroidered design serving no other function than to be incorporated or appliquéd as elements of embroidery in, for example, underwear or articles of apparel or furnishings. They may be cut to any shape, backed or otherwise assembled. They include badges, emblems, “flashes”, initials, numbers, stars, national or sporting insignia, etc.

\* \* \* \*

NY B85277, NY 801210, NY 889565, NY 800463, and NY 881559 classified the embroidered motifs under the provision for “badges, emblems and motifs,” noting that the strips of motifs could be cut apart and sold or used individually. We find this classification to be incorrect, especially in light of the descriptions set forth above in the Explanatory Notes.

The classification of the subject embroidered motifs will depend on their condition upon importation, i.e., whether they are imported individually or in the piece. We note that although the subject merchandise is referred to as “motifs,” a “motif” is merely “a single or repeated design or color.” *Merriam-Webster Dictionary*, <https://www.merriam-webster.com/dictionary/motif> (last accessed Oct. 9, 2019). The subject merchandise consists of motifs, but it must be determined whether they are “in the form of motifs” for tariff classification

purposes. EN 58.10 distinguishes embroidery “in the piece or in strips of various widths” from embroidery “in the form of motifs.” Embroidery is “in the form of motifs” if it is imported as individual pieces and its sole purpose is to be incorporated or appliquéd as elements of embroidery. *See, e.g.*, Headquarter Ruling Letter (“HQ”) 957317 (Mar. 10, 1995) (classifying embroidered motifs in subheading 5810.92.10, HTSUS, as “in the form of motifs” because they were no longer “in the piece” once cut to irregular shapes to accommodate embroidered designs and to enable a dress designer to use those designs to his/her needs.) Subsequent separation into individual pieces after importation does not preclude the embroidery from being considered in the piece. Therefore, the fact that the subject embroidered motifs could be easily cut apart into individual pieces, and may be intended to do so, does not make them eligible for classification as an individual motif. The subject embroidered motifs fall within the scope of “in the piece or in strips of various widths” under EN 58.10 because they are imported in continuous strips or by the yard and bear a series of identical designs.

This is consistent with the rule set forth in *United States v. Buss & Co.*, 5 Ct. Cust. 110 (1914). *Buss* addressed the classification of woven cotton tape imported in continuous lengths that bore cross marks at short intervals indicating where to cut the tape into small pieces for use as coat hangers. *Id.* In *Buss*, the United States Court of Customs Appeals held that:

The rule expressed by the decisions just cited recognizes the fact that most small articles are not produced as individual or separate products of the loom, but for economy of manufacture are first woven “in the piece.” The rule of decision is therefore established that where such articles are imported in the piece and nothing remains to be done except to cut them apart they shall be treated for dutiable purposes as if already cut apart and assessed according to their individual character or identity. This follows, however, only in case the character or identity of the individual articles is fixed with certainty and in case the woven piece in its entirety is not commercially capable of any other use.

*Id.* at 113. Thus, a product imported in the piece is classified as an individual article if it has the defined identity of the individual article and must be separated to be commercially usable.

Here, the embroidered motifs are not classifiable as individual motifs if, at the time of importation, they are commercially suitable for use as strips. In other words, the identity of the good is not fixed with certainty as a motif. Although the subject embroidered motifs can be separated without damage and used as individual appliqués, they are also usable as strips, such as for trimming. This variation provides the user a flexibility of design in a range of applications. Additionally, the embroidered strips provide the ease of fixed spacing if the user desires to position the motifs at regular intervals. The motifs are used for embellishment regardless of form, but the length of the embellishment is not fixed with certainty and they are not dedicated for use solely as individual appliqués or as strips. By being imported in continuous lengths or by the yard, the user can apply the motifs in the form they desire, whether that be as individual appliqués or as strips of various lengths. Because the embroidered motifs do not need to be separated to be commercially capable of use, we find that the subject embroidered motifs are not classifiable according to their individual character.

In accordance with the above, the subject embroidered motifs are classified as “in the piece or in strips of various widths.” Embroidery, of man-made

fibers, that is imported in continuous lengths is classified under subheading 5810.92.90, HTSUS. *See, e.g.*, NY N260125 (Jan. 6, 2015); NY N137843 (Jan. 13, 2011); and NY G86149 (Jan. 19, 2001) (classifying a floral motif imported in continuous lengths to be used as trimming). Thus, the subject embroidered motifs are classified in subheading 5810.92.90, HTSUS.

Goods classified in this provision are dutiable according to the terms of Additional U.S. Note 3 to Chapter 58, which states that the general rate of duty applicable to goods classified in subheading 5810.92.90, HTSUS, is “7.4%, but in the case of embroidery in the piece not less than the rate which would apply to such product if not embroidered.”<sup>1</sup> Therefore, the rate of duty for the subject embroidered motifs is based on the classification of their respective ground fabric. NY B85277, NY 801210, NY 889565, NY 800463, and NY 881559 state that the ground fabrics of the subject embroidered motifs are, or are assumed to be, made of man-made fabric. The rulings do not provide enough information to determine the duty rate applicable to the ground fabrics. Without this additional information regarding the ground fabric in these rulings, we are unable to determine the applicable duty rate for the subject embroidered motifs.

#### **HOLDING:**

By application of GRIs 1 and 6, the subject embroidered motifs are classified under subheading 5810.92.90, HTSUS, which provides for “Embroidery in the piece, in strips or in motifs: Other embroidery: Of man-made fibers: Other.” We cannot assess the applicable duty rate because we do not know the ground fabric of the embroidered motifs.

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

NY B85277, dated May 13, 1997, NY 801210, dated August 22, 1994, and NY 889565, dated August 26, 1993, are hereby MODIFIED.

NY 800463, dated July 24, 1994, and NY 881559, are hereby REVOKED.

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

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

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<sup>1</sup> According to Additional U.S. Note 2 to Chapter 58, the column 1 rate of duty applicable to subheading 5810.92.10, HTSUS, is “4.2%, but in the case of embroidery in the piece not less than the rate which would apply to such product if not embroidered.” We understand that as a result of this ruling, embroidery in the piece shall not be classified in subheading 5810.92.10, HTSUS, effectively nullifying the language of Additional U.S. Note 2 to Chapter 58 applicable to embroidery in the piece. However, all embroidery classified in heading 5810, HTSUS, with the exception of subheading 5810.10.00, HTSUS, that is imported in the piece is dutiable at a rate not less than the rate which would apply to such product if not embroidered. *See* Additional U.S. Notes 1–5 to Chapter 58, HTSUS. Prior to 1994, only one Additional U.S. Note to Chapter 58 existed, which encompassed subheadings 5810.91, 5810.92, and 5810.99, HTSUS, and provided a single duty rate for individual pieces of embroidery and the current duty rate language for embroidery in the piece. The embroidered motifs in NY B85277, NY 801210, NY 889565, NY 800463, and NY 881559 were assessed at the individual rate.

## **PROPOSED REVOCATION OF RULING LETTER RELATING TO APPLICABILITY OF SUBHEADING 9802.00.50, HTSUS**

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

**ACTION:** Notice of revocation of New York Ruling Letter (NY) M86482, dated September 25, 2006, regarding the applicability of subheading 9802.00.50, Harmonized Tariff Schedule of the United States (HTSUS) to automotive rim forgings.

**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 NY M86482 regarding the applicability of subheading 9802.00.50, 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.

**DATES:** Comments must be received on or before January 31, 2020.

**ADDRESSES:** 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:** James Kim, Valuation and Special Programs Branch, Regulations and Rulings, Office of Trade, at (202) 325–0158.

### **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 proposes to revoke NY M86482, dated September 25, 2006 (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 ruling 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 M86482, U.S. Customs and Border Protection ("CBP") determined that automotive rim forgings, exported to Mexico for various operations including grinding and polishing and then returned to the United States, were eligible for duty-free treatment under subheading 9802.00.50, HTSUS, which provides for articles returned to the United States after exportation for repair or alterations. We have reviewed NY M86482 and determined it to be in error. It is now CBP's position that the operations undertaken in Mexico do not constitute repairs or alterations and therefore the automotive rim forgings are not eligible for duty-free treatment under subheading 9802.00.50, HTSUS.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY M86482 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter ("HQ") H306334, 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: December 11, 2019

MONIKA R. BRENNER  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

Attachments

## ATTACHMENT A

NY M86482

September 25, 2006

CLA-2-98:RR:NC:N1:101 M86482

CATEGORY: Classification

TARIFF NO.: 9802.00.50

MR. ALEX ROMERO  
A.F. ROMERO & Co., INC.  
1749 STERGIOS RD  
CALEXICO, CA  
P.O. BOX 989  
CALEXICO CA 92231

RE: The tariff classification of automotive rim forgings from Mexico after certain operations are performed in Mexico.

DEAR MR. ROMERO:

In your letter dated August 28, 2006 you requested a tariff classification ruling on behalf of your client Prime Wheel Corporation of Gardena, California.

Prime Wheel Corporation imports forgings of automotive rims from Taiwan. They are imported duty paid in Long Beach, California. After importation and payment of duty, they are sent to Mexicali, B.C Mexico for the following operations:

- Staging
- Grinding with air grinder
- Polishing with polishing wheel
- Sanding
- Buffing
- Cleaning

After this process, each wheel must be free of any polish imperfections, the color must be even in all polished areas, the wheel must be free of pits, nicks and scratches in the face, and must be free of polish compound.

After the polishing in Mexico, they are returned to the US and a formal entry is filed. In the US the wheels undergo the following processes:

- Compound removal
- Pre-clean spray wash
- Clean spray wash
- Rinse spray wash
- Deoxidizer spray: Pre-treatment process prior to painting the wheels
- Rinse spray wash
- Oven Drying
- Apply clear coat: Powder pain process
- Curing
- Coating thickness inspection
- Packaging

The applicable subheading for the altered forgings will be 9802.00.50, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Articles returned to the United States after having been exported for repair or alterations. The rate of duty will be free.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Robert DeSoucey at 646-733-3008.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director,*

*National Commodity Specialist Division*

## ATTACHMENT B

HQ H306334

OT:RR:CTF:VS H306334 JK

CATEGORY: Classification

ALEX ROMERO  
A.F. ROMERO & Co., INC.  
1749 STERGIOS ROAD  
CALEXICO, CA 92231

RE: Revocation of NY M86482; Subheading 9802.00.50, HTSUS; Automotive Rim Forgings

DEAR MR. ROMERO:

This is in reference to New York Ruling Letter (“NY”) M86482, dated September 25, 2006. At issue was the applicability of subheading 9802.00.50, Harmonized Tariff Schedule of the United States (“HTSUS”), to automotive rim forgings subject to various operations including grinding and polishing in Mexico. In NY M86482, U.S. Customs and Border Protection (“CBP”) determined that the automotive rim forgings were eligible for duty-free treatment under subheading 9802.00.50, HTSUS, which provides for articles returned to the United States after exportation for repair or alterations. We have reviewed NY M86482 and determined it to be in error. For the reasons set forth below, we are revoking the ruling.

**FACTS:**

NY M86482 stated, in relevant part, that Prime Wheel Corporation imports forgings of automotive rims from Taiwan. Subsequently, these forgings are exported to Mexicali, Mexico to be subject to the following operations: staging, grinding with air grinder, polishing with polishing wheel, sanding, buffing, and cleaning. After the Mexican operations, they are returned to the United States, where they undergo the following operations: compound removal, pre-clean spray wash, clean spray wash, rinse spray wash, deoxidizer spray (pre-treatment process prior to painting the wheels), rinse spray wash, oven drying, application of a clear coat (powder pain process), curing, coating thickness inspection, and packaging. CBP held that the automotive rim forgings were eligible for duty-free treatment under subheading 9802.00.50, HTSUS.

**ISSUE:**

Whether automotive rim forgings are eligible for tariff treatment under subheading 9802.00.50, HTSUS?

**LAW AND ANALYSIS:**

Subheading 9802.00.50, HTSUS, provides a full or partial duty exemption for articles returned to the United States after having been exported to be advanced in value or improved in condition by means of repairs or alterations. Articles returned to the United States after having been repaired or altered in Mexico, whether or not pursuant to warranty, may be eligible for duty-free treatment, provided the documentary requirements of 19 CFR § 181.64 are satisfied.

Section 181.64(a), CBP Regulations, (19 CFR § 181.64(a)) states, in pertinent part:

‘[R]epairs or alterations’ means restoration, addition, renovation, redyeing, cleaning, reesterilizing, or other treatment which does not destroy the essential character of, or create a new and commercially different good from, the good exported from the United States.

Section 181.64(b), CBP Regulations, (19 CFR § 181.64(b)) states:

*Goods not eligible for duty-free or reduced-duty treatment after repair or alteration.* The duty-free or reduced-duty treatment referred to in paragraph (a) of this section shall not apply to goods which, in their condition as exported from the United States to Canada or Mexico, are incomplete for their intended use and for which the processing operation performed in Canada or Mexico constitutes an operation that is performed as a matter of course in the preparation or manufacture of the finished goods.

Subheading 9802.00.50, HTSUS, treatment is precluded where: (1) the exported articles are not complete for their intended use and the foreign processing operation is a necessary step in the preparation or manufacture of finished articles; or (2) the operations performed abroad destroy the identity of the exported articles or create new or commercially different articles through a process of manufacture. See *Guardian Indus. Corp. v. United States*, 3 Ct. Int’l Trade 9 (1982); *Dolliff & Co., Inc., v. United States*, 81 Cust. Ct. 1, C.D. 4755, 455 F. Supp. 618 (1978), *aff’d*, 66 C.C.P.A. 77, C.A.D. 1225, 599 F.2d 1015 (1979).

In *Guardian Industries v. United States*, the Court of International Trade stated that, in construing “the tariff provision for repairs and alterations performed abroad, the focus is upon whether the exported article is ‘incomplete’ or ‘unsuitable for its intended use’ prior to the foreign processing.” At issue in *Guardian Industries* was the question of whether subjecting U.S.-produced annealed glass to a tempering process in Canada to create glass for sliding glass patio doors qualified as an “alteration” under item 806.20, TSUS (a predecessor provision of subheading 9802.00.50, HTSUS). The court noted that glass must be tempered (i.e., strengthened) for practical safety use reasons and to conform to U.S. federal regulations before it may be marketed for use in sliding glass patio doors. In concluding that the tempering process was not an “alteration,” the court stated that “the exported articles of raw annealed glass were not ‘completed articles’ since they were entirely unsuitable for their intended use” as sliding glass patio doors and required a manufacturing process to make them compete. The court further concluded that, because the tempering of the annealed glass transformed the glass in name, use, performance characteristics and tariff classification, the operation created a new and different commercial article. See also *Dolliff & Company, Inc. v. United States*, 81 Cust. Ct. 1, C.D. 4755, 455 F.Supp. 618 (1978), *aff’d*, 66 CCPA 77, C.A.D. 1225, 599 F.2d 1015 (1979) (finding that U.S.-origin fabrics which were exported to Canada as grieve goods for heat-setting, chemical-scouring, dyeing, and treating with chemicals, were ineligible for 806.20, TSUS, as the processing in Canada resulted in a finished fabric suitable for manufacture into curtains).

Conversely, in *Amity Fabrics, Inc. v. United States*, 43 Cust. Ct. 64, C.D. 2104 (1959), “pumpkin” colored fabrics were exported to Italy to be redyed black since the pumpkin color had gone out of fashion and black was a consistently good seller. The court held that the identity of the goods was not lost or destroyed by the dyeing process, that no new article was created since there was no change in the character, quality, texture, or use of the merchandise; it was merely changed in color. The court found that such change

constituted an alteration for purposes of paragraph 1615(g) of the Tariff Act of 1930 (a predecessor provision of subheading 9802.00.50, HTSUS). *See also Royal Bead Novelty Co. v. United States*, 68 Cust. Ct. 154, C.D. 4353, 342 F. Supp. 1394 (1972) (finding that uncoated glass beads exported and coated was entitled to preferential tariff treatment under 806.20, TSUS as the identity of the beads was not lost or destroyed in the coating process and no new article was created).

In Headquarters Ruling Letter (HQ) H288285, dated January 18, 2018, CBP found that painting automotive bumpers in Canada did not constitute a repair or alteration under subheading 9802.00.50, HTSUS. Distinguishing *Amity Fabrics*, which determined that redyeing (but not dyeing) was a repair or alteration, CBP noted that the process undertaken in Canada was not a repainting operation; rather, the painting process was a continuation of the production process that allowed the automotive bumpers to be fit for their intended purpose. In addition, painting the bumpers prevented them from rusting. As a result, CBP concluded that the bumpers were not ready for their intended purpose prior to exportation to Canada. *See also* HQ H278563, dated November 23, 2016 (aluminum coils exported to Canada to undergo a paint coating process did not qualify for subheading 9802.00.50, HTSUS treatment).

Consistent with the above-referenced cases and rulings, we find that the staging, grinding, sanding, polishing, buffing and cleaning operations undertaken in Mexico are necessary, intermediate steps in the production of the finished good. As in *Guardian Industries*, where the raw annealed glass was incomplete and unsuitable prior to the foreign processing, the automotive rims are merely “forgings” that require additional processing prior to exportation to Mexico to be suitable for their intended use. The grinding, polishing, sanding, buffing and cleaning processes undertaken in Mexico prepare the forgings for further additional operations in the United States, which include washing, oven drying, and the application of a clear coat. As in HQ H278563, these operations are necessary to ensure the automotive rims can withstand rusting and exposure to the outdoor environment. Therefore, since the automotive rim forgings are not complete for their intended use prior to exportation and the Mexican operations are merely a continuation of the production of the finished good, we conclude that the subject goods do not qualify for subheading 9802.00.50, HTSUS treatment.

**HOLDING:**

NY M86482 is revoked to reflect that the operations undertaken in Mexico as described above do not constitute a repair or alteration and therefore the forgings of automotive rims are not eligible for duty-free treatment under subheading 9802.00.50, HTSUS.

**EFFECT ON OTHER RULINGS:**

NY M86482, dated September 25, 2006, is hereby REVOKED. In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after publication in the Customs Bulletin.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

**PROPOSED REVOCATION OF THREE RULING LETTERS  
AND REVOCATION OF TREATMENT RELATING TO THE  
TARIFF CLASSIFICATION OF INSTANT NOODLE SOUP**

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

**ACTION:** Notice of proposed revocation of three ruling letters and revocation of treatment relating to the tariff classification of instant noodle soup.

**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 three ruling letters concerning tariff classification of instant noodle soup 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 January 31, 2020.

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

**SUPPLEMENTARY INFORMATION:**

**BACKGROUND**

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an 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 three ruling letters pertaining to the tariff classification of instant noodle soup. Although in this notice, CBP is specifically referring to New York Ruling Letter (“NY”) N125119, dated October 12, 2010 (Attachment A), Headquarters Ruling Letter (“HQ”) 953104, dated April 1, 1993 (Attachment B), and HQ 086309, dated March 1, 1990 (Attachment C), this notice also covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the three 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 N125119, HQ 953104, and HQ 086309, CBP classified instant ramen soup in heading 1902, HTSUS, which provides for “Pasta, whether or not cooked or stuffed (with meat or other substances) or otherwise prepared, such as spaghetti, macaroni, noodles, lasagna, gnocchi, ravioli, cannelloni; couscous, whether or not prepared.” CBP has reviewed NY N125119, HQ 953104, and HQ 086309 and has determined the ruling letters to be in error. It is now CBP’s position that instant noodle soup is properly classified, in heading 2104, HTSUS, specifically in subheading 2104.10.0000, HTSUS, which provides for “Soups and broths and preparations therefor; homogenized composite food preparations: Soups and broths and preparations therefor.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke NY N125119, HQ 953104, and HQ 086309, and to revoke or modify any

other ruling not specifically identified to reflect the analysis contained in the proposed HQ H304896, set forth as Attachment D 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: December 11, 2019

YULIYA A. GULIS  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

Attachments

## ATTACHMENT A

N125119

October 12, 2010  
CLA-2-19:OT:RR:NC:2:228  
CATEGORY: Classification  
TARIFF NO.: 1902.30.0060

Ms. JESSICA ROWE  
BLUE Q CORPORATION  
103 HAWTHORNE AVENUE  
PITTSFIELD, MA 0120

RE: The tariff classification of instant ramen noodle soup from China

DEAR Ms. ROWE:

In your letters dated September 9, 2010 and September 23, 2010, you requested a tariff classification ruling.

An ingredients statement, illustration of the chicken flavor ramen noodle soup package and a sample accompanied your first letter. The sample was examined and disposed of. "Ramen Noodle Soup" consists of flat dried noodles and a pouch of a powdered soup base. The soup base packet will be prepared in four different flavors: Chicken, Shrimp, Spicy Beef and Spicy Vegetable. The product is put up for retail sale in a package containing 3 ounces (85 grams), net weight.

The declared ingredients for the noodles are wheat flour, palm oil, salt, sugar, guar gum, garlic powder. The manufacturing process for the noodles was described in your second letter. The ingredients are mixed, rolled and cut into strips, steamed and cut into blocks, deep fried and air cooled, and packaged with different flavor soup base packets. Package instructions direct the user to bring 2 cups of cold water to a boil, insert the noodles and cook for 2-3 minutes until noodles are tender and separated, then remove from heat, add soup base to noodles and stir.

The applicable subheading for all four instant "Ramen Noodle Soup" products will be 1902.30.0060, Harmonized Tariff Schedule of the United States (HTSUS), which provides for pasta, whether or not cooked or stuffed (with meat or other substances) or otherwise prepared, such as spaghetti, macaroni, noodles, lasagna, gnocchi, ravioli, cannelloni ... other pasta...other... other. The rate of duty will be 6.4% 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 merchandise is subject to The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (The Bioterrorism Act), which is regulated by the Food and Drug Administration (FDA). Information on the Bioterrorism Act can be obtained by calling FDA at 301-575-0156, or at the Web site [www.fda.gov/oc/bioterrorism/bioact.html](http://www.fda.gov/oc/bioterrorism/bioact.html).

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 Stanley Hopard at (646) 733-3029.

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

## ATTACHMENT B

HQ 953104

April 1, 1993

CLA-2-CO:R:C:F 953104 K

CATEGORY: Classification

TARIFF No.: 1902.30.0060

MR. KWANG SOO PAICK  
K.S. TRADING CO.  
P.O. BOX 76214  
LOS ANGELES, CALIFORNIA 90076

RE: Classification of Noodles With A Soup Base

DEAR SIR:

The following is in response to your request of September 4, 1992, for a ruling concerning the classification of products referred to as "Oriental Style Instant Noodle With Soup". Two samples were submitted which were examined and disposed of.

**FACTS:**

The products consist of a plastic bowl with a foil lid, containing dried noodles and a packet of a powdered soup base. The net weight is 3.03 ounces. The stated ingredients for the noodles are wheat flour, potato starch, palm oil, salt, onion paste, and corn flour. The manufacturing process of the noodles includes the passing of the noodles through a steam box for one and one half minutes and partially cooking the noodles by frying them in palm oil for two minutes. The noodles are then air cooled and are packaged with a soup based packet which enables a consumer to make instant noodle soup by the addition of boiling hot water. One of the products contains shrimp and for purposes of this ruling, we assume that the quantity is not over 20 percent by weight.

**ISSUE:**

The issue is whether the noodles have been "cooked" and therefore classifiable under subheading 1902.30.0060, Harmonized Tariff Schedule of the United States (HTSUS).

**LAW AND ANALYSIS:**

Heading 1902, HTSUS, provides for pasta, whether or not cooked or stuffed (with meat or other substances) or otherwise prepared, such as ... noodles..., whether or not prepared. In Headquarters Ruling Letter (HRL) 086309, dated March 1, 1990, concerning a similar instant noodle soup, we stated that the mere inclusion of a sealed soup base packet in the same package as the noodles does not constitute a preparation of the pasta for tariff purposes and that the merchandise was classifiable as other uncooked pasta, not stuffed or otherwise prepared, other, including pasta packaged with sauce preparations, in subheading 1902.19.4000, HTSUS, with duty at 10 percent ad valorem. However, the merchandise in this case contains noodles that have been cooked or partially cooked and therefor have been prepared for tariff purposes. Accordingly, the merchandise in this case is classifiable as other pasta, under subheading 1902.30.0060, HTSUS, with a duty at 10 percent ad valorem.

**HOLDING:**

Products containing dried noodles that were prepared by a cooking process and are packaged with a soup base packet that enables a consumer to make instant noodle soup by the addition of boiling hot water, are classifiable as other pasta under subheading 1902.30.0060, HTSUS, with duty at 10 percent ad valorem.

*Sincerely,*  
JOHN DURANT,  
*Director*  
*Commercial Rulings Division*

## ATTACHMENT C

HQ 086309

March 1, 1990

CLA-2 CO:R:C:G 086309 WAW

CATEGORY: Classification

TARIFF NO.: 1902.19.4000

Ms. EVA ESSLER

SHAFFER, CLARKE &amp; Co., INC.

3 PARKLANDS DRIVE

DARIEN, CT 06820-3639

RE: Reconsideration and modification of New York Ruling Letter 843104;  
wonton noodles and soup base

DEAR Ms. ESSLER:

This letter is a reconsideration of New York Ruling Letter 843104, dated August 1, 1989, concerning the tariff classification of wonton noodles with soup base under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA).

The soup product is described as consisting of dried, uncooked wonton noodles and a sealed packet that contains a soup base. The soup is prepared by adding a specified amount of boiling water to the ingredients and then simmering the mixture for two minutes. The product is manufactured in Japan.

In New York Ruling Letter 843104, Customs classified the sample merchandise under subheading 1902.30.0060, HTSUSA, which provides for pasta, whether or not cooked or stuffed (with meat or other substances) or otherwise prepared, such as spaghetti, macaroni, noodles, lasagna, gnocchi, ravioli, cannelloni; couscous, whether or not prepared: other pasta: other. Items classified under this subheading are subject to a 10 percent rate of duty.

After reexamination of Heading 1902, HTSUS and the relevant Explanatory Notes, it is Customs position that the sample item is more properly classifiable under subheading 1902.19, HTSUS, rather than 1902.30, HTSUS. Subheading 1902.19, HTSUS, provides for pasta, whether or not cooked or stuffed (with meat or other substances) or otherwise prepared, such as spaghetti, macaroni, noodles, lasagna, gnocchi, ravioli, cannelloni; couscous, whether or not prepared: uncooked pasta, not stuffed or otherwise prepared. More specifically, subheading 1902.19.4000, HTSUSA, includes uncooked pasta packaged with other ingredients, provided that the pasta has not been otherwise prepared. The mere inclusion of a sealed soup base packet in the same package as the noodles does not constitute a "preparation" of the pasta for tariff purposes. Moreover, it is the position of the Customs Service that the noodle and soup base product is analogous to "pasta packaged with sauce" which is one of the exemplars noted in subheading 1902.19, HTSUS. By contrast, subheading 1902.30, HTSUS, includes cooked or otherwise prepared unstuffed pasta. Since the product consists of dried, uncooked wonton noodles which have not been stuffed, classification is not appropriate under subheading 1902.30, HTSUS.

For the foregoing reasons, the subject merchandise is properly classified in subheading 1902.19.4000, HTSUSA. Items classified under this subheading

are dutiable at 10 percent ad valorem. New York Ruling Letter 843104, dated August 1, 1989, is hereby modified accordingly.

*Sincerely,*

JOHN DURANT,

*Director*

*Commercial Rulings Division*

## ATTACHMENT D

HQ H304896  
OT:RR:CTF:FTM H304896 TJS  
CATEGORY: Classification  
TARIFF NO.: 2104.10.0020

MS. JESSICA ROWE  
BLUE Q CORPORATION  
103 HAWTHORNE AVENUE  
PITTSFIELD, MA 01201

RE: Revocation of NY N125119, HQ 953104, and HQ 086309; Classification of Instant Noodle Soup

DEAR MS. ROWE,

This is to inform you that U.S. Customs and Border Protection (“CBP”) has reconsidered New York Ruling Letter (“NY”) N125119, issued to you on October 12, 2010, as well as Headquarters Ruling Letter (“HQ”) 953104, dated April 1, 1993, and HQ 086309, dated March 1, 1990, regarding the tariff classification of instant noodle soup under the Harmonized Tariff Schedule of the United States (“HTSUS”). In those rulings, CBP classified various instant noodle soups in heading 1902, HTSUS, as pasta. We have determined those rulings to be in error. For the reasons set forth below, we are revoking NY N125119, HQ 953104, and HQ 086309.

**FACTS:**

The subject merchandise consists of various instant noodle soup products comprised of dried noodles and soup base. NY N125119 concerned the tariff classification of instant “Ramen Noodle Soup” from China consisting of a block of dried noodles and a pouch of a powdered soup base available in four different flavors: Chicken, Shrimp, Spicy Beef, and Spicy Vegetable. Package instructions directed the user to bring two cups of cold water to a boil, insert the noodles and cook for two to three minutes until noodles were tender and separated, remove from heat, and then add the soup base and stir. HQ 953104 concerned products referred to as “Oriental Style Instant Noodle With Soup” that consisted of a plastic bowl with a foil lid containing dried noodles and a packet of a powdered soup base, which enabled the consumer to make instant noodle soup by adding boiling water.<sup>1</sup> The products in NY N125119 and HQ 953104 were classified in subheading 1902.30.0060, Harmonized Tariff Schedule of the United States Annotated (“HTSUSA”), which provides for “Pasta, whether or not cooked or stuffed (with meat or other substances) or otherwise prepared, such as spaghetti, macaroni, noodles, lasagna, gnocchi, ravioli, cannelloni: Other pasta: Other: Other.”

The product in HQ 086309 was a soup product manufactured in Japan consisting of dried, uncooked wonton noodles and a sealed packet of a soup base. The consumer prepared the soup by adding a specified amount of boiling water to the ingredients and then simmering the mixture for two minutes. HQ 086309 classified the soup product under subheading 1902.19.40, HTSUS, which includes uncooked pasta packaged with other

<sup>1</sup> One of the products in HQ 953104 contained shrimp and for purposes of the ruling, it was assumed that the quantity was not over 20% by weight.

ingredients, provided that the pasta has not been otherwise prepared.<sup>2</sup> CBP held that the mere inclusion of a sealed soup base packet in the same package as the noodles did not constitute a “preparation” of the pasta for classification purposes and that the noodle and soup base product was analogous to “pasta packaged with sauce,” which is one of the exemplars noted in subheading 1902.19, HTSUS.

**ISSUE:**

Whether the subject merchandise is classified in heading 1902, HTSUS, which provides for pasta, or in heading 2104, HTSUS, which provides for soup.

**LAW AND ANALYSIS:**

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

The following HTSUS headings are under consideration:

- 1902: Pasta, whether or not cooked or stuffed (with meat or other substances) or otherwise prepared, such as spaghetti, macaroni, noodles, lasagna, gnocchi, ravioli, cannelloni; couscous, whether or not prepared
- 2104: Soups and broths and preparations therefor; homogenized composite food preparations

\* \* \*

The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the Harmonized System. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the proper classification of merchandise. It is CBP’s practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89–90, 54 Fed. Reg. 35127 (Aug. 23, 1989).

EN 19.02 provides, in relevant part, the following:

The heading does not cover:

- (b) Soups and broths and preparations therefor, containing pasta (heading 21.04).

\* \* \*

EN 21.04 provides, in pertinent part, the following:

**(A) SOUPS AND BROTHS AND PREPARATIONS THEREFOR**

This category includes:

- (1) Preparations for soups or broths requiring only the addition of water, milk, etc.
- (2) Soups and broths ready for consumption after heating.

<sup>2</sup> HQ 086309 modified NY 843104, dated August 1, 1989, which classified the wonton soup under subheading 1902.30.0060, HTSUSA.

These products are generally based on vegetable products (vegetables, flour, starches, tapioca, pasta, rice, plant extracts, etc.), meat, meat extracts, fat, fish, crustaceans, molluscs or other aquatic invertebrates, peptones, amino-acids or yeast extract. They may also contain a considerable proportion of salt.

They are generally put up as tablets, cakes, cubes, or in powder or liquid form.

\* \* \*

Heading 2104, HTSUS, is the provision for “soups and broths and preparations therefor.” There are no definitions for the terms “soup”, “broth”, and “preparation” in the HTSUS. Merriam-Webster dictionary defines “soup” as “a liquid food especially with a meat, fish, or vegetable stock as a base and often containing pieces of solid food.”<sup>3</sup> With the addition of boiling water, the powdered soup base becomes a flavored broth containing noodles—falling within the definition of “soup.” The noodles in the products at issue are typically used in soups, as indicated by their definitions. Merriam-Webster dictionary defines “ramen” as “quick-cooking egg noodles usually served in a broth with bits of meat and vegetables.”<sup>4</sup> “Wonton” is defined as “a Chinese food made of dough that is filled with meat or vegetables and often served boiled in soup.”<sup>5</sup> These definitions, coupled with the fact that the subject products include soup base, support the classification of the subject products as preparations for soup. Moreover, “Ramen Noodle Soup” and “Oriental Style Instant Noodle With Soup” are sold and identified as soups. These definitions, coupled with the fact that the subject products include soup base, support the classification of the subject products as preparations for soup. Moreover, “Ramen Noodle Soup” and “Oriental Style Instant Noodle With Soup” are sold and identified as soups.

In HQ 963821, dated July 17, 2000, CBP classified “Milk Peanut Soup” under heading 2008, HTSUS, as prepared peanuts, rather than heading 2104, HTSUS. In making its determination, CBP considered the product’s contents, noting that the high sugar content and the lack of stock indicated that the product was actually a snack or dessert rather than a soup. CBP also considered the fact that the “Milk Peanut Soup” was intended to be consumed directly from its tin can container, rather than a bowl. Here, the subject merchandise differs from the “Milk Peanut Soup” primarily in its contents and preparation. The noodle soup products at issue consist of two primary ingredients: soup base and noodles. The powdered soup base becomes soup stock with the addition of water, and is itself classifiable in heading 2104, HTSUS, as a soup preparation. *See* HQ 962908 (Dec. 23, 1999) (classifying under subheading 2104.10.0020, HTSUSA, two types of dried soup stocks to which the consumer adds hot water for a soup or a soup base). The inclusion

<sup>3</sup> Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/soup> (last accessed Nov. 7, 2019).

<sup>4</sup> Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/ramen> (last accessed Nov. 7, 2019); *See also* Lexico, <https://www.lexico.com/en/definition/ramen> (defining “ramen” as “quick-cooking noodles, typically served in a broth with meat and vegetables”) (last accessed Nov. 7, 2019).

<sup>5</sup> Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/wonton> (last accessed Nov. 7, 2019); *See also* Lexico, <https://www.lexico.com/en/definition/wonton> (defining “wonton” as “a small round dumpling or roll with a savoury filling, usually eaten boiled in soup”) (last accessed Nov. 7, 2019).

of the soup base and required addition of water indicate that the subject products are soups. Additionally, the “Oriental Style Instant Noodle With Soup” in HQ 953104 was packaged in a plastic bowl with a foil lid, allowing the consumer to prepare and consume the product directly from the container. The bowl container in HQ 953104 is unlike the tin can container in HQ 963821 because soups are typically served in bowls.

In NY N043855, dated December 10, 2008, CBP addressed the classification of “Chicken Noodle Soup,” which was a dry mix composed of approximately 44% small egg-pasta shells, 36% seasoning, 18% vegetable blend, and 3% green peas. The product was mixed with water, supplemented with chicken, and heated to make the soup. CBP classified the “Chicken Noodle Soup” mix under subheading 2104.10.0020, HTSUSA, as a dried preparation for soup.

We find that the instant rulings are similar to NY N043855 where, despite consisting primarily of noodles/pasta upon importation, the products only require the addition of water to make soup. According to EN 21.04(A)(1), heading 2104, HTSUS, includes preparations for soups requiring only the addition of water. Each of the subject products instructs the user to add boiling water to the noodles and soup base to prepare the dish. Additionally, the soup base distinguishes the product as soup rather than a noodle dish. The subject merchandise would consist solely of noodles but for the soup base. It is the soup base that provides the flavor and serves as the foundation of the dish. The inclusion of the soup base implies that the product is intended as a soup rather than a pasta dish.<sup>6</sup> EN 19.02 excludes soup preparations containing pasta from classification in heading 1902, HTSUS, and in fact, directs classification of such products in heading 2104, HTSUS. Because the products at issue are soup preparations that contain noodles, they are precluded from classification in heading 1902, HTSUS.

As such, the subject instant noodle soup products, are classified as soup preparations in heading 2104, HTSUS. They are specifically classified in subheading 2104.10.0020, HTSUSA, which provides for “Soups and broths and preparations therefor; homogenized composite food preparations: Soups and broths and preparations therefor: Dried.”

#### **HOLDING:**

By application of GRI 1, the instant noodle soup products are classified in heading 2104, HTSUS, specifically under subheading 2104.10.0020, HTSUSA, which provides for “Soups and broths and preparations therefor; homogenized composite food preparations: Soups and broths and preparations therefor: Dried.” The 2019 column one duty rate is 3.2% *ad valorem*.

<sup>6</sup> In NY N204353, dated March 15, 2012, CBP addressed the classification of Indomie® Instant Noodles Chicken Flavor, which consisted of flat, dried, pre-cooked noodles and a sealed packet with two compartments containing chili powder and seasoning powder, packed in a sealed, retail pouch. The package contained two sets of instructions: one set for preparing the noodles as a noodle dish, and another instructing the user to prepare the noodles with additional water for “soup style.” CBP classified the instant noodles in subheading 1902.30.0060, HTSUSA, as pasta. We do not dispute this classification because the noodles are prepared either as a noodle dish or in a “soup style.” Additionally, it does not appear the noodles were marketed as soup and the seasoning packet is not referred to as “soup base.”

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

**EFFECT ON OTHER RULINGS:**

NY N125119, dated October 12, 2010, HQ 953104, dated April 1, 1993, and HQ 086309, dated March 1, 1990 are hereby **REVOKED** in accordance with the above analysis.

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

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*



**PROPOSED MODIFICATION OF ONE RULING LETTER  
AND REVOCATION OF TREATMENT RELATING TO THE  
TARIFF CLASSIFICATION OF A DOCUMENT HOLDER  
WITH NOTE PAD**

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

**ACTION:** Notice of proposed modification of one ruling letter and revocation of treatment relating to the tariff classification of a document holder with note pad.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to modify one ruling letter concerning tariff classification of a document holder with note pad 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:** omments must be received on or before January 31, 2020.

**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:** Lindsay Heebner, Chemicals, Petroleum, Metals, and Miscellaneous Articles Branch, Regulations and Rulings, Office of Trade, at (202) 325-0266.

**SUPPLEMENTARY INFORMATION:**

**BACKGROUND**

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

Pursuant to 19 U.S.C. §1625(c)(1), this notice advises interested parties that CBP is proposing to modify one ruling letter pertaining to the tariff classification of a document holder with note pad. Although in this notice, CBP is specifically referring to New York Ruling Letter ("NY") N069095, dated August 19, 2009 (Attachment A), this notice also covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the comment period.

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

In NY N069095, CBP classified a document holder with note pad in heading 4202, HTSUS, specifically in subheading 4202.12.8170<sup>1</sup>, HTSUS, which provides for “Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper: Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels and similar containers: With outer surface of plastics or of textile materials: Of man-made fibers: Other.” CBP has reviewed NY N069095 and has determined the ruling letter to be in error. It is now CBP’s position that the document holder with note pad is properly classified, in heading 4820, HTSUS, specifically in subheading 4820.10.2040, HTSUS, which provides for “Registers, account books, notebooks, order books, receipt books, letter pads, memorandum pads, diaries and similar articles, exercise books, blotting pads, binders (looseleaf or other), folders, file covers, manifold business forms, interleaved carbon sets and other articles of stationery, of paper or paperboard; albums for samples or for collections and book covers (including cover boards and book jackets) of paper or paperboard: Registers, account books, notebooks, order books, receipt books, letter pads, memorandum pads, diaries and similar articles: Diaries, notebooks and address books, bound; memorandum pads, letter pads and similar articles: Other note books with dimensions of 152.4–381 mm (6” - 15”), inclusive (small side) X 222.5–381 mm (8.75” -15”), inclusive (large side).”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to modify NY N069095 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H188455, 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.

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<sup>1</sup> 2009 HTSUS subheading 4202.12.8030.

Dated: December 11, 2019

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

Attachments

## ATTACHMENT A

N069095

August 19, 2009

CLA-2-42:OT:RR:NC:N4:441

CATEGORY: Classification

TARIFF NO.: 4202.12.8030, 4202.32.9550

LISA GINGERICH  
COPPERSMITH INC.  
760 BONNIE LANE  
ELK GROVE VILLAGE, IL 60007

RE: The tariff classification of expandable document organizers and coupon holders from China

DEAR Ms. GINGERICH:

In your letter dated June 24, 2009, you requested a tariff classification ruling. Your samples will be returned to you.

Style 98735 and 95835 are expandable document organizers constructed with an outer surface of man-made textile material. Both styles are a form of a portfolio. Each is made up to provide storage, protection, portability and organization to documents and other such items as catalog pages, etc., as well as accessories. Each organizer features an open pocket with a retractable paper notepad and thirteen semi-translucent plastic expandable sleeve dividers with tab holders to identify document contents. Style 95835 has a zipper closure along three sides. Style 98735 has a flap with a magnetic closure. Both measure approximately 11.5" (W) x 14" (L) x 1.5" (D).

Styles 98630 and 98631 are accordion style coupon holders designed to organize and store coupons. They are constructed with an outer surface of man-made textile material. Both are made up to provide storage, protection, portability and organization to coupons or other small documents. Each holder features an open pocket with a retractable paper notepad and thirteen semi-translucent plastic expandable sleeve dividers with tab holders to identify the contents. Style 98630 has a flap with a metal twist lock closure. Style 98631 has a zipper closure along three sides. Both measure approximately 5.5" (W) x 8" (L) x 1.5" (D).

In your letter, you suggest all four samples should be classified under 4820.10.2020, Harmonized Tariff Schedule of the United States (HTSUS), which provides for registers, account books, notebooks . . . and similar articles: diaries, notebooks and address books, bound memorandum pads, letter pads and similar articles: memorandum pads, letter pads and similar articles. Each expandable document organizer is clearly designed to organize, store, protect and carry documents. The translucent plastic expandable sleeve dividers aid in the organization, storage and protection of documents. The expandable document organizers share the essential characteristics, as well as the specific and primary purpose of the exemplars of heading 4202, HTSUS. The organizers are, therefore, classified under an ejusdem generis analysis, as a "similar container," in heading 4202, HTSUS.

The applicable subheading for styles 98735 and 95835 will be 4202.12.8030, HTSUS, which provides for attaché cases, briefcases, school satchels, occupational luggage cases and similar containers, with outer surface of textile materials, other of man-made fibers. The duty rate will be 17.6% ad valorem.

The applicable subheading for styles 98630 and 98631 will be 4202.32.9550, HTSUS, which provides for articles of a kind normally carried in the pocket or in the handbag, with outer surface of textile materials, other, of man-made fibers. The duty rate will be 17.6 percent ad valorem.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on 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 Vikki Lazaro at (646) 733-3041.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director*

*National Commodity Specialist Division*

## ATTACHMENT B

HQ H188455

OT:RR:CTF:CPMM:LMH

CATEGORY: Classification

TARIFF NO.: 4820.10.2040

LISA GINGERICH  
COPPERSMITH INC.  
760 BONNIE LANE  
ELK GROVE VILLAGE, IL 60007

RE: Modification of NY N069095. Tariff classification of certain document holders with notepads.

DEAR LISA GINGERICH,

U.S. Customs and Border Protection (CBP) issued you New York Ruling Letter (NY) N069095, dated August 19, 2009. That ruling pertains to the tariff classification under the Harmonized Tariff Schedule of the United States, (HTSUS) of a document holder with a notepad and an accordion style coupon holder. We have since reviewed this ruling and find it to be in error with respect to the document holder with notepad, which is described in detail herein.

**FACTS:**

NY N069095 states the following, in relevant part:

Style 98735 and 95835 are expandable document organizers constructed with an outer surface of man-made textile material. Both styles are a form of a portfolio. Each is made up to provide storage, protection, portability and organization to documents and other such items as catalog pages, etc., as well as accessories. Each organizer features an open pocket with a retractable paper notepad and thirteen semi-translucent plastic expandable sleeve dividers with tab holders to identify document contents. Style 95835 has a zipper closure along three sides. Style 98735 has a flap with a magnetic closure. Both measure approximately 11.5" (W) x 14" (L) x 1.5" (D).

**ISSUE:**

Whether the document holder with notepad is classified as a container of heading 4202, HTSUS, or a notebook, memorandum pad, or letter pad of heading 4820, 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.

The HTSUS provisions under consideration in this case are as follows:

- 4202 Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper:
- Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels and similar containers:
- 4202.12 With outer surface of plastics or of textile materials:  
With outer surface of textile materials:
- 4202.12.81 Of man-made fibers:
- 4202.12.8170 Other.
- \*\*\*
- 4820 Registers, account books, notebooks, order books, receipt books, letter pads, memorandum pads, diaries and similar articles, exercise books, blotting pads, binders (looseleaf or other), folders, file covers, manifold business forms, interleaved carbon sets and other articles of stationery, of paper or paperboard; albums for samples or for collections and book covers (including cover boards and book jackets) of paper or paperboard:
- 4820.10 Registers, account books, notebooks, order books, receipt books, letter pads, memorandum pads, diaries and similar articles:
- 4820.10.20 Diaries, notebooks and address books, bound; memorandum pads, letter pads and similar articles:
- 4820.10.2040 Other note books with dimensions of 152.4–381 mm (6"–15"), inclusive (small side) X 222.5–381 mm (8.75"–15"), inclusive (large side).

In understanding the language of the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System, which constitute the official interpretation of the HTSUS at the international level, may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS.<sup>2</sup>

The EN to GRI 3(b) states:

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

Applying the GRIs and analyzing the headings and related section and chapter notes, we note that this product is a composite good with a man-made textile cover, plastic expandable sleeve dividers, and a paper letter pad. As such, GRIs 1 and 2 are not sufficient to classify the product because it could fall under multiple provisions. In addition, the binder is made of various materials, eliminating the possibility of classification by material alone. Under GRI 3(a), the container and letter pad refer only to part of the com-

<sup>2</sup> See T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

posite product and are considered equally specific. As a result, we move to GRI 3(b) to determine the essential character of the product.

The Explanatory Note to GRI 3(b) states, “the factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.”<sup>3</sup> The courts have found that the “essential character” of an article is “that which is indispensable to the structure, core or condition of the article, i.e., what it is.”<sup>4</sup> Further, “the existence of other materials which impart something to the article ought not to preclude an attempt to isolate the most outstanding and distinctive characteristic of the article . . . .”<sup>5</sup> The courts make clear that determining the essential character of an article requires a fact-intensive analysis.<sup>6</sup>

In this case, the letter pad or notebook accounts for the bulk of the weight of the product, while the textile outer portion comprises more value than any other individual material in the good. However, the role of the notepad in relation to the use of the good is paramount in that the pockets, plastic sleeves and cover facilitate the ability to keep and carry notes written on the pad or in the notebook.

The above analysis is in accordance with court precedent. Specifically, the Court of Appeals for the Federal Circuit evaluated a similar product in *Aves. in Leather, Inc. v. United States*. The product was described as:

...Calcu-Folios measure approximately 13.5 inches tall by 11.5 inches wide by 1.5 inches deep when closed, are zippered on three sides with an interior sleeve, possess one exterior open flat pocket and a number of small interior pockets, have a padded carrying handle fitted to the exterior spine, are constructed of paperboard covered with plastic foam and a vinyl/plastic exterior and interior, contain a solar-powered calculator, and have an interior three-ring metal binder permanently affixed to the spine.<sup>7</sup>

In that case, the Court considered whether the Calcu-Folios were properly classified under heading 4802 or 4202 and concluded:

Here, while the Calcu-Folios may be used to organize and protect small and/or flat items in addition to a writing pad, they have an internal capacity of only 1 inch and lack significant carrying space. These characteristics make them unsuitable to carry newspapers, books, and other objects that are normally carried in containers that are common to Heading 4202. Moreover, while the articles in question may be generally described as “containers,” their specific use is limited to facilitation in taking of notes as well as aiding in the organization of print and other

<sup>3</sup> EN to Rule 3(b), (VIII).

<sup>4</sup> See *United China & Glass Co. v. United States*, 61 Cust. Ct. 386, C.D. 3637, 293 F. Supp. 734, 737, (1968).

<sup>5</sup> *Canadian Vinyl Indus., Inc. v. United States*, 76 Cust. Ct. 1, 3, C.D. 4626 408 F. Supp. 1377, 1378 (1976).

<sup>6</sup> See *Toy Biz, Inc. v. United States*, 219 F. Supp. 2d 1289, 1301 (CIT 2002).

<sup>7</sup> 423 F.3d 1326 (Fed. Cir. 2005) at 1328.

visual flat materials. Such a specific use, which predominates over the more general description of containers, precludes classification of the Calcu-Folios under Heading 4202.<sup>8</sup>

As with the case above, the instant product has slim pockets to hold print and other visual flat materials and is used to facilitate notetaking. The more specific use of notetaking predominates over the general description as a container. In Headquarters Ruling Letter (HQ) 967816, we followed the decision in *Aves. in Leather*, classifying a folio filer with memorandum pad or spiral notebook under heading 4820, HTSUS. The merchandise in that ruling was described as follows:

[The Big Mouth Folio is] made of translucent polypropylene sheeting that has been scored, folded, heat-sealed and spot bonded to form a bifold case with a flap closure. The inner left side of the folder contains an accordion pouch fitted with five tabbed plastic folders. This side measures approximately 13" high by 10" wide. A bungee stretches over a plastic button rivet to secure the folders. The inner right side of the folder incorporates a horizontal slit into which a legal size paper pad has been inserted. This side also measures approximately 13" high by 10" wide. When in closed position, the Big Mouth Folio measures approximately 13" high, 11" wide, and 1-1/8" thick.

We found that the article's use was centered on the memorandum pad of heading 4820 and the other features served merely to enhance the ability to provide a convenient and organized method by which to take notes. *See also* New York Ruling Letter (NY) N031216, dated July 10, 2008. Because the essential character of the instant document holder with notepad is the notepad, it is classified via GRIs 1 and 3(b), under heading 4820 as a notebook or letter pad in accordance with *Aves. In Leather* and the above cited rulings.

#### **HOLDING:**

By application of GRIs 1 and 3(b), the subject document holder with notepad is classified in heading 4820, HTSUS. It is specifically provided for in subheading 4820.10.2040, HTSUS, which provides for, "Registers, account books, notebooks, order books, receipt books, letter pads, memorandum pads, diaries and similar articles, exercise books, blotting pads, binders (looseleaf or other), folders, file covers, manifold business forms, interleaved carbon sets and other articles of stationery, of paper or paperboard; albums for samples or for collections and book covers (including cover boards and book jackets) of paper or paperboard: Registers, account books, notebooks, order books, receipt books, letter pads, memorandum pads, diaries and similar articles: Diaries, notebooks and address books, bound; memorandum pads, letter pads and similar articles: Other note books with dimensions of 152.4–381 mm (6" - 15"), inclusive (small side) X 222.5–381 mm (8.75" -15"), inclusive (large side)." The 2019 column one general rate of duty is free.

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

<sup>8</sup> *Id.* at 1333.

**EFFECT ON OTHER RULINGS:**

NY N069095, dated August 19, 2009, with respect to the document holder with notepad is hereby MODIFIED.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

  
**AGENCY INFORMATION COLLECTION ACTIVITIES:****Record of Vessel Foreign Repair or Equipment Purchase**

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

**ACTION:** 60-Day notice and request for comments; extension of an existing collection of information.

**SUMMARY:** The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and must be submitted (no later than February 11, 2020) to be assured of consideration.

**ADDRESSES:** Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651-0027 in the subject line and the agency name. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Email.* Submit comments to: *CBP\_PRA@cbp.dhs.gov*.

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

**FOR FURTHER INFORMATION CONTACT:** Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229-1177, Telephone number 202-325-0056 or via email *CBP\_PRA@cbp.dhs.gov*. Please note that the contact information provided here is solely for questions regard-

ing this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877-227-5511, (TTY) 1-800-877-8339, or CBP website at <https://www.cbp.gov/>.

**SUPPLEMENTARY INFORMATION:** CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

### Overview of This Information Collection

**Title:** Record of Vessel Foreign Repair or Equipment Purchase.

**OMB Number:** 1651-0027.

**Form Number:** CBP Form 226.

**Abstract:** 19 U.S.C. 1466(a) provides for a 50 percent *ad valorem* duty assessed on a vessel master or owner for any repairs, purchases, or expenses incurred in a foreign country by a commercial vessel documented under the laws of the United States. CBP Form 226, Record of Vessel Foreign Repair or Equipment Purchase, is used by the master or owner of a vessel to declare and file entry on equipment, repairs, parts, or materials purchased for the vessel in a foreign country. This information enables CBP to assess duties on these foreign repairs, parts, or materials. CBP Form 226 is provided for by 19 CFR 4.7 and 4.14 and is accessible at: <https://www.cbp.gov/document/forms/form-226-record-vessel-foreign-repair-or-equipment-purchase>.

**Current Actions:** This submission is being made to extend the expiration date with no change to the burden hours or to the information collected on Form 226.

**Type of Review:** Extension (without change).

**Affected Public:** Businesses.

**Estimated Number of Respondents:** 100.

**Estimated Number of Responses per Respondent:** 11.

**Estimated Number of Total Annual Responses:** 1,100.

**Estimated Time per Response:** 2 hours.

**Estimated Total Annual Burden Hours:** 2,200.

Dated: December 10, 2019.

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

[Published in the Federal Register, December 13, 2019 (84 FR 68181)]



**AGENCY INFORMATION COLLECTION ACTIVITIES:  
NAFTA Regulations and Certificate of Origin**

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

**ACTION:** 60-Day notice and request for comments; extension of an existing collection of information.

**SUMMARY:** The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and must be submitted (no later than February 11, 2020) to be assured of consideration.

**ADDRESSES:** Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651-0098 in the subject line and the agency name. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Email.* Submit comments to: *CBP\_PRA@cbp.dhs.*

(2) *Mail.* Submit written comments to CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade,

Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE, 10th Floor, Washington, DC 20229–1177.

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

**SUPPLEMENTARY INFORMATION:** CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

### **Overview of This Information Collection**

**Title:** NAFTA Regulations and Certificate of Origin.

**OMB Number:** 1651–0098.

**Form Number:** CBP Forms 434, 446, and 447.

**Abstract:** On December 17, 1992, the U.S., Mexico and Canada entered into an agreement, “the North American Free Trade Agreement” (NAFTA). The provisions of NAFTA were adopted by

the U.S. with the enactment of the North American Free Trade Agreement Implementation Act. Public Law 103–182, 107 Stat. 2057 (1993).

CBP Form 434, *North American Free Trade Agreement Certificate of Origin*, is used to certify that a good being exported either from the United States into Canada or Mexico or from Canada or Mexico into the United States qualifies as an originating good for purposes of preferential tariff treatment under NAFTA. This form is completed by exporters and/or producers and furnished to CBP upon request. CBP Form 434 is provided for by 19 CFR 181.11, 181.22 and is accessible at: <https://www.cbp.gov/newsroom/publications/forms>.

CBP Form 446, *NAFTA Verification of Origin Questionnaire*, is a questionnaire that CBP personnel use to gather sufficient information from exporters and/or producers to determine whether goods imported into the United States qualify as originating goods for the purposes of preferential tariff treatment under NAFTA as stated on the Certificate of Origin pertaining to the good. CBP Form 446 is provided for by 19 CFR 181.72 and is accessible at: <https://www.cbp.gov/newsroom/publications/forms>.

CBP Form 447, *North American Free Trade Agreement Motor Vehicle Averaging Election*, is used to gather information required by 19 CFR 181 Appendix § 11(2). This form is provided to CBP when a manufacturer chooses to average motor vehicles for the purpose of obtaining NAFTA preference. CBP Form 447 is accessible at: <https://www.cbp.gov/newsroom/publications/forms>.

**Current Actions:** This submission is being made to extend the expiration dates for CBP Forms 434, 446, and 447 with no change to the estimated burden hours or to the information collected.

**Type of Review:** Extension (without change).

**Affected Public:** Businesses.

Form 434, NAFTA Certificate of Origin

**Estimated Number of Respondents:** 40,000.

**Estimated Number of Responses per Respondent:** 3.

**Estimated Total Number of Responses:** 120,000.

**Estimated Time per Response:** 2 hours.

**Estimated Total Annual Burden Hours:** 240,000.

Form 446, NAFTA Questionnaire

**Estimated Number of Respondents:** 400.

**Estimated Number of Responses per Respondent:** 1.

**Estimated Total Number of Responses:** 400.

**Estimated Time per Response:** 2 hours.

**Estimated Total Annual Burden Hours:** 800.

Form 447, NAFTA Motor Vehicle Averaging Election

**Estimated Number of Respondents:** 11.

**Estimated Number of Responses per Respondent:** 1.28.

**Estimated Time per Response:** 1 hour.

**Estimated Total Annual Burden Hours:** 14.

Dated: December 10, 2019.

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

[Published in the Federal Register, December 13, 2019 (84 FR 68180)]