U.S. Customs and Border Protection

PROPOSED REVOCATION OF TWO RULING LETTERS AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF BATTERY-OPERATED FOOD MILLS


ACTION: Notice of proposed revocation of two ruling letters and proposed revocation of treatment relating to the tariff classification of battery-operated food mills.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke two ruling letters concerning the tariff classification of battery-operated food mills 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 July 17, 2020.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Cammy Canedo, Regulations and Disclosure Law Division, 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 Ms. Cammy Canedo at (202) 325–0439.

FOR FURTHER INFORMATION CONTACT: Suzanne Kingsbury, Electronics, Machinery, Automotive and International Nomenclature Branch, Regulations and Rulings, Office of Trade, at (202) 325–0113 or via email at suzanne.kingsbury@cbp.dhs.gov.
SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to 19 U.S.C. § 1625(c)(1), this notice advises interested parties that CBP is proposing to revoke two ruling letters pertaining to the tariff classification of battery-operated food mills. Although in this notice CBP is specifically referring to New York Ruling Letter (“NY”) N254846, dated July 9, 2014 (Attachment “A”), and NY N254844, dated July 22, 2014 (Attachment “B”), this notice also covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the 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 N254846 and NY N254844, CBP classified two styles of battery-operated salt and pepper mills (grinders) in heading 8210, HTSUS, specifically in subheading 8210.00.00, HTSUS, which provides for “[H]and-operated mechanical appliances, weighting 10 kg or less, used in the preparation, conditioning or serving of food or drink,
and base metal parts thereof.” CBP has reviewed NY N254846 and NY N254844 and has determined the ruling letters to be in error. It is now CBP’s position that battery-operated food mills are properly classified in heading 8509, HTSUS, specifically in subheading 8509.40.00, HTSUS, which provides for “[E]lectromechanical domestic appliances, with self-contained electric motor, other than vacuum cleaners of heading 8508; parts thereof: Food grinders, processors and mixers; fruit or vegetable juice extractors.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY N254846 and NY N254844 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed HQ H257788, set forth as Attachment “C” to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

GREGORY CONNOR
for
CRAIG T. CLARK,
Director
Commercial and Trade Facilitation Division

Attachments
Ms. Marta Portillo
HSN
1 HSN Drive
St. Petersburg, FL 33729

RE: The tariff classification of salt and pepper mills from China

Dear Ms. Portillo:

In your letter dated June 23, 2014, you requested a tariff classification ruling. A sample was submitted and will be returned to you.

The HSN Item Number 277326 is identified as the “Wolfgang Puck Stainless Steel Battery Operated Mill.” The set includes a salt and a pepper shaker. The items have a tubular-shaped housing made of brushed stainless steel and contain a stainless steel grinder. The shakers measure approximately 2 inches in diameter and 9 inches in height. The top of the shakers have a push-button for grinding. The set is packaged together for retail sale.

The applicable subheading for HSN Item Number 277326 will be 8210.00.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for hand-operated mechanical appliances, weighting 10 kg or less, used in the preparation, conditioning or serving of food or drink, and base metal parts thereof. The rate of duty will be 3.7 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 Hope Abada at hope.abada@cbp.dhs.gov.

Sincerely,

Gwen Klein Kirschner
Director
National Commodity Specialist Division
RE: The tariff classification of a salt and pepper mill from China

DEAR MS. PORTILLO:

In your letter dated June 23, 2014, you requested a tariff classification ruling. A representative sample of the mill was submitted and will be returned to you.

The sample is described as the Wolfgang Puck Stainless Steel Battery Powered Mill, Vendor Item Number I-MTSPGMILL-B. The mill measures approximately 7 inches tall, 2.25 inches in diameter at the top, and 3 inches in diameter at the bottom. The housing has a clear plastic section for holding the salt and pepper. The top of the housing has two push-buttons for dispensing salt or pepper. The buttons are marked with the letters “S” for salt, and “P” for pepper. The mill is operated by six “AAA” batteries, which are included. The item features a ceramic blade for grinding. The mill contains Himalayan salt and 5 blends of peppercorns.

The applicable subheading for the Wolfgang Puck Stainless Steel Battery Powered Mill, Vendor Item Number I-MTSPGMILL-B will be 8210.00.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for hand-operated mechanical appliances, weighing 10 kg or less, used in the preparation, conditioning or serving of food or drink. The rate of duty will be 3.7 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 Hope Abada at hope.abada@cbp.dhs.gov.

Sincerely,

Gwenn Klein Kirschner
Director
National Commodity Specialist Division
DEAR MS. PORTILLO:

This letter is in response to HSN’s July 30, 2014 request for reconsideration of New York Ruling Letter (NY) N254846, dated July 9, 2014, and NY N254844, dated July 22, 2014, concerning the classification of battery-operated condiment mills in heading 8210 of the Harmonized Tariff Schedule of the United States (HTSUS), specifically subheading 8210.00.00, HTSUS, which provides for “[H]and-operated mechanical appliances, weighting 10 kg or less, used in the preparation, conditioning or serving of food or drink, and base metal parts thereof.”

Upon reconsideration we have determined that the tariff classification of the subject merchandise at issue in NY N254846 and NY N254844 is incorrect. Pursuant to the analysis set forth below, CBP is revoking both rulings.

FACTS:

The merchandise at issue in NY N254846, identified as Item Number 277326, is described as the “Wolfgang Puck Stainless Steel Battery Operated Mill.” The article is comprised of electric salt and pepper grinders packaged together as a set for retail sale. The items have a tubular-shaped housing made of brushed stainless steel and contain a stainless steel grinder. The articles measure approximately 2 inches in diameter and 9 inches in height. The top of the shakers have a push-button to activate grinding.

The merchandise at issue in NY N254844, identified as Item Number I-MTSPGMILL-B, is described as the “Wolfgang Puck Stainless Steel Battery Powered Mill.” The article measures approximately 7 inches tall, 2.25 inches in diameter at the top, and 3 inches in diameter at the bottom. The housing has a clear plastic section for holding salt and pepper. The top of the housing has two push-buttons for dispensing salt or pepper. The buttons are marked with the letters “S” for salt, and “P” for pepper. The mill is operated by six “AAA” batteries, which are included. The item features a ceramic blade for grinding. The mill contains Himalayan salt and 5 blends of peppercorns.

LAW AND ANALYSIS:

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

The following HTSUS headings are under consideration:
8210  Hand-operated mechanical appliances, weighting 10 kg or less, used in the preparation, conditioning or serving of food or drink, and base metal parts thereof.

8509  Electromechanical domestic appliances, with self-contained electric motor, other than vacuum cleaners of heading 8508; parts thereof:

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

The ENs to heading 8210, HTSUS, state, in pertinent part:

This heading covers non-electric mechanical appliances, generally hand-operated, not exceeding 10 kg in weight, used in the preparation, serving or conditioning of food or drink.

* * * * *

The ENs to heading 8509, HTSUS, state, in pertinent part:

This heading covers a number of domestic appliances in which an electric motor is incorporated. The term “domestic appliances” in this heading means appliances normally used in the household. These appliances are identifiable, according to type, by one or more characteristic features such as overall dimensions, design, capacity, volume. The yardstick for judging these characteristics is that the appliances in question must not operate at a level in excess of household requirements.

* * * * *

The appliances of this heading are of two groups (see Chapter Note 4):

(A) A limited class of articles are classified here irrespective of their weight.

This group consists of the following only:

* * *

(2) Food grinders and mixers, e.g., grinders for meat, fish, vegetables or fruit; multi-purpose grinders (for coffee, rice, barley, split peas, etc.); milk shakers; ice cream mixers; sorbet mixers; dough kneaders; mayonnaise beaters; other similar grinders and mixers (including those which, by means of interchangeable parts, can also be used for cutting or other manipulations).

* * * * *

In NY N254846 and NY N254844, CBP classified two styles of battery-operated salt and pepper mills (grinders) under subheading 8210.00.00, HTSUS, which provides for “[H]and-operated mechanical appliances, weighting 10 kg or less, used in the preparation, conditioning or serving of food or drink, and base metal parts thereof.” However, the text of heading 8210, HTSUS, requires that merchandise covered by the provision be “hand-operated” and “mechanical”. Furthermore, EN 82.10 clarifies that the legal text covers only “non-electric” mechanical appliances. Accordingly, the subject battery-operated mills are precluded from classification in this heading.
The subject battery-operated mills in NY N254846 and NY N254844 are household electromechanical appliances and covered by heading 8509, HTSUS. Specifically, the subject articles are classified in subheading 8509.40.00, HTSUS, which provides for “[E]lectromechanical domestic appliances, with self-contained electric motor, other than vacuum cleaners of heading 8508; parts thereof: Food grinders, processors and mixers; fruit or vegetable juice extractors.”

HOLDING:

By application of GRIs 1 and 6, the subject battery-operated mills at issue in NY N254846 and NY N254844 are classified under heading 8509, HTSUS, specifically under subheading 8509.40.00, HTSUS, which provides for “[E]lectromechanical domestic appliances, with self-contained electric motor, other than vacuum cleaners of heading 8508; parts thereof: Food grinders, processors and mixers; fruit or vegetable juice extractors.” The applicable rate of duty is 4.2 percent ad valorem. Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the internet at www.us- itc.gov.

EFFECT ON OTHER RULINGS:

NY N254846, dated July 9, 2014, and NY N254844, dated July 22, 2014, are hereby REVOKED.

Sincerely,

CRAIG T. CLARK,
Director
Commercial and Trade Facilitation Division
PROPOSED REVOCATION OF ONE RULING LETTER AND REVOCATION OF TREATMENT RELATING TO COUNTRY OF ORIGIN OF REVERSIBLE COMFORTERS


ACTION: Notice of proposed revocation of one ruling letter, and revocation of treatment relating to the country of origin of reversible comforters.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke one ruling letter concerning the country of origin of reversible comforters. 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 July 17, 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 Ms. Cammy Canedo at (202) 325–0439.

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 one ruling letter pertaining to the country of origin of reversible comforters. Although in this notice, CBP is specifically referring to New York Ruling Letter (“NY”) N306605, dated October 25, 2019 (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 N306605, the fabric comprising one side of the reversible comforters is dyed while the fabric comprising the reverse side is printed. CBP determined India to be the country of origin of the reversible comforters by application of 19 C.F.R. §102.21(e)(2)(i). CBP has reviewed NY N306605 and has determined the ruling letter to be in error. Because the fabric is either dyed or printed, not both, 19 C.F.R. §102.21(e)(2)(i) is inapplicable. Pursuant to 19 C.F.R. §102.21(c)(2) and (e)(2)(ii), the country of origin is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric-making process. As the fabric comprising the subject comforters is manufactured in China, it is now CBP’s position that the country of origin of the reversible comforters is China.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke NY N306605 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H309368, 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.

Craig T. Clark,
Director
Commercial and Trade Facilitation Division

Attachments
DEAR MS. HUNT:

In your letter dated October 8, 2019, you requested a country of origin ruling on reversible, dyed and printed 100% polyester comforters. You provided product and material descriptions and explained where the requisite manufacturing operations will be performed. No samples were provided.

Per your submission, the comforters, subject of this ruling, contain no embroidery, lace, braid, edging, trimming, piping exceeding 6.35 mm or applique work.

The comforters, in Twin, Queen and King sizes (65” x 88”, 86” x 102”, and 104” x 93”, respectively), are made of a 100% polyester woven fabric and filled with 100% polyester batting. The fabric comprising one side of the comforter has been printed and comprising the reverse has been dyed.

MANUFACTURING OPERATIONS

The 100% polyester greige fabric comprising both sides of the comforter shell is woven in China and shipped to India where a portion of it will be dyed and submitted to the following operations:

a. Batching  
b. Peaching (napping process)  
c. Bleaching  
d. Dyeing  
e. Hydrowashing  
f. Finishing-heat setting to stabilize fabric weight and width (shrinking)

An equal portion of the fabric will be printed and subject to the following operations:

a. Batching  
b. Peaching (napping process)  
c. Bleaching  
d. Heat setting (shrinking process to control shrinkage after finishing)  
e. Disperse Printing  
f. High temperature steaming  
g. Washing  
h. Finishing

Subsequent to fabric dyeing, printing and finishing operations, the dyed fabric will be cut to size and sewn to make one side of the comforter shell and the printed fabric will be cut to size and sewn to make the other. The comforter will then be filled with 100% polyester fill batting of Indian origin and sewn closed.
**CLASSIFICATION**

A country of origin ruling cannot be issued on a textile article without first determining the classification. Classification under the Harmonized Tariff Schedule of the United States (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 (together known as legal 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.

This office concurs with the requester that the comforters, as described herein, are provided for in 9404.90.8522, HTSUS, which provides for “Mattress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered: Other: Other: Other: Quilts, eiderdowns, comforters and similar articles: With outer shell of man-made fibers (666).” The rate of duty will be 12.8% ad valorem.

**COUNTRY OF ORIGIN**

Section 334 of the Uruguay Round Agreements Act (codified at 19 U.S.C. 3592), enacted on December 8, 1994, provided rules of origin for textiles and apparel entered, or withdrawn from warehouse for consumption, on and after July 1, 1996. Section 102.21, Customs Regulations (19 C.F.R. 102.21), published September 5, 1995, in the Federal Register, implements Section 334 (60 FR 46188). Section 334 of the URAA was amended by Section 405 of the Trade and Development Act of 2000, enacted on May 18, 2000, and accordingly, section 102.21 was amended (68 Fed. Reg. 8711). Thus, the country of origin of a textile or apparel product shall be determined by the sequential application of the general rules set forth in paragraphs (c)(1) through (5) of Section 102.21.

Paragraph (c)(1) states: “The country of origin of a textile or apparel product is the single country, territory, or insular possession in which the good was wholly obtained or produced.” As the subject merchandise is not wholly obtained or produced in a single country, territory or insular possession, paragraph (c)(1) of Section 102.21 is inapplicable.

Paragraph (c)(2) states: “Where the country of origin of a textile or apparel product cannot be determined under paragraph (c)(1) of this section, the country of origin of the good is the single country, territory, or insular possession in which each of the foreign materials incorporated in that good underwent an applicable change in tariff classification, and/or met any other requirement specified for the good in paragraph (e) of this section.”

Paragraph (e)(1) states, in its pertinent part:

The following rules will apply for purposes of determining the country of origin of a textile or apparel product under paragraph (c)(2) of this section:

9404.90: Except for goods of subheading 9404.90 provided for in paragraph (e)(2) of this section, the country of origin of a good classifiable under subheading 9404.90 is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric-making process.
Paragraph (e)(2) provides, in relevant part, that for goods of subheading 9404.90.85 (the applicable classification)... the country of origin is the country “in which the fabric comprising the good was both dyed and printed” and at least two of the identified finishing operations occur.

Here, “the fabric comprising the good” is the 100% polyester greige fabric. One side of the comforter shell will be made of fabric that was dyed and underwent bleaching, napping and shrinking in India, which fulfills the two or more specific finishing operations requirement. The reverse side of the comforter shell will be made of fabric that was printed and underwent bleaching, napping and shrinking in India, which also fulfills the two or more specific finishing operations requirement. Therefore, the country of origin of the comforter will be India, the country in which the fabric comprising the good was dyed and printed and underwent two or more of the required finishing operations.

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 https://hts.usitc.gov/current.

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

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

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 Seth Mazze at seth.mazze@cbp.dhs.gov.

Sincerely,

STEVEN A. MACK
Director
National Commodity Specialist Division
Dear Ms. Hunt,

This is to inform you that U.S. Customs and Border Protection ("CBP") has reconsidered New York Ruling Letter ("NY") N306605, issued to you on October 25, 2019, regarding the country of origin of certain reversible polyester comforters. In that ruling, CBP determined the country of origin to be India. We have reviewed NY N306605 and determined that it is incorrect. For the reasons stated below, we hereby revoke NY N306605.

FACTS:

The merchandise at issue is reversible, dyed and printed 100% polyester comforters. The comforters contain no embroidery, lace, braid, edging, trimming, piping exceeding 6.35 mm or applique work. The comforters, in Twin, Queen and King sizes (65” x 88”, 86” x 102”, and 104” x 93”, respectively), are made of a 100% polyester woven fabric and filled with 100% polyester batting. The fabric comprising one side of the comforter has been printed and the fabric comprising the reverse has been dyed.

NY N306605 described the manufacturing operations as follows:

The 100% polyester greige fabric comprising both sides of the comforter shell is woven in China and shipped to India where a portion of it will be dyed and submitted to the following operations:

a. Batching
b. Peaching (napping process)
c. Bleaching
d. Dyeing
e. Hydrowashing
f. Finishing-heat setting to stabilize fabric weight and width (shrinking)

An equal portion of the fabric will be printed and subject to the following operations:

a. Batching
b. Peaching (napping process)
c. Bleaching
d. Heat setting (shrinking process to control shrinkage after finishing)
e. Disperse Printing
f. High temperature steaming
g. Washing
h. Finishing

Subsequent to fabric dyeing, printing and finishing operations, the dyed fabric will be cut to size and sewn to make one side of the comforter shell and the printed fabric will be cut to size and sewn to make the other. The comforter will then be filled with 100% polyester fill batting of Indian origin and sewn closed.
The subject comforters are classified in subheading 9404.90.8522 of the Harmonized Tariff Schedule of the United States Annotated (“HTSUSA”), which provides for “Mattress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered: Other: Other: Other: Quilts, eiderdowns, comforters and similar articles: With outer shell of man-made fibers (666).”

ISSUE:
What is the country of origin for marking purposes of the reversible polyester comforters?

LAW AND ANALYSIS:

Section 334 of the Uruguay Round Agreements Act, codified at 19 U.S.C. § 3592, provides rules of origin for textiles and apparel entered, or withdrawn from warehouse, for consumption, on and after July 1, 1996. 19 C.F.R. § 102.21 implements section 334, and 19 C.F.R. § 102.0 refers to 19 C.F.R. § 102.21 for determining the country of origin of textile and apparel products. Pursuant to 19 C.F.R. § 102.21(c), the country of origin of a textile or apparel product will be determined by sequential application of the general rules set forth in paragraphs (c)(1) through (5).

Section 102.21(c)(1) provides that “the country of origin of a textile or apparel product is the single country, territory, or insular possession in which the good was wholly obtained or produced.” As the subject comforters are not wholly obtained or produced in a single country, territory, or insular possession, paragraph (c)(1) is inapplicable.

Paragraph (c)(2) provides, “Where the country of origin of a textile or apparel product cannot be determined under paragraph (c)(1) of this section, the country of origin of the good is the single country, territory, or insular possession in which each of the foreign materials incorporated in that good underwent an applicable change in tariff classification, and/or met any other requirement, specified for the good in paragraph (e) of this section.”

The applicable subheading for the subject comforters is 9404.90.8522, HTSUSA. Section 102.21(e)(1) in pertinent part provides, “The following rules will apply for purposes of determining the country of origin of a textile or apparel product under paragraph (c)(2) of this section:”

<table>
<thead>
<tr>
<th>HTSUS</th>
<th>Tariff shift and/or other requirements</th>
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<tr>
<td>9404.90</td>
<td>Except for goods of subheading 9404.90 provided for in paragraph (e)(2) of this section, the country of origin of a good classifiable under subheading 9404.90 is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric-making process.</td>
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Subheading 9404.90.85, HTSUS, is included in the paragraph (e)(2) exception to the above tariff shift rule. 19 C.F.R. § 102.21(e)(2)(i) provides:

(i) The country of origin of the good is the country, territory, or insular possession in which the fabric comprising the good was both dyed and printed when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing;
It has been a longstanding CBP position that the fabric comprising the good must be both dyed and printed for § 102.21(e)(2)(i) to apply. See Headquarters Ruling Letter (“HQ”) H304571 (Jan. 6, 2020); NY J89052 (Oct. 31, 2003); NY I81934 (June 4, 2002); NY H81451; (June 18, 2001); and NY H81279 (June 4, 2001). For example, in HQ H304571, CBP determined the country of origin of certain stuffed mattress covers classified in subheading 9404.90.95, HTSUS, which is included in the paragraph (e)(2) exception. The fabric comprising the mattress covers was formed in the United States, China, and/or Mexico and was cut, sewn, and assembled into the finished products in El Salvador. CBP found that paragraph (e)(2)(i) was inapplicable because the fabric comprising the covers were dyed but not printed. NY J89052 concerned the country of origin of a bed sheet set consisting of a flat sheet, fitted sheet, and one or two pillowcases. In that ruling, CBP considered two manufacturing scenarios: in Scenario 1, the sets were printed and not dyed while the sets in Scenario 2 were both printed and dyed. Under both scenarios, the fabric comprising the goods was woven in Country A and shipped to Tanzania where it was subject to singing, scouring, bleaching, drying, printing, curing, shrinking, stiffening and finishing. Under Scenario 2, the dyeing would also occur in Tanzania. The fabric was then cut to size and shape and the components were sewn together to form the finished sheets and pillowcases. CBP determined that, as the sheet sets under Scenario 2 were both dyed and printed and subject to two or more finishing operations in Tanzania, as per the terms of the tariff shift requirement, the country of origin of the sheet sets was conferred in Tanzania. Conversely, CBP held that paragraph (e)(2)(i) was not applicable to the sheet sets in Scenario 1 as the fabric comprising the sets were not both dyed and printed. NY H81279 concerned two woven fabrics composed of 97% cotton and 3% spandex, designated as styles C-0138 and C-0156. Each fabric was woven in Tajikistan and shipped to China where the fabric for style C-0138 was bleached, dyed and finished including drying and the fabric for style C-0156 was bleached, printed, washed, and finished including tentering. CBP determined that because both fabrics were formed by a fabric forming process in a single country, and neither fabric was both dyed and printed in China, as per the terms of the tariff shift requirement, country of origin was conferred in Tajikistan.

Therefore, paragraph (e)(2)(i) applies when the fabric comprising the good is both dyed and printed. In India, the fabric comprising one side of the subject comforters is dyed while the fabric comprising the reverse side is printed. Here, the dyeing and printing are mutually exclusive processes. Because the fabric is either dyed or printed, not both, paragraph (e)(2)(i) is inapplicable.

Paragraph (e)(2)(ii) provides, “If the country of origin cannot be determined under paragraph (e)(2)(i) of this section, [. . .] the country of origin is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric-making process.” As the fabric comprising the subject comforters is manufactured in China, the country of origin is China.

**HOLDING:**

The country of origin for marking purposes of the reversible polyester comforters is China.
EFFECT ON OTHER RULINGS:

NY N306605, dated October 25, 2019, is hereby REVOLED 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,

CRAIG T. CLARK,
Director
Commercial and Trade Facilitation Division
PROPOSED MODIFICATION OF ONE RULING LETTER AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF KLUBER MICROLUBE GB 0


ACTION: Notice of proposed modification of one ruling letter and proposed revocation of treatment relating to the tariff classification of Kluber Microlube GB 0.

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 Kluber Microlube GB 0 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 July 17, 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 Mrs. Cammy Canedo at (202) 325–0439.

FOR FURTHER INFORMATION CONTACT: Andrew Levey, Chemicals, Petroleum, Metals and Miscellaneous Classification Branch, Regulations and Rulings, Office of Trade, at (202) 325–3298.

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 responsibil-
ity 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 Kluber Microlube GB 0. Although in this notice, CBP is specifically referring to New York Ruling Letter (“NY”) N237898, dated February 28, 2013 (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 N237898, CBP classified Kluber Microlube GB 0 in heading 2710, HTSUS, specifically in subheading 2710.19.4000, HTSUS, which provides for “other... lubricating grease.” CBP has reviewed NY 237898 and has determined the ruling letter to be in error. It is now CBP’s position that Kluber Microlube GB 0 is properly classified, in heading 2710, HTSUS, specifically in subheading 2710.19.3500, HTSUS, which provides for ““other: Lubricating oils and greases, with or without additives: Greases: Containing not over 10 percent by weight of salts or fatty acids of animal (including marine animal) or vegetable origin.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to modify NY N237898 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H289346, set forth as Attachment A 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: May 15, 2020

CRAIG T. CLARK,

Director

Commercial and Trade Facilitation Division

Attachments
RE: Modification of N237898; Classification of “Kluber Microlube GB 0.”

This is in reference to the New York Ruling Letter (NY) N237898, issued to you by U.S. Customs and Border Protection (CBP) on February 28, 2013, concerning the classification of certain mineral oil-based greases and Kluber Microlube GB 0 under the Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed this ruling, and determined it is incorrect, with respect to the classification of the Kluber Microlube GB 0 under subheading 2710.19.40, HTSUS, the provision for other lubricating grease. For the reasons set forth below, we are modifying the ruling.

FACTS:

The merchandise in NY N237898 consists of a product called “Kluber Microlube GB 0.” This product is a mineral oil-based grease containing zinc and silica additives. The “Kluber Microlube GB 0” mineral oil based lubricant is described by the importer as a universal high-performance grease developed for friction points subject to high loads and mixed friction conditions. Lastly, the Material Safety Data Sheet (MSDS) does not mention any animal or plant based components.

ISSUE:

Whether the subject merchandise consisting of “Kluber Microlube GB 0” should be classified in subheading subheading 2710.19.3500, as “other: Lubricating oils and greases, with or without additives: Greases: Containing not over 10 percent by weight of salts or fatty acids of animal (including marine animal) or vegetable origin”, or remain in 2710.19.4000, HTSUS, as “other... lubricating grease.”

LAW AND ANALYSIS:

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

The 2019 HTSUS provisions under consideration are as follows:

* * * * *
Petroleum oils and oils obtained from bituminous minerals, other than crude; preparations not elsewhere specified or included, containing by weight 70 percent or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations; waste oils:

Petroleum oils and oils obtained from bituminous minerals (other than crude) and preparations not elsewhere specified or included, containing by weight 70 percent or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations, other than those containing biodiesel and other than waste oils:

2710.19.3500 Containing not over 10 percent by weight of salts of fatty acids of Animal (including marine animal) or vegetable origin

2710.19.4000 Other:

* * * * *

The merchandise in New York ruling N237898, contains no animal or plant based components, nor salts of fatty acids of animal or vegetable origin. Because there is no indication that the Kluber product contains salts of fatty acids, the classification of the instant merchandise in 2710.19.4000, HTSUS, is incorrect. Moreover, sub-heading 2710.19.3500, HTSUS is an appropriate subheading for “Kluber Microlube GB 0” because the silica is entirely based on mineral oil, and as such, contains no salts of fatty acids of animal or plant origin. In conclusion, because the instant merchandise does not contain any salts of fatty acids of animal or plant origin, classification in subheading 2710.19.4000, which covers greases containing over 10 percent by weight of such salts, is incorrect. Therefore, N237898 is modified to reflect that Kluber Microlube is classified in subheading 2710.19.3500, HTSUS.

HOLDING:

The “Kluber Microlube GB 0” is classified in subheading 2710.19.3500, HTSUS, as containing not over 10 percent by weight of salts of fatty acids of animal (including marine animal) or vegetable origin. The general, column 1 rate of duty for subheadings 2710.19.3500, HTSUS, is 5.8%.

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

A copy of this ruling letter should be attached to the entry documents filed at the time the goods are to be entered. If the documents have been filed without a copy, this ruling should be brought to the attention of the CBP officer handling the transaction.

EFFECT ON OTHER RULINGS

New York Ruling letter N237898, dated February 28, 2013 is hereby MODIFIED in accordance with the above analysis.

Sincerely,
CRAIG T. CLARK,
Director
Commercial and Trade Facilitation Division
In your letter dated January 21, 2013, on behalf of Wittenstein Arena Inc., you requested a tariff classification ruling. Descriptive literature was submitted with your request.

The products to be imported are various components for rack and pinion linear drive systems: class rack, pinion gear, mounting axis, lubricating pinion and exchange lubrication. You state that these parts will be imported separately for assembly, replacement and/or repair and are used in various industrial applications.

Measuring one meter in length, the class rack (gear rack) is designed to mesh with the pinion gear to create linear motion. The mounting axis is described as a shaft used to mount the lubricating pinion. This shaft has drill holes which allow grease to be transferred from the exchange lubrication tube to the wool felt lubricating pinion, a gear which in turn transfers lubrication to the gear rack or a pinion.

The applicable subheading for the class rack, the pinion gear and the mounting axis will be 8483.90.5000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for transmission shafts (including camshafts and crankshafts) and cranks; bearing housings, housed bearings and plain shaft bearings; gears and gearing; ball or roller screws; gear boxes and other speed changers, including torque converters; flywheels and pulleys, including pulley blocks; clutches and shaft couplings (including universal joints); parts thereof, toothed wheels, chain sprockets and other transmission elements presented separately; parts, parts of gearing, gear boxes and other speed changers. The rate of duty will be 2.5 percent ad valorem.

The applicable subheading for the lubrication pinion will be 5911.90.0080, HTSUS, which provides for textile products and articles, for technical uses, specified in note 7 to this chapter, other, other. The rate of duty will be 3.8 percent ad valorem.

The lubricator, also referred to by you as the “exchange lubrication”, is a mechanical device that supplies lubrication points automatically with lubricant. The lubricator is available in two sizes, i.e., Type 125 and Type 475. The grease cup is connected by a plastic hose to a felt pinion/lubrication point. When the lubricator is switched on, an electro-chemical reaction is initiated by the closing of contacts. Pressure is increased in the nitrogen chamber. This pressure fills a bellows which pushes against a piston that in turn pushes out the lubricant. The lubricant is emitted automatically for a specified period while conforming to permitted specifications. Each unit requires two AA (Varta 1.5 V AA Alkaline long life) batteries. Batteries are pre-installed in all lubricators.
Submitted data states that all lubricators are prefilled with grease at the factory in Germany. The Klüber MICROLUBE GB 0 mineral oil based lubricant is a universal high-performance grease developed for friction points subject to high loads and mixed friction conditions.

The applicable subheading for the lubricators, Type 125 and Type 475, will be 8479.89.9899, HTSUS, which provides for “Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter, parts thereof: Other machines and mechanical appliances: Other: Other ... Other”. The rate of duty will be 2.5 percent ad valorem.

The applicable subheading for the Klüber MICROLUBE GB 0 mineral oil based lubricant will be 2710.19.4000, HTSUS, which provides for “Petroleum oils and oils obtained from bituminous minerals, other than crude; preparations not elsewhere specified or included, containing by weight 70 percent or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations; waste oils: Petroleum oils and oils obtained from bituminous minerals (other than crude) and preparations not elsewhere specified or included, containing by weight 70 percent or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations, other than those containing biodiesel and other than waste oils: ... Lubricating oils and greases, with or without additives: Greases: Other”. The rate of duty will be 1.3 cents per kilogram plus 5.7 percent ad valorem.

This merchandise may be subject to the requirements of the Toxic Substances Control Act (TSCA), administered by the U.S. Environmental Protection Agency. You may contact them at 402 M Street, S.W., Washington, D.C. 20460, telephone number (202) 554–1404, or at EPA Region II telephone number (908) 321–6669.

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 the National Import Specialist at (646) 733–3009.

Sincerely,

THOMAS J. RUSSO
Director
National Commodity Specialist Division
COPYRIGHT, TRADEMARK, AND TRADE NAME RECORDATIONS
(NO. 3 2020)


SUMMARY: The following copyrights, trademarks, and trade names were recorded with U.S. Customs and Border Protection in March 2020. A total of 168 recordation applications were approved, consisting of 4 copyrights and 164 trademarks. The last notice was published in the Customs Bulletin Vol. 54, No. 1, March 25, 2020.

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


CHARLES R. STEUART
Chief,
Intellectual Property Rights Branch
Regulations and Rulings, Office of Trade
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<td>02/19/2021</td>
<td>Mickey's Colorful Meadow R51</td>
<td>Vera Bradley Designs, Inc.</td>
<td>No</td>
</tr>
</tbody>
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REVOCATION OF ONE RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF EVAPORATED CREAMER


ACTION: Notice of revocation of one ruling letter, and of revocation of treatment relating to the tariff classification of evaporated creamer.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking one ruling letter concerning tariff classification of evaporated creamer 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. 54, No. 9, on March 11, 2020. 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 August 16, 2020.

FOR FURTHER INFORMATION CONTACT: Catherine Miller, Food, Textiles, and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325-0101.

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. 54, No. 9, on March 11, 2020, proposing to revoke one ruling letter pertaining to the tariff classification of evaporated creamer. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

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

In New York Ruling Letter (“NY”) N305031, CBP classified the evaporated creamer in heading 1901, HTSUS, specifically in subheading 1901.90.61, HTSUS, which provides for “food preparations of goods of headings 0401 to 0404, not containing cocoa. . . . : Other: Other: Dairy products described in additional U.S. note 1 to chapter 4: Dairy preparations containing over 10 percent by weight of milk solids: Described in additional U.S. note 10 to chapter 4 and entered pursuant to its provisions.” CBP has reviewed NY N305031 and has determined the ruling letter to be in error. It is now CBP’s position that the evaporated creamer is properly classified in subheading 1901.90.91, HTSUS, which provides for “Malt extract; food preparations of flour, groats, meal, starch or malt extract, not containing cocoa or containing less than 40 percent by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included; food preparations of goods of headings 0401 to 0404, not containing cocoa or containing less than 5 percent by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included: Other: Other: Other: Other: Other: Other.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY N305031 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter (“HQ”) H305298, set forth as an attachment to this notice. Addition-
ally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

CRAIG T. CLARK,

*Director*

*Commercial and Trade Facilitation Division*

Attachment
DEAR MR. MONTENEGRO R.:  

On July 24, 2019, U.S. Customs and Border Protection (“CBP”) issued New York Ruling Letter (“NY”) N305031 to Mr. Robert Avon of Mtres Holding International Limited (“Mtres Holding”). The ruling pertained to the tariff classification under the Harmonized Tariff Schedule of the United States (“HTSUS”) of evaporated creamer from Malaysia. In NY N305031, CBP classified the evaporated creamer in subheading 1901.90.6100, Harmonized Tariff Schedule of the United States Annotated (“HTSUSA”), which provides for “food preparations of goods of headings 0401 to 0404, not containing cocoa or containing less than 5 percent by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included: Other: Other: Dairy products described in additional U.S. note 1 to chapter 4: Dairy preparations containing over 10 percent by weight of milk solids: Described in additional U.S. note 10 to chapter 4 and entered pursuant to its provisions.”

You submitted a request for reconsideration of NY N305031. We have reviewed NY N305031 and found it to be in error, because the CBP Laboratory report indicated that the product contains 5.4 percent non-fat milk solids, which is below the requisite amount of “over 10 percent milk by weight of milk solids” listed in subheading 1901.90.6100, HTSUSA. Accordingly, NY N305031 is revoked.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. No. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed action was published on March 11, 2020, in Volume 54, Number 9, of the Customs Bulletin. No comments were received in response to this notice.

FACTS:

In NY N305031, evaporated creamer from Malaysia was described as follows:

The product is composed of milk, palm oleins, maltodextrin, emulsifier, stabilizers, vitamins A and D₃. . . . Evaporated creamer is packed in cans with a net weight of 170 grams, 390 grams, and 400 grams, respectively.

In this ruling, Mtres Holding submitted a technical data sheet for the product but no sample. In your request for reconsideration of NY N305031, you claimed that CBP erred in stating that the evaporated creamer “contains
25% milk solids when it only contains according to our technical data sheet and formulation 9% of skim milk solids.” You also submitted a sample with your reconsideration request.

CBP Laboratory Report No. NY20191509, dated October 17, 2019, identified the sample as consisting of two small cans labeled “sample” and containing the following label description: evaporated creams, 8 percent vegetable fat, 25 percent total product solids. The CBP Laboratory indicated that, based on its analysis, the product contains 5.4 percent non-fat milk solids.

ISSUE:

Whether evaporated creamer is properly classified in subheading 1901.90.6100, HTSUSA, as dairy preparations containing over 10 percent by weight of milk solids, or in subheading 1901.90.9195, HTSUSA, as other food preparations not elsewhere specified.

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 GRIs may then be applied.

The 2019 HTSUS provisions under consideration are as follows:

1901 Malt extract; food preparations of flour, groats, meal, starch or malt extract, not containing cocoa or containing less than 40 percent by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included; food preparations of goods of headings 0401 to 0404, not containing cocoa or containing less than 5 percent by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included

1901.90 Other:

Dairy products described in additional U.S. note 1 to chapter 4:

1901.90.61 Dairy preparations containing over 10 percent by weight of milk solids

1901.90.91 Other:

Other:

Other: Other:
You argue that the evaporated creamer contains only nine percent of skim milk solids so it cannot be classified in subheading 1901.90.61, HTSUS, which must contain over 10 percent by weight of milk solids.

There is no dispute that the evaporated creamer is classifiable under heading 1901, HTSUS, which provides for “food preparations of goods of headings 0401 to 0404, not containing cocoa or containing less than 5 percent by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included.” Note 4(b) to chapter 4 guides that “Products obtained from milk by replacing one or more of its natural constituents (for example butyric fats) by another substance (for example, oleic fats)” belongs in heading 1901 or 2106, HTSUS. The subject merchandise meets the requirements for heading 1901, HTSUS. There is also no dispute that the evaporated creamer is classifiable under the six digit subheading 1901.90, HTSUS, which provides for “Other: Other.”

The question lies at the eight-digit subheading level. NY N305031 classified the evaporated creamer in the eight-digit subheading 1901.90.61, HTSUS, which requires “Dairy products described in additional U.S. note 1 to chapter 4: Dairy Preparations containing over 10 percent by weight of milk solids.” The referenced additional U.S. note 1 to chapter 4 provides “For the purposes of this schedule, the term ‘dairy products described in additional U.S. note 1 to chapter 4’ means any of the following goods: malted milk, and articles of milk or cream (except (a) white chocolate and (b) inedible dried milk powders certified to be used for calibrating infrared milk analyzers); articles containing over 5.5 percent by weight of butterfat which are suitable for use as ingredients in the commercial production of edible articles (except articles within the scope of other import quotas provided for in additional U.S. notes 2 and 3 to chapter 18); or, dried milk, whey or buttermilk (of the type provided for in subheadings 0402.10, 0402.21, 0403.90 or 0404.10) which contains not over 5.5 percent by weight of butterfat and which is mixed with other ingredients, including but not limited to sugar, if such mixtures contain over 16 percent milk solids by weight, are capable of being further processed or mixed with similar or other ingredients and are not prepared for marketing to the ultimate consumer in the identical form and package in which imported.” The evaporated creamer is an article of cream.

At issue is the percentage of milk solid content, which has been determined by the CBP Laboratory. According to the CBP Laboratory result of the sample that you provided with your reconsideration request, the evaporated creamer only contains 5.4 percent of the non-fat milk solids. Hence, the evaporated creamer does not meet the requisite milk solid content to be classified as a dairy preparation containing over 10 percent of weight of milk solids. Therefore, under GRI 1, the evaporated creamer does not meet the terms of the subheading 1901.90.61, HTSUS.

Since the evaporated creamer does not fall under any of the provisions in subheadings 1901.90.10-1901.90.72, HTSUS, this product is classified under the other provision provided in subheading 1901.90.91, HTSUS. Accordingly, we find that the evaporated creamer is classified in subheading 1901.90.9195, HTSUSA, which provides for “Malt extract; food preparations of flour, groats, meal, starch or malt extract, not containing cocoa or containing less than 40 percent by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included; food preparations of goods of headings 0401 to 0404, not containing cocoa or containing less than 5 percent by weight of
cocoa calculated on a totally defatted basis, not elsewhere specified or included: Other: Other: Other: Other: Other: Other: Other: Other.”

**HOLDING:**

Under the authority of GRI 1, Mtres Holding’s evaporated creamer is classified under heading 1901, HTSUS, and specifically in subheading 1901.90.9195, HTSUSA, which provides for “Malt extract; food preparations of flour, groats, meal, starch or malt extract, not containing cocoa or containing less than 40 percent by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included; food preparations of goods of headings 0401 to 0404, not containing cocoa or containing less than 5 percent by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included: Other: Other: Other: Other: Other: Other: Other: Other.” The 2019 column one, general rate of duty is 6.4 percent.

This merchandise is subject to The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (“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.

**EFFECT ON OTHER RULINGS:**

NY N305031, dated July 24, 2019, is REVOKED.

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

_Sincerely,_

**CRAIG T. CLARK,**

_Director_

_Commercial and Trade Facilitation Division_