

# U.S. Customs and Border Protection



## DEPARTMENT OF THE TREASURY

19 CFR PART 12

CBP DEC. 20-03

RIN 1515-AE52

### IMPORT RESTRICTIONS IMPOSED ON ARCHAEOLOGICAL AND ETHNOLOGICAL MATERIAL FROM ECUADOR

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

**ACTION:** Final rule.

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

**DATES:** Effective February 12, 2020.

**FOR FURTHER INFORMATION CONTACT:** For legal aspects, Lisa L. Burley, Chief, Cargo Security, Carriers and Restricted Merchandise Branch, Regulations and Rulings, Office of Trade, (202) 325-0300, [ot-otrrculturalproperty@cbp.dhs.gov](mailto:ot-otrrculturalproperty@cbp.dhs.gov). For operational aspects, Genevieve S. Dozier, Management and Program Analyst, Commercial Targeting and Analysis Center, Trade Policy and Programs, Office of Trade, (202) 945-2942, [CTAC@cbp.dhs.gov](mailto:CTAC@cbp.dhs.gov).

## **SUPPLEMENTARY INFORMATION:**

### **Background**

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

### **Determinations**

Under 19 U.S.C. 2602(a)(1), the United States must make certain determinations before entering into an agreement to impose import restrictions under 19 U.S.C. 2602(a)(2). On October 19, 2018, the Assistant Secretary for Educational and Cultural Affairs, United States Department of State, after consultation with and recommendation by the Cultural Property Advisory Committee, made the determinations required under the statute with respect to certain archaeological and ethnological material originating in Ecuador that are described in the designated list set forth below in this document.

These determinations include the following: (1) That the cultural patrimony of Ecuador is in jeopardy from the pillage of archaeological or ethnological material representing Ecuador’s cultural heritage dating from approximately 12,000 B.C. up to 250 years old, including material starting in the Pre-ceramic period and going into the Colonial period (19 U.S.C. 2602(a)(1)(A)); (2) that the Ecuadorean government has taken measures consistent with the Convention to protect its cultural patrimony (19 U.S.C. 2602(a)(1)(B)); (3) that import restrictions imposed by the United States would be of substantial benefit in deterring a serious situation of pillage and remedies less drastic are not available (19 U.S.C. 2602(a)(1)(C)); and (4) that the application of import restrictions as set forth in this final rule is consistent with the general interests of the international community in the interchange of cultural property among nations for scientific, cultural, and educational purposes (19 U.S.C. 2602(a)(1)(D)). The Assistant Secretary also found that the material described in the determinations meets the statutory definition of “archaeological or ethnological material of the State Party” (19 U.S.C. 2601(2)).

## **The Agreement**

On May 22, 2019, the United States and Ecuador entered into a bilateral agreement, “Memorandum of Understanding between the Government of the United States of America and the Government of the Republic of Ecuador Concerning the Imposition of Import Restrictions on Categories of Archaeological and Ethnological Material of Ecuador” (“the Agreement”), pursuant to the provisions of 19 U.S.C. 2602(a)(2). The Agreement enables the promulgation of import restrictions on categories of archaeological and ethnological material representing Ecuador’s cultural heritage that are at least 250 years old, dating as far back as the Pre-ceramic period (approximately 12,000 B.C.) through the Formative, Regional development, Integration, and Inka periods and into the Colonial period. A list of the categories of archaeological and ethnological material subject to the import restrictions is set forth later in this document.

## **Restrictions and Amendment to the Regulations**

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

Import restrictions listed at 19 CFR 12.104g(a) are effective for no more than five years beginning on the date on which the Agreement enters into force with respect to the United States. This period may be extended for additional periods of not more than five years if it is determined that the factors which justified the Agreement still pertain and no cause for suspension of the Agreement exists. Pursuant to the MOU, the import restrictions entered into force upon delivery of the U.S. diplomatic note to Ecuador on May 22, 2019. Therefore, the import restrictions will expire on May 22, 2024, unless extended.

## **Designated List of Archaeological and Ethnological Material of Ecuador**

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

The designated list includes archaeological and ethnological material. Archaeological material of ceramic, stone, metal, and organic tissue ranges in date from approximately 12,000 B.C. to A.D. 1769, which is 250 years from the signing of the Agreement. Ethnological material includes Colonial period ecclesiastical paintings, sculpture, furniture, metalwork, textiles, documents, and manuscripts. In addition, ethnological material includes secular Colonial period paintings, documents, and manuscripts.

### **Additional Resource**

National Institute of Cultural Patrimony, Ecuador, *Guía de identificación de bienes culturales patrimoniales* (Guide for identification of cultural patrimony goods) (2d ed. 2011), <http://patrimoniocultural.gob.ec/guia-de-identificacion-de-bienes-culturales-patrimoniales/>.

### **Categories of Materials**

#### **I. Archaeological Material**

- A. Stone
- B. Ceramic
- C. Metal
- D. Bone, Shell, and Other Organic Tissue

#### **II. Ethnological Material**

- A. Paintings
- B. Sculpture
- C. Furniture
- D. Metalwork
- E. Textiles
- F. Documents and Manuscripts

### **I. Archaeological Material**

Archaeological material covered by the Agreement is associated with the diverse cultural groups that resided in this region from the earliest human settlement of the Pre-ceramic period and into the Colonial period (approximately 12,000 B.C. to A.D. 1769).

#### *Approximate Chronology of Well-Known Archaeological Styles*

(a) *Pre-ceramic period*: El Cubilán (12,606 B.C.), Montequinto (11,858 B.C.), Las Mercedes (11,500 B.C.), El Inga (11,000 B.C.), Guagua Canoyacu (9905 B.C.), Gran Cacao (9386 B.C.), Chobshi (9000–6500 B.C.), and Las Vegas (8800–4500 B.C.).

(b) *Formative period*: Valdivia (3800–1500 B.C.), Mayo Chinchipe (3000–2000 B.C.), Cerro Narrio (2000–400 B.C.), Cotocollao (1800–350 B.C.), Machalilla (1600–800 B.C.), and Chorrera (1000–100 B.C.).

(c) *Regional development period*: La Tolita (600 B.C.–A.D. 400), Tiaone (600 B.C.–A.D. 400), Bahía (500 B.C.–A.D. 650), Cosanga (500 B.C.–A.D. 1532), Jama Coaque I (350 B.C.–A.D. 100), Upano (300 B.C.–A.D. 500), and Guangala (100 B.C.–A.D. 800).

(d) *Integration period*: Puruhá (A.D. 300–1500), Cañari (A.D. 400–1500), Atacames (A.D. 400–1532), Jama-Coaque II (A.D. 400–1532), Milagro Quevedo (A.D. 400–1532), Manteño-Huancavilca (A.D. 500–1532), Pasto (A.D. 700–1500), Napo (A.D. 1200–1532), and Caranqui (A.D. 1250–1500).

(e) *Inka period*: A.D. 1470–1532.

(f) *Colonial period*: A.D. 1532–1822.

#### A. Stone

Early chipped stone tools mark the appearance of the first people to inhabit the region and continued to be used throughout history. Polished stone axes became common in the Formative period. Highly skilled stoneworkers created elaborately carved mortars, figurines, seats, and other items for use in daily and ceremonial life. Examples of archaeological stone objects covered in the Agreement include the following objects:

1. Chipped stone tools—Projectile points and tools for scraping, cutting, or perforating are made primarily from basalt, quartzite, chert, chalcedony, or obsidian and are 5–8 cm long.

2. Polished stone tools—Axes or hoes are typically made in basalt or andesite and are about 12 cm long and 8–9 cm wide with a cutting edge on one end and a flat or slightly grooved edge with “ears” on the other side to attach a handle. Some axes have a hole used to attach the handle with cord. Ceremonial axes are highly polished and lack use marks. Hooks, in the shape of small anvils or birds, and weights for spear-throwers (*i.e.*, atlatls) are made from quartzite, chalcedony, and serpentine. Mace heads and stone shields are made from polished stone.

3. Receptacles—Polished stone bowls may be undecorated or decorated with incisions or notches about 10–20 cm in diameter. Mortars made from volcanic rock may be undecorated or carved in the shape of animals, including felines (*e.g.*, Valdivia style mortars).

4. Ornaments—Beads are made of quartz, turquoise, and other stone. Round or oval obsidian mirrors are relatively thin with one unworked side and one polished side. Earrings and ear plugs are made from quartz or obsidian.

5. Figurines—Valdivia style human figurines are small (3–5 cm tall) and range from simple plaques to detailed three-dimensional statuettes. These figurines are made from calcium carbonate and often combine feminine and masculine attributes. Quitu-Chaupicruz monoliths are stone posts up to 90 cm tall with tapered bases topped with anthropomorphic figures.

6. Sculpture—Terminal Valdivia style rectangular or square plaques and blocks are made of white or gray volcanic tuff or other stone with smooth faces or faces decorated with lines or circles depicting human or avian imagery. Manteño style seats are monolithic sculptures with U-shaped seats resting on zoomorphic, anthropomorphic, or undecorated pedestals on a rectangular base.

## *B. Ceramic*

The earliest-known pottery in Ecuador dates to the Formative period (about 4400 B.C.). Highly skilled potters in the region created diverse and elaborate vessels, figurines, sculptural pottery, musical instruments, and other utilitarian and ceremonial items. Ceramics vary widely between archaeological styles. Decorations include paint (red, black, white, green, and beige) or surface decorations such as incisions, excisions, punctations, combing, fingernail marks, corrugations, modelling, etc. Pre-Columbian vessels are never glazed; shiny surfaces are created only by burnishing. Pre-Columbian potters did not use a pottery wheel, so vessels do not have the regular striations or perfectly spherical shapes characteristic of wheel-made pottery. Examples of archaeological ceramic objects covered in the Agreement include the following objects:

1. Vessels—There are three basic types of vessels: Plates, bowls, and jars. Forms and decoration vary among archaeological styles and over time. Some of the most well-known types are highlighted below.

a. Plates have flat or slightly convex bases, occasionally with annular support. Rims are everted, inverted, or vertical, sometimes with zoomorphic modelled appliqué or masks on the exterior. The interior surface is often painted with geometric, anthropomorphic, or zoomorphic designs (*e.g.*, Carchi style plates). Most Inka style plates from Tomebamba have handles and vertical walls without interior paint and some are flat with handles in the form of a bird or llama. Napo culture platters (*fuentes*) often have polychrome designs.

b. Bowls and cups may have everted or inverted rims, and they may have annular or polypod bases. Interior and/or exterior decorations may be made with incisions, negative painting, iridescent paint, etc. Bowls with pedestal bases are known as *compoteras*. Carchi style *compoteras* have anthropomorphic and zoomorphic negative paint designs. A *llipta* box or *poporo* is a very small bowl decorated with incisions or paint in round, zoomorphic, or anthropomorphic shapes. [Note: *Llipta* is a mixture of lime and/or ash used when chewing coca leaves.] Related to bowls, cups may have everted rims (e.g., Azuay style and Cañar style cups and Inka *keros*) or inverted rims (e.g., Puruhá style *timbales*). Milagro-Quevedo style tripod or pedestal bowls known as *cocinas de brujos* sometimes have handles and are often decorated with modelled reliefs of snake heads, toads, serpents, and nude human figures.

c. Jars are globular vessels with short necks, sometimes with exterior decoration on the entire vessel or only on the upper half. Jars sometimes have feet, usually three. Bottles are a type of jar with a long spout attached to the body by a handle. Some bottles have stirrup handles. Some bottles have an interior mechanism that regulates movement of air and liquid to create a whistling sound. Very large jars are called *cántaros*. *Cántaros* have wide mouths and typically have convex or conical bases; in a few cases, bases are flat and small. Carchi style *cántaros* or *botijuelas* are ovoid in shape, have long necks, are decorated with red or negative paint, and sometimes have a modelled human face attached to the neck. Puruhá style *cántaros* are rounder, with bodies covered in negative paint designs and an everted rectilinear neck that is usually decorated with handles and a modelled human face. *Chicha* jars or *tinajas* are very large, usually undecorated jars. Funerary urns may be various sizes depending on whether they contained skeletal remains or ashes. There are two types of Napo style funerary urns with polychrome decorations: Large, elongated vessels with a bulge at the base and anthropomorphic, ceramic statues. Inka style *aríbalos* have long necks with everted rims and bulging bodies with two handles near the base, a modelled zoomorphic knob near the neck, and a pointed base. Imperial style *aríbalos* have primarily geometric, polychrome painting. Local style *aríbalos* have the same shape but are roughly made and undecorated.

2. Figurines—Figurine manufacturing was common in pre-Columbian Ecuador. Anthropomorphic figurines are solid or hollow clay with diverse representations of the body. The size of the figurines varies from less than 10 cm tall to statues over 50 cm tall. Some of the best-known types are described below:

a. Valdivia style ceramic “Venus figures” are small, female figurines in fired clay with detailed treatment of the torso and head. Machalilla and Chorrera figures are larger (up to 40 cm) and usually mold-made and decorated with white slip and red painted designs with humans (more often women than men) depicted in the nude with arms by the side or slightly raised.

b. Low-relief, mold-made figurines were common, including Chorrera style figurines in zoomorphic and phytomorphic shapes (*e.g.*, squashes, *babacos*, monkeys, canines, opossums, felines, and birds).

c. Guangala style and Jama-Coaque style figurines use modeled clay to depict body adornments or clothing of men and women. Bodies and ornaments may be painted black, green, red, or yellow. Jama-Coaque figurines, some up to 30 cm tall, with abundant molded decorations and rich painting depict individuals’ occupations and social statuses (*e.g.*, seated shamans with *llipta* boxes, farmers with bags of seeds and digging sticks, warriors with helmets, spear-throwers and shields, seated jewelry makers with jewels in their laps, hunters carrying or slaughtering their prey, masked figures, dancers with wings or fancy dress, and characters in costumes that indicate privileged status).

d. Figurines from Bahía are generally medium-sized (about 25 cm tall). The “giants of Bahía” are up to 50 cm tall and typically depict shaman figures or elite personages seated cross-legged or standing with elaborate attire, adornment, and headdresses. They often exhibit a necklace adorned with a one to three white tusk-like ornaments.

e. Tolita figurines include individuals of high status and representations of daily life as well as anthropomorphic figures with mammal or bird heads. Tolita style heads and small figures without slip and detailed facial expressions are common. Some hollow heads have perforations and may have been suspended from cords, similar to the *tzantzas* (shrunken heads) of the Shuar.

f. Manteño style figurines are standardized with polished, black surfaces, almost always standing and with body adornments. There are some seated figures, including Manteño style incense burners depicting men, apparently entranced, with wide plates on their heads and elaborate incisions depicting body tattoos.

g. Carchi *coquero* figurines depict a seated individual in a hallucinogenic trance with a bulging cheek indicating that the individual is chewing coca. The bulging cheek is also common in Cosanga figurines from Amazonia. Other figurines from Amazonia are rough and their typology is not well known.

3. Musical instruments—During the Integration period, flutes—typically with four finger holes—were common in the northern Sierra. Throughout the coast and highlands, whistles in human or animal form, frequently birds, were common. Ceramic whistles in the form of sea shells (sometimes called *ocarinas*) are often decorated with geometric, anthropomorphic, and zoomorphic designs.

4. Masks—Human and zoomorphic masks made of clay, shell, and metal with varied facial expressions were common in pre-Columbian Ecuador. Many masks have small holes along the upper edge so that they can be suspended as pectorals. Rectangular, clay plaques depicting humans, sometimes in erotic motifs, have similar holes for suspension.

5. Stamps—Stamps are made from solid clay, including cylindrical roller stamps and flat stamps with a small handle on one side. Low relief geometric designs include stylized anthropomorphic, phytomorphic, and zoomorphic motifs. Small conical clay spindle whorls called *torteros* or *fusaiolas* have similar designs and a hole in the middle to be attached to a spindle.

6. Beads—Beads are small round pieces of ceramic with polished edges and a hole in the center.

7. Graters—Graters are long thin plates, often in the shape of a fish, with a concentration of embedded sharp stones on one side for scraping or grating. Some scrapers lack embedded stones but are decorated with deep incisions in the scraping surface. Bowls occasionally contain embedded scraping stones.

8. Neck rests—Bahía style and Jama-Coaque style neck rests, called *descansanucas*, are made from a slightly concave, rectangular, ceramic slab resting on a pedestal made from a flat slab of the same size supporting columns or a wide pillar in the shape of a house or human face.

9. House models—House models, or *maquetas*, from the coastal region have slightly concave roofs and walls that rest on a base that contains stairs and, sometimes, human figures guarding the entrance. In some cases, the interior columns supporting the roof are visible. These are typically found in the Jama-Coaque and La Tolita cultures, and many of them are functioning bottle forms used in drinking rituals. In the northern highlands, models of round houses represent typical domestic structures of the region.

### C. Metal

Objects of gold, platinum, silver, copper, and tumbaga (an alloy of copper and gold) were common in pre-Columbian Ecuador. Several

pre-Columbian cultures practiced metalwork on the coast (*e.g.*, Guanagala, Bahía, Jama-Coaque, La Tolita, Manteño and Milagro-Quevedo), in the highlands (*e.g.*, Capulí, Piartal, Puruhá and Cañari), and in Amazonia (*e.g.*, Cosanga). The Inka introduced bronze, an alloy of copper and tin. Metallurgists were skilled at creating alloys and gold-and copper-plating. Objects were made by using melted metal or hammering metal sheets. Parts of compound objects were made separately and assembled mechanically. Examples of archaeological metal objects covered in the Agreement include the following objects:

1. Tools—Chisels are flat copper strips about 7 cm long and are beveled on one end. Copper needles vary in size from 3 to 8 cm long. There are also copper fish hooks, cylindrical punches, and long-handled spoons. Functional copper axes are similar in shape to stone axes. Ceremonial copper axes lack a cutting edge, are sometimes silver plated, and are decorated on both faces in high and low relief, often in geometric designs.

A *tumi* is a type of axe with a long handle and a semicircular or rectilinear blade. Axe-monies (*hachas monedas*) are thin, axe-shaped sheets of arsenical copper that are 7–8 cm long and often found in bundles or carefully grouped.

2. Body ornaments—Copper ear piercers may have a hollow handle to facilitate insertion of the post. Gold, silver, and copper crowns and diadems are decorated with engraved or embossed designs. Pre-Columbian people in the region used a wide variety of nose ornaments including oval or circular plates open at the top for insertion into the nasal septum, ornaments with tubular bodies, and scroll or zoomorphic ornaments. Solid or hollow ear ornaments, sometimes with hanging decorations, and labrets are also common. Concave copper disc pectorals with embossed human faces often have holes at the mouth suggesting the existence of a tongue that would have functioned as a rattle. Ornamental clothing pins (*tupos* or *tupus*) made of copper, silver, and gold are topped with a circular or semicircular plate. Gold masks are made of embossed thin gold sheets. Some masks are a single piece of gold, others have additional elements such as diadems, pendants, and platinum eyes. Necklaces vary and often combine metal, *Spondylus* shell, and semi-precious stones.

3. Weapons—Bronze star-shaped mace heads typically have six points. Spear or lance points are made from silver sheets rolled into cones leaving a hole for the shaft. Manteño style spear or lance points have a hollow, cylindrical stem to attach the shaft. Gold and silver helmets were made for high-ranking individuals or ceremonial use.

4. Figurines—Small Inka style figurines depict male, female, and animal figures in solid gold or silver.

#### *D. Bone, Shell, and Other Organic Tissue*

Ceremonial use and trade of *Spondylus princeps*, a bivalve mollusk native to the coastal Pacific Ocean from modern Panama to the Gulf of Guayaquil, began during the Formative period. Although preservation of organic material is poor in most of Ecuador, utilitarian tools, instruments, and body ornaments made in bone, shell, and other materials may be found. Examples of archaeological organic objects covered in the Agreement include the following objects:

1. Tools—Sharp bone awls are made from long bones and are often fired to strengthen them. Various bone tools used for weaving include spatulas, needles, combs, shuttles, pick-up sticks, etc. Ritual long-handled spoons are made from bone. Spoons also are made from shell. Shell fish hooks are 3–5 cm in diameter.

2. Musical instruments—Flutes and whistles with a single finger-hole are made from bone. Large gastropod sea shells (e.g., *Strombus* sp.) were used as trumpets beginning in Early Valdivia times (around 3000 B.C.).

3. Body ornaments—Ornamental clothing pins (*tupos* or *tupus*) made from bone usually are topped with a zoomorphic ornament. Shell bracelets, nose rings, and small earrings are common. *Ucuyayas* are human figures made from *Spondylus* shell.

4. Human remains—Skeletal remains, soft tissue, and ash from the human body may be preserved in burials and other contexts.

## **II. Ethnological Material**

Ethnological material covered by the Agreement includes Colonial period ecclesiastical paintings, sculpture, furniture, metalwork, textiles, documents, and manuscripts. In addition, ethnological material includes secular Colonial period paintings, documents, and manuscripts. Quito School artists incorporated into mostly religious art of the Catholic Church particularities of the Andes such as local costumes, indigenous customs, local flora and fauna, and placement within the Andean countryside or cities.

### *A. Paintings*

Colonial period paintings are made on canvas, copper, marble, or wood panels. Pigments are typically made from pulverized minerals mixed with linseed or almond oil. Early 16th-century paintings use muted color palates of reddish browns and grays. By the 18th century,

paintings display greater movement, illumination, and color, including intense blues, reds, and greens. Some paintings are decorated with gold leaf rays, stars, or floral designs. Most paintings are anonymous works, but a few are signed. Examples of ethnological paintings covered in the Agreement include, but are not limited to, the following objects:

1. Colonial period ecclesiastical paintings—Ecclesiastical paintings depict religious subjects including Christ, saints, virgins, angels, bishops, popes, and others.

2. Colonial period secular paintings— Secular paintings include landscapes, portraits, allegorical paintings, and *casta* paintings depicting racial classifications used in the Spanish colonial empire.

### *B. Sculpture*

Ecclesiastical sculpture from the Colonial period includes images of religious content carved in wood during the 16th, 17th, and 18th centuries. Sculpture may also incorporate silver, gold, bronze, gesso, vegetal ivory (*tagua*), ivory, porcelain, glass eyes, or human hair. Quito School artists produced the finest and most sought-after sculpture in Colonial period Latin America. Quito School 18th-century sculptures are the most famous, including works by Manuel Chili, also known as Caspicara. Examples of ethnological sculpture covered in the Agreement include, but are not limited to, the following objects:

1. Ecclesiastical statues—Ecclesiastical statues carved in wood represent virgins, saints, crucified Christ, baby Jesus, angels and arch-angels, and figures for nativity scenes. The images are usually life-size. Most statues include the body, face, hands, and clothing sculpted in wood. To give the flesh a luminescent, life-like appearance, artists used the technique of *encarnación*, a process of painting, varnishing, and sanding the sculpture several times. Clothing is decorated in high relief using techniques such as *graffito* and *estofado* that includes layering of paint, lacquer, and gold or silver leaf. Other statues include only carved face and hands attached to a simple wood frame that is covered in robes made from fabric, brocade, or cloth stiffened with gum or paste. Most statues have silver accessories; in the case of the Virgin Mary, these accessories may be halos or *coronas*, small hearts crossed by a dagger, or earrings or other jewelry.

2. Ecclesiastical relief carvings—Low reliefs or nearly flat sculptures depict saints.

3. Portable altars or triptychs—Small altars of gilded wood or different-colored wood close like boxes, and smaller religious sculptures are stored inside.

### C. Furniture

Colonial period ecclesiastical furniture was created by teams of designers, carpenters, cabinetmakers, and craftspeople specializing in leather, veneers, or inlaid wood. Additionally, these teams of artisans included carvers, weavers, bronze smiths, locksmiths, and artistic blacksmiths. Examples of ecclesiastical ethnological furniture covered in the Agreement include, but are not limited to, the following objects:

1. Altarpieces or *retablos*—Elaborate ornamental structures placed behind the altar include attached paintings, sculptures, or other religious objects.
2. Reliquaries and coffins—Containers made from wood, glass, or metal hold and exhibit sacred objects or human remains.
3. Church furnishings—Furnishings used for liturgical rites include pulpits, tabernacles, lecterns, confessionals, pews, choir stalls, chancels, baldachins, and palanquins.

### D. Metalwork

Colonial period ecclesiastical objects made of silver, gold, and other metals were crafted in silversmiths' workshops for use in religious ceremonies. Designs relate to the Eucharist, such as the Lamb of God, a fish, a dove, a cross, fruit, and vine leaves. These ecclesiastical metal objects incorporate precious stones and jewels. Examples of ecclesiastical ethnological metalwork covered in the Agreement include, but are not limited to, the following objects:

1. Sacred vessels—Pyxes, goblets, chalices, and patens were commonly used for religious ceremonies. Urns and *custodia* (monstrances) were used to display the communion wafer.
2. Altar furnishings—Candlesticks, candelabra, and processional or stationary crosses were used in religious ceremonies. Decorative plaques were affixed to altars.
3. Statue accoutrements—Crowns, radiations, wings, garment pins, and jewelry adorned many ecclesiastical statues.

### E. Textiles

Textiles used to perform religious services are often made from fine cotton or silk and may be embroidered with metallic or silk thread, brocades, prints, lace, fabrics, braids, and bobbin lace. Examples of textiles covered in the Agreement include, but are not limited to, the following objects:

1. Religious vestments—Garments worn by the priest and/or other ecclesiastics include cloaks, tunics, surplices, chasubles, dalmatics, albs, amices, stoles, maniples, cinctures, rochets, miters, bonnets,

and humeral veils complemented by the so-called *blancos* or “whites.”

2. Coverings and hangings—Textiles used for liturgical celebrations include altar cloths, towels, and tabernacle veils.

#### *F. Documents and Manuscripts*

Original handwritten texts or printed texts of limited circulation made during the Colonial period are primarily on paper, parchment, and vellum. They include books, single folios, or collections of related documents bound with string. Documents may contain a wax, clay, or ink seals or stamps denoting a public or ecclesiastical institution. Seals may be affixed to the document or attached with cords or ribbons. Because many of these documents are of institutional or official nature, they may have multiple signatures, denoting scribes, witnesses, and other authorities. Documents are generally written in Spanish, but may be composed in an indigenous language such as Quichua. Examples of ethnological documents and manuscripts covered in the Agreement include, but are not limited to, the following objects:

1. Colonial period ecclesiastical documents and manuscripts—These include religious texts, hymnals, and church records.

2. Colonial period secular documents and manuscripts—These include, but are not limited to, notary documents (*e.g.*, wills, bills of sale, contracts) and documents of the city councils, Governorate of New Castile, Royal Audience of Quito, Viceroyalty of Peru, Viceroyalty of New Granada, or the Council of the Indies.

#### **Inapplicability of Notice and Delayed Effective Date**

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

#### **Regulatory Flexibility Act**

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

#### **Executive Orders 12866 and 13771**

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

**Signing Authority**

This regulation is being issued in accordance with 19 CFR 0.1(a)(1) pertaining to the Secretary of the Treasury’s authority (or that of his/her delegate) to approve regulations related to customs revenue functions.

**List of Subjects in 19 CFR Part 12**

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

**Amendment to CBP Regulations**

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

**PART 12—SPECIAL CLASSES OF MERCHANDISE**

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

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

\* \* \* \* \*

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

\* \* \* \* \*

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

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

(a) \* \* \*

State party	Cultural property	Decision No.
*	*	*
*	*	*
Ecuador .....	Archaeological and ethnological material representing Ecuador’s cultural heritage that is at least 250 years old, dating from the Pre-ceramic (approximately 12,000 B.C.), Formative, Regional development, Integration, Inka periods and into the Colonial period to A.D. 1769.	CBP Dec. 20–03.
*	*	*
*	*	*

\* \* \* \* \*

Dated: February 11, 2020.

MARK A. MORGAN,  
*Acting Commissioner,*  
*U.S. Customs and Border Protection.*

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

[Published in the Federal Register, February 14, 2020 (85 FR 8389)]

**ACCREDITATION AND APPROVAL OF CHEM COAST, INC.  
(LA PORTE, TX) AS A COMMERCIAL GAUGER AND  
LABORATORY**

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

**ACTION:** Notice of accreditation and approval of Chem Coast, Inc. (La Porte, TX), as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given, pursuant to CBP regulations, that Chem Coast, Inc. (La Porte, TX), has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of August 13, 2019.

**DATES:** Chem Coast, Inc. (La Porte, TX) was approved and accredited as a commercial gauger and laboratory as of August 13, 2019. The next triennial inspection date will be scheduled for August 2022.

**FOR FURTHER INFORMATION CONTACT:** Dr. Justin Shey, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Suite 1500N, Washington, DC 20229, tel. 202-344-1060.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Chem Coast, Inc., 11820 North H Street, La Porte, TX 77571, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Chem Coast, Inc. (La Porte, TX) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API Chapters	Title
3 .....	Tank Gauging
7 .....	Temperature Determination
8 .....	Sampling
12 .....	Calculations
17 .....	Marine Measurement

Chem Coast, Inc. (La Porte, TX) is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27-08.....	D 86	Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure
27-48.....	D 4052	Standard Test Method for Density, Relative Density, and API Gravity of Liquids by Digital Density Meter
27-50.....	D 93	Standard Test Methods for Flash-Point by Pensky-Martens Closed Cup Tester
N/A.....	D 1364	Standard Test Method for Water in Volatile Solvents (Karl Fischer Reagent Titration Method)

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov*. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. <http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories>

DAVE FLUTY  
*Executive Director  
 Laboratories and Scientific  
 Services Directorate*

**PROPOSED MODIFICATION OF RULING LETTER  
RELATING TO COUNTRY OF ORIGIN UNDER  
SECTION 301**

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

**ACTION:** Notice of modification of New York Ruling Letter (NY) N303338, dated March 20, 2019 regarding the country of origin of server cabinets under section 301.

**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 NY N303338 regarding country of origin under section 301. Similarly, CBP intends to modify 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 April 3, 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 Ms. Cammy Canedo at (202) 325–0439.

**FOR FURTHER INFORMATION CONTACT:** Joy Marie Virga, Valuation and Special Programs Branch, Regulations and Rulings, Office of Trade, at (202) 325–1511.

**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 modify NY N303338, dated March 20, 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 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 N303338, CBP found that the server cabinet, classified under subheading 9403.10.00 of the Harmonized Tariff Schedule of the United States ("HTSUS") was not subject to additional duties as provided for under 9903.88.03, HTSUS. CBP has reviewed NY N303338 and has determined the ruling letter to be in error. It is now CBP's position that the server cabinet, classified under subheading 9403.10.00, HTSUS is subject to the additional duties in one of the proposed manufacturing scenarios as it is a product of China enumerated in U.S. Note 20(b), Chapter 99, HTSUS.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to modify NY N303338 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter ("HQ") H305371, 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 30, 2019

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

Attachments

N303338

March 20, 2019

CLA-2-94:OT:RR:NC:N4:433

CATEGORY: Classification; Country of Origin;

Marking; Trade Agreement

TARIFF NO.: 9403.10.0040

LISA MURRIN

EXPEDITORS TRADEWIN LLC.

3 TECHNOLOGY DRIVE

PEABODY, MA 01960

RE: The tariff classification, country of origin, marking, North American Free Trade Agreement (NAFTA), and applicability of Section 301 trade remedies of a computer server cabinet from Mexico. Correction to Ruling Number N302029.

DEAR Ms. MURRIN:

This replaces Ruling Number N302029, dated December 18, 2018, which contained an omission regarding the applicability of Section 301 trade remedies. A complete corrected ruling follows.

In your letter dated November 30, 2018, you requested a binding ruling for country of origin on behalf of your client, Foxconn. Illustrative literature and a product description were received.

Foxconn item, the “Computer Server Cabinet,” is a floor-standing moveable steel storage cabinet on four swivel castors designed to secure a computer server and hardware. The cabinet measures approximately 44” in length, 24” in width, and 80” in height.

The applicable subheading for the cabinet is 9403.10.0040, Harmonized Tariff Schedule of the United States, (HTSUS), which provides for “Other furniture and parts thereof: Metal furniture of a kind used in offices: Other.”

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>.

Foxconn outlines two scenarios wherein the cabinet is manufactured. In scenario 1, six vertical posts, a base subassembly, and a top subassembly of Chinese origin are welded together in Mexico to form the main computer server frame. In Mexico, the frame and welds are further polished, cleaned, painted, inspected and additional assembly of Chinese component parts (side panels, castors, patch panels, clips, a busbar, and brackets) are performed by skilled technicians. The cabinet will then be imported into the United States.

In scenario 2, the base subassembly and top subassembly are of Chinese origin whereas the six vertical posts are of Mexican origin. In Mexico, additional assembly of the Chinese component parts (side panels, castors, patch panels, clips, a busbar, and brackets) are performed by skilled technicians. Welding, assembly, polishing, painting, cleaning and inspection occurs in Mexico. The cabinet will then be imported into the United States.

Country of Origin and Marking (Scenario 1 and 2)

Pursuant to 19 Code of Federal Regulations (CFR) 134.1(b), “country of origin” means the country of manufacture, production, or growth of any article of foreign origin entering the United States. Further work or material added to an article in another country must effect a substantial transforma-

tion in order to render such other country the “country of origin.” Further, pursuant to 19 CFR 10.14(b) a substantial transformation occurs when, as a result of manufacturing processes, a new and different article emerges, having a distinctive name, character, or use.

However, for a good of a NAFTA country (Mexico, Canada), the NAFTA Marking Rules (set forth in 19 CFR 102) will determine the country of origin. Because the cabinet is manufactured in part in Mexico, a NAFTA country, the NAFTA origin marking rules will determine the country of origin.

Part 102.11(a)(3) of 19 CFR provides that for the purposes of determining the country of origin of imported goods other than textile and apparel products each foreign material incorporated in that good undergoes an applicable change in tariff classification set out in section 102.20 and satisfies any other applicable requirements of that section, and all other applicable requirements of these rules are satisfied.

Part 102.20 states that, for goods of heading 9403.10 - 9403.89 to be of Mexican origin, they must undergo

A change to subheading 9403.10 thru 9403.89 from any other subheading outside that group, except from subheading 9401.10 through 9403.89 and except from subheading 9401.90 or 9403.90, when that change is pursuant to General Rule of Interpretation (GRI) 2(a).

Based on the information provided, a change in tariff occurs for scenarios 1 and 2 as the material components undergo a substantial transformation to become a cabinet, taking on a new name, character, and identity. The country of origin is conferred in Mexico.

Part 134, of 19 CFR implements the country of origin marking requirements of 19 U.S.C. 1304. Unless excepted by law, every article of foreign origin imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit, in such a manner as to indicate to the ultimate purchaser in the United States the English name of the country of origin of the article. As a product of Mexico, the cabinet is to be marked accordingly.

Trade Agreement – NAFTA (Scenario 1 and 2)

General Note 12(b), HTSUS, sets forth the criteria for determining whether a good is originating under the NAFTA. To be an “originating good” the material components must be transformed in the territory of Mexico pursuant to GN12(b)(ii)(A)(t), HTSUS, which states:

Chapter 94, Rule 4,

- (A) A change to subheadings 9403.10 through 9403.89 from any other chapter; or
- (B) A change to subheadings 9403.10 through 9403.89 from subheading 9403.90, whether or not there is also a change from any other chapter, provided there is a regional value content of not less than:
  - (1) 60 percent where the transaction value method is used, or
  - (2) 50 percent where the net cost method is used.

In both scenarios the material components from China and Mexico are classifiable outside of Section XX (miscellaneous manufactured articles), and a change in tariff occurs in Mexico as a result of manufacturing, therefore, the

cabinet is eligible for NAFTA preferential duty treatment. Furthermore, the cabinet is not subject to the Section 301 trade remedies as provided for under 9903.88.03, HTSUS.

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, please contact National Import Specialist Dharmendra Lilia at [dharmendra.lilia@cbp.dhs.gov](mailto:dharmendra.lilia@cbp.dhs.gov).

*Sincerely,*

STEVEN A. MACK

*Director*

*National Commodity Specialist Division*

HQ H305371  
OT:RR:CTF:VSP H305371 JMV  
CATEGORY: Origin

LISA MURRIN  
EXPEDITORS TRADEWIN, LLC  
3 TECHNOLOGY DRIVE  
PEABODY, MA 01960

RE: Modification of NY N303338, dated March 20, 2019; Section 301 Measures

DEAR MS. MURRIN:

This is in reference to New York Ruling Letter (“NY”) N303338, issued to Expeditors Tradewin, LLC on March 20, 2019, concerning the origin and applicability of Section 301 trade remedies of a computer server cabinet. In that ruling, U.S. Customs and Border Protection (“CBP”) found that the country of origin of the computer server cabinet is Mexico and that the cabinet is not subject to Section 301 trade remedies as provided for under 9903.88.03, Harmonized Tariff Schedule of the United States (“HTSUS”).

Upon additional review, we have found NY N303338 to be incorrect with respect to the application of trade remedies under Section 301. For the reasons set forth below, with respect to the applicability of Section 301 duties to subheading 9403.10.0040, HTSUS, we hereby modify NY N303338. The tariff classifications of the computer server cabinet under subheading 9403.10.0040, HTSUS, as determined in NY N303338, is unaffected.

**FACTS:**

NY N303338 concerned the Foxconn “Computer Server Cabinet,” which is a floor-standing moveable steel storage cabinet on four swivel castors designed to secure a computer server and hardware. The cabinet measures approximately 44” in length, 24” in width, and 80” in height. NY N303338 found that the applicable subheading for the cabinet is 9403.10.0040, HTSUS, which provides for “Other furniture and parts thereof: Metal furniture of a kind used in offices: Other.”

NY N303338 also considered the country of origin of the cabinet under two manufacturing scenarios:

*Scenario One:*

The assembly of the server cabinet includes approximately 85–90 parts. In Mexico, the six posts, base and top subassembly of Chinese origin are welded together to form the main frame. The welds are then polished, and the frame is cleaned, painted and inspected. The side panels of Mexican origin, the castors, 0.5U blank, patch panel, Mylar, power shelf support plate, clips, busbar, and brackets are then assembled to the frame. This process, including welding, painting and assembly, takes 90 minutes to complete. The welding and painting processes require a degree of skill, and are performed by skilled technicians. The finished server cabinet is then packaged. You provided a Bill of Materials for scenario that shows 33% of the value of the materials is of Mexican origin one. When labor is included, the parts and labor in Mexico make up 60% of the finished cabinet.

Under this first scenario, the parts that are of Mexican origin are the side panels, screws, nuts, washers, and a leveler foot.

*Scenario Two:*

The assembly of the server cabinet includes approximately 85–90 parts. The assembly process for scenario two begins with the production of the six metal posts used to construct the main frame. The manufacturing process for the front and rear posts includes blanking/punching, riveting nut, spot welding and bending. The two middle posts are formed by blanking/punching and bending. The six posts, base and top subassembly are then welded together to form the main frame. The welds are then polished and the frame is cleaned, painted and inspected. The side panels, castors, 0.5U blank, patch panel, Mylar, power shelf support plate, clips, busbar and brackets are then installed to finish the server cabinet. The assembly process of the server cabinet (including producing six posts, welding, painting and assembly) takes 140 minutes to complete. Fifty-three percent of the value of the materials is of Mexican origin. The parts, welding, painting and labor in Mexico make up 70% of the overall value of the finished good.

Under this second scenario, the parts of Mexican origin are the left and right front posts, left and right center posts, left and right rear posts, screws and side panels.

Since Mexico is involved in the processing of the cabinet, NY N303338 considered the origin of the cabinet under the North American Free Trade Agreement (“NAFTA”) rules of origin. However, NY N303338 stated, “the cabinet is not subject to the Section 301 trade remedies as provided for under 9903.88.03, HTSUS” without considering whether the parts from China underwent a substantial transformation to become a product of Mexico.

**ISSUE:**

Whether the computer server cabinet is subject to Section 301 duties under 9903.88.03, HTSUS.

**LAW AND ANALYSIS:**

When determining the country of origin for purposes of applying current trade remedies under Section 301, the substantial transformation analysis is applicable. The test for determining whether a substantial transformation will occur is whether an article emerges from a process with a new name, character, or use different from that possessed by the article prior to processing. *See Texas Instruments Inc. v. United States*, 69 C.C.P.A. 151 (1982). This determination is based on the totality of the evidence. *See National Hand Tool Corp. v. United States*, 16 C.I.T. 308 (1992), *aff'd*, 989 F.2d 1201 (Fed. Cir. 1993).

In order to determine whether a substantial transformation occurs when components of various origins are assembled into completed products, the determinative issue is the extent of operations performed and whether the parts lose their identity and become an integral part of the new article. *See Belcrest Linens v. United States*, 6 CIT 204 (1983), *aff'd*, 741 F.2d 1368 (Fed. Cir. 1984). The country of origin of the item’s components, extent of the processing that occurs within a country, and whether such processing renders a product with a new name, character, and use are primary considerations in such cases. Additionally, factors such as the resources expended on product design and development, extent and nature of post-assembly inspection and testing procedures, and the degree of skill required during the actual manu-

facturing process may be relevant when determining whether a substantial transformation has occurred. No one factor is determinative.

In *Carlson Furniture Industries v. United States*, 65 Cust. Ct. 474 (1970), the U.S. Customs Court ruled that U.S. operations on imported chair parts constituted a substantial transformation, resulting in the creation of a new article of commerce. The court determined that because the importer had to perform additional work on the imported chair parts and add materials to create a functional article of commerce, the imported parts were not chairs in an unassembled or knocked-down condition. *Id.* at 478. After importation, the importer assembled, fitted, and glued the wooden parts together, inserted steel pins into the key joints, cut the legs to length and leveled them, and in some instances, upholstered the chairs and fitted the legs with glides and casters. Consequently, the court found that the operations were substantial in nature, and that the processing performed in the United States constituted more than the mere assembly of finished parts. *Id.*

CBP applied the standard established in *Carlson Furniture* in Headquarters Ruling Letter (“HQ”) W563456, dated July 31, 2006. In that case, CBP found that certain office chairs assembled in the United States were products of the United States for purposes of U.S. government procurement. The office chairs were assembled from seventy domestic and foreign components. The imported components alone were insufficient to create the finished chairs and substantial additional work and materials were added to the imported components in the United States to produce the finished chairs. In finding that the imported parts were substantially transformed in the United States, CBP stated that the components lost their individual identities when they became part of the chair as a result of the U.S. assembly operations and combination with U.S. components.

Similarly, in HQ 561258, dated April 15, 1999, CBP determined that the assembly of numerous imported workstation components, such as leg brackets, drawer units, and panels, with a U.S.-origin work surface constituted a substantial transformation of the parts into a finished workstation. CBP held that the imported components lost their identity when they were assembled together to form a workstation and classified the finished piece of furniture as U.S.-origin merchandise.

Here, the assembly in scenario one is simple assembly and is not enough to effect a substantial transformation. All the parts that are imported into Mexico are in a prefabricated form with a predetermined use. Additionally, unlike HQ W563456, the components of Chinese origin make up the entire frame of the cabinet and a large portion of the final product. Only the side panels, screws, nuts, washers and leveler feet, which are all minor parts, are of Mexican origin. Therefore, the computer server cabinet remains a product of China and is subject to Section 301 duties.

However, the processing in scenario two is much more significant because a number of the fundamental components, such as the six metal posts, are created in Mexico. Fabrication of the metal posts is more than mere assembly as it consists of blanking and punching, riveting, spot welding and bending. It is also noteworthy that the Mexican originating components make up most of the value of the materials, at 53%, and when Mexican labor is included, the value increases to 70%. Therefore, the processing in Mexico under scenario two constitutes a substantial transformation, and the country of origin of the computer server cabinet in scenario two is Mexico.

Pursuant to U.S. Note 20 to Subchapter III, Chapter 99, HTSUS, products of China classified under subheading 9403.10.00, HTSUS, unless specifically excluded, are subject to an additional 25 percent ad valorem rate of duty. At the time of importation, you must report the Chapter 99 subheading, i.e., 9903.88.03, in addition to subheading 9403.10.00, HTSUS, listed above.

The HTSUS is subject to periodic amendment so you should exercise reasonable care in monitoring the status of goods covered by the Note cited above and the applicable Chapter 99 subheading. For background information regarding the trade remedy initiated pursuant to Section 301 of the Trade Act of 1974, you may refer to the relevant parts of the USTR and CBP websites, which are available at <https://ustr.gov/issue-areas/enforcement/section-301-investigations/tariff-actions> and <https://www.cbp.gov/trade/remedies/301-certain-products-china> respectively.

**HOLDING:**

Based on the information presented, under scenario one, the origin of the computer server cabinet described in NY N303338 is China and therefore, it is subject to the Section 301 duties. Under scenario two, the origin of the computer server cabinet is Mexico and therefore, it is not subject to the Section 301 duties. NY N303338 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,*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

**PROPOSED MODIFICATION OF ONE RULING LETTER,  
REVOCATION OF ONE RULING LETTER, AND  
REVOCATION OF TREATMENT RELATING TO THE  
TARIFF CLASSIFICATION OF CERTAIN FOOTWEAR**

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

**ACTION:** Notice of proposed modification of one ruling letter, revocation of one ruling letter, and revocation of treatment relating to the tariff classification of a certain footwear.

**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 and revoke one ruling letter concerning the tariff classification of certain footwear under the Harmo-

nized 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 April 3, 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, 10<sup>th</sup> Floor, Washington, DC 20229–1177. Submitted comments may be inspected at the address stated above during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Ms. Cammy D. Canedo at (202) 325–0439.

**FOR FURTHER INFORMATION CONTACT:** Tatiana Salnik Matherne, Food, Textiles and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325–0351.

**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 and revoke one ruling letter pertaining to the tariff classification of certain footwear. Although in this notice CBP is specifically referring to New York Ruling Letter (“NY”) N266867, dated August 10, 2015 (Attachment A), and NY N267221, dated August 20, 2015 (Attachment B), this notice also covers any rulings on this merchandise, which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the two rulings 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 N266867, CBP classified footwear Style 203105 in subheading 6401.99.80, HTSUS, which provides for "Waterproof footwear with outer soles and uppers of rubber or plastics, the uppers of which are neither fixed to the sole nor assembled by stitching, riveting, nailing, screwing, plugging or similar processes: Other footwear: Other: Other: Other: Having uppers of which over 90 percent of the external surface area (including any accessories or reinforcements such as those mentioned in note 4(a) to this chapter) is rubber or plastics (except footwear having foxing or a foxing-like band applied or molded at the sole and overlapping the upper)."

In NY N267221, CBP classified footwear Style 7749010 in subheading 6402.99.31, HTSUS, which provides for "Other footwear with outer soles and uppers of rubber or plastics: Other footwear: Other: Other: Other: Having uppers of which over 90 percent of the external surface area (including any accessories or reinforcements such as those mentioned in note 4(a) to this chapter) is rubber or plastics (except footwear having a foxing or a foxing-like band applied or molded at the sole and overlapping the upper and except footwear designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather): Other: Other."

CBP has reviewed NY N266867 and NY N267221, and has determined these rulings to be in error. It is now CBP's position that footwear Style 203105, at issue in NY N266867, and footwear Style 7749010, at issue in NY N267221, are properly classified in subheading 6402.99.27, HTSUS, which provides for "Footwear with outer soles and uppers of rubber or plastics: Other footwear: Other: Other: Other: Having uppers of which over 90 percent of the external surface area (including any accessories or reinforcements such as those mentioned in note 4(a) to this chapter) is rubber or plastics (except footwear having a foxing or a foxing-like band applied or molded at the sole and

overlapping the upper and except footwear designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather): Other: Sandals and similar footwear of plastics, produced in one piece by molding.” CBP’s classification of two other styles of footwear at issue in NY N266867 (Style 202845 and Style 202196), remains unchanged.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to modify NY N266867, revoke NY N267221, and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H298312, set forth as Attachment C to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: January 28, 2020

CRAIG T. CLARK,  
*Director*

*Commercial and Trade Facilitation Division*

Attachments

N266867

August 10, 2015

CLA-2-64:OT:RR:NC:N3:447

CATEGORY: Classification

TARIFF NO.: 6401.92.9060; 6401.99.8000;  
6404.19.3960

Ms. YVETTE POWELL

CROCS

7477 E. DRY CREEK PARKWAY

NIWOT, CO 80503

RE: The tariff classification of footwear from China and Vietnam

DEAR Ms. POWELL:

In your letter dated July 16, 2015 you requested a tariff classification ruling. As requested the samples are being returned to you.

You will be importing 3 styles of footwear. Style 202845 (Capri V Shimmer Flip W), is a woman's size 7, open toe, open heel, thong sandal. The sandal has a V-shaped thong textile material upper. The thong is not attached to the sole with plugs that penetrate the outer sole. The outer sole is made from 100 percent plastic. It is not protective nor does it feature a foxing or foxing-like band. The plastic outer sole accounts for more than 10 percent of the total weight of the sandal.

Style 203105 (Kadee Animal Print Flat W), is a woman's size 7, closed toe, closed heel, slip-on shoe, which does not cover the ankle. The one-piece molded shoe has an upper and outer sole made from 100 percent thermoplastic. It features small vent holes on the vamp, a small vent hole on the heel, and larger oval holes on the lateral and medial sides. It does not have a foxing or foxing-like band.

You suggest that Style 203105 (Kadee Animal Print Flat W) be classified under subheading 6402.99.2760, Harmonized Tariff Schedule of the United States (HTSUS), which provides for...sandals and similar footwear of plastics. We disagree with this suggested classification because the submitted sample is not like a sandal or similar footwear. Style 203105 does not have an open-toe, an open-heel, or an outer sole held to the foot with straps.

Style 202196 (Crocs Chelsea Rain Boot W), is a woman's closed toe, closed heel, above the ankle, below the knee, size 7, pull-on rain boot. The molded upper is made from rubber. The upper features inset elastic gore on the lateral and medial sides. The external surface area of the upper is predominately rubber. It measures approximately 6½ inches in height and it does not incorporate a metal toe cap. The inside of the boot is supported or lined with a thin layer of cotton fabric. It has a rubber outer sole with traction grooves. The boot is protective against water.

The applicable subheading for Style 202196 (Crocs Chelsea Rain Boot W) will be 6401.92.9060, HTSUS, which provides for waterproof footwear with outer soles and uppers of rubber or plastics, the uppers of which are neither fixed to the sole nor assembled by stitching, riveting, nailing, screwing, plugging or similar processes: other footwear: covering the ankle but not covering the knee: other: other: other. The rate of duty will be 37.5 percent ad valorem.

The applicable subheading for Style 203105 (Kadee Animal Print Flat W) will be 6401.99.8000, HTSUS, which provides for waterproof footwear with

outer soles and uppers of rubber or plastics, the uppers of which are neither fixed to the sole nor assembled by stitching, riveting, nailing, screwing, plugging or similar processes; which does not cover the ankle or knee; which is not designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease or chemicals, or cold or inclement weather; in which the upper's external surface area is over 90% rubber or plastics (including any accessories or reinforcements); and which does not have a foxing-like band applied or molded at the sole and overlapping the upper. The rate of duty will be Free.

The applicable subheading for Style 202845 (Capri V Shimmer Flip W) will be 6404.19.3960, HTSUS, which provides for footwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials: footwear with outer soles of rubber or plastics: not sports footwear; footwear not designed to be a protection against cold or inclement weather; footwear with open toes or open heels; footwear that is not less than 10 percent by weight of rubber or plastics; other: other: for women. The rate of duty will be 37.5 percent ad valorem.

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

Style 202196 (Crocs Chelsea Rain Boot W) is not marked with a country of origin. Therefore, if imported as is, it will not meet the country of origin marking requirements of 19 U.S.C. 1304. Accordingly, the footwear would be considered not legally marked under the provisions of 19 C.F.R. 134.11 which states, "every article of foreign origin (or its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit, in such manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article."

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 Stacey Kalkines at [Stacey.Kalkines@cbp.dhs.gov](mailto:Stacey.Kalkines@cbp.dhs.gov).

*Sincerely,*

GWENN KLEIN KIRSCHNER

*Director*

*National Commodity Specialist Division*

N267221

August 20, 2015

CLA-2-64:OT:RR:NC:N3:447

CATEGORY: Classification

TARIFF NO.: 6402.99.3171

Ms. DONNA ARLORO  
PVH CORP.  
200 MADISON AVENUE  
NEW YORK, NY 10016

RE: The tariff classification of footwear from China

DEAR Ms. ARLORO:

In your letter dated July 28, 2015 you requested a tariff classification ruling. As requested the sample is being returned.

The submitted sample, identified as Style 7749010, is a girl's closed-toe, closed-heel, slip-on shoe that does not cover the ankle. It is produced in one piece of molded rubber or plastics. The "upper" is perforated with numerous eyelet holes, and has a plastic tab on the heel portion. The "outer sole" has molded tread. It is not protective and does not have a foxing or foxing like band.

You suggest that Style 7749010 be classified under subheading 6402.99.2760, Harmonized Tariff Schedule of the United States (HTSUS), which provides in part for sandals and similar footwear of plastics, produced in one piece by molding. We disagree with this suggested classification because the submitted sample is not like a sandal or similar footwear. Style 7749010 does not have an open toe, open heel, or an outer sole held to the foot with straps.

The applicable subheading for Style 7749010 will be 6402.99.3171, HTSUS, which provides for footwear with outer soles and uppers of rubber or plastics: other footwear: other: other: having uppers of which over 90% of the external surface area (including accessories or reinforcements) is rubber or plastics; not having a foxing or a foxing-like band and not protective against water, oil, grease or chemicals or cold or inclement weather; other: other: other: other. The rate of duty will be 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 Stacey Kalkines at [Stacey.Kalkines@cbp.dhs.gov](mailto:Stacey.Kalkines@cbp.dhs.gov).

*Sincerely,*

GWENN KLEIN KIRSCHNER

*Director*

*National Commodity Specialist Division*

HQ H298312  
OT:RR:CTF:FTM H298312 TSM  
CATEGORY: Classification  
TARIFF NO.: 6402.99.27

Ms. YVETTE POWELL  
CROCS  
7477 E. DRY CREEK PARKWAY  
NIWOT, COLORADO 80503

RE: Modification of NY N266867; Revocation of NY N267221; Tariff classification of certain footwear of plastics

DEAR Ms. POWELL:

This is in reference to New York Ruling Letter (“NY”) N266867, issued to Crocs on August 10, 2015. In NY N266867, U.S. Customs and Border Protection (“CBP”) classified certain Kadee animal print flat footwear, identified as Style 203105, under subheading 6401.99.80, Harmonized Tariff Schedule of the United States (“HTSUS”), which provides for “Waterproof footwear with outer soles and uppers of rubber or plastics, the uppers of which are neither fixed to the sole nor assembled by stitching, riveting, nailing, screwing, plugging or similar processes: Other footwear: Other: Other: Having uppers of which over 90 percent of the external surface area (including any accessories or reinforcements such as those mentioned in note 4(a) to this chapter) is rubber or plastics (except footwear having foxing or a foxing-like band applied or molded at the sole and overlapping the upper).” We have reviewed NY N266867 and found it to be partially incorrect. For the reasons set forth below, we are modifying NY N266867. CBP’s classification of two other styles of footwear (Style 202845 and Style 202196), discussed in NY N266867, remains unchanged.

This is also in reference to NY N267221, issued to PVH Corporation on August 20, 2015, in which CBP classified a certain footwear style, identified as Style 7749010, under 6402.99.31, HTSUS, which provides for “Other footwear with outer soles and uppers of rubber or plastics: Other footwear: Other: Other: Having uppers of which over 90 percent of the external surface area (including any accessories or reinforcements such as those mentioned in note 4(a) to this chapter) is rubber or plastics (except footwear having a foxing or a foxing-like band applied or molded at the sole and overlapping the upper and except footwear designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather): Other: Other.”

**FACTS:**

In NY N266867, Style 203105 was described as follows:

Style 203105 (Kadee Animal Print Flat W), is a woman’s size 7, closed toe, closed heel, slip-on shoe, which does not cover the ankle. The one-piece molded shoe has an upper and outer sole made from 100 percent thermoplastic. It features small vent holes on the vamp, a small vent hole on the heel, and larger oval holes on the lateral and medial sides. It does not have a foxing or foxing-like band.

In NY N267221, Style 7749010 was described as follows:

Style 7749010, is a girl’s closed-toe, closed-heel, slip-on shoe that does not cover the ankle. It is produced in one piece of molded rubber or plastics.

The “upper” is perforated with numerous eyelet holes, and has a plastic tab on the heel portion. The “outer sole” has molded tread. It is not protective and does not have a foxing or foxing like band.

In both NY N266867 and NY N267221, the requesters claimed that the footwear styles at issue should be classified under subheading 6402.99.27, HTSUS, which provides for “Other footwear with outer soles and uppers of rubber or plastics: Other footwear: Other: Other: Having uppers of which over 90 percent of the external surface area (including any accessories or reinforcements such as those mentioned in note 4(a) to this chapter) is rubber or plastics (except footwear having a foxing or a foxing-like band applied or molded at the sole and overlapping the upper and except footwear designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather): Other: Sandals and similar footwear of plastics, produced in one piece by molding.” Nonetheless, CBP classified Style 203105, at issue in NY N266867, under subheading 6401.99.80, HTSUS, and Style 7749010, at issue in NY N267221, under subheading 6402.99.31, HTSUS. We have now reconsidered our classification of these footwear styles.

#### ISSUE:

Whether the footwear styles at issue are classified as waterproof footwear of rubber or plastics under subheading 6401.99.80, HTSUS, sandals or similar footwear of plastics, produced in one piece by molding, under subheading 6402.99.27, HTSUS.

#### LAW AND ANALYSIS:

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

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

The HTSUS provisions at issue are as follows:

6401                    Waterproof footwear with outer soles and uppers of rubber or plastics, the uppers of which are neither fixed to the sole nor assembled by stitching, riveting, nailing, screwing, plugging or similar processes:

Other footwear:

6401.99                    Other:

		*       *       *
	Other:	
		*       *       *
	Other:	
6401.99.80		Having uppers of which over 90 percent of the external surface area (including any accessories or reinforcements such as those mentioned in note 4(a) to this chapter) is rubber or plastics (except footwear having foxing or foxing-like band applied or molded at the sole and overlapping the upper)
		*       *       *
6402	Other footwear with outer soles and uppers of rubber or plastics:	
	Other footwear:	
6402.99	Other:	
	Other:	
		Having uppers of which over 90 percent of the external surface area (including any accessories or reinforcements such as those mentioned in note 4(a) to this chapter) is rubber or plastics (except footwear having a foxing or a foxing-like band applied or molded at the sole and overlapping the upper and except footwear designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather):
		*       *       *
	Other:	
6402.99.27		Sandals and similar footwear of plastics, produced in one piece by molding
		*       *       *
6402.99.31	Other	
		*       *       *

To determine whether footwear Style 203105, at issue in NY N266867, is classified in heading 6401, HTSUS, as waterproof footwear, or heading 6402, HTSUS, as other footwear, we consider whether it meets the definition of “waterproof footwear.”

Additional U.S. Note 3 to Chapter 64, HTSUS, provides the following:

For the purposes of heading 6401 “waterproof footwear” means footwear specified in the heading, designed to protect against penetration by water or other liquids, whether or not such footwear is primarily designed for such purposes.

Upon review, we find that footwear Style 203105 features small vent holes on the vamp (the top front part), a small vent hole on the heel, and larger oval holes on both sides close to the outer sole. These characteristics show that the

subject footwear style was not designed to protect the feet from penetration by water or other liquids. Therefore, we find that it is not “waterproof footwear” within the meaning of Additional U.S. Note 3 to Chapter 64, HTSUS, and is not classified under heading 6401, HTSUS.

Footwear Style 203105, at issue in NY N266867, and footwear Style 7749010, at issue in NY N267221, are both made of 100 percent plastics, do not cover the ankle, and are produced in one piece by molding. Although these footwear styles are not sandals because they do not have an open-toe, an open-heel, or an outer sole held to the foot with straps, upon review we find that these footwear styles constitute similar footwear of plastics. Moreover, because they are also made of plastics and produced in one piece by molding, we find that they are specifically covered by 6402.99.27, HTSUS, which provides for “Other footwear with outer soles and uppers of rubber or plastics: Other footwear: Other: Other: Having uppers of which over 90 percent of the external surface area (including any accessories or reinforcements such as those mentioned in note 4(a) to this chapter) is rubber or plastics (except footwear having a foxing or a foxing-like band applied or molded at the sole and overlapping the upper and except footwear designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather): Other: Sandals and similar footwear of plastics, produced in one piece by molding.”

We note that CBP has consistently classified below the ankle slip-on non-waterproof footwear, produced in one piece by molding, under subheading 6402.99.27, HTSUS. See NY N014536, dated August 2, 2007 (classifying a sandal-like slip-on shoe which does not cover the ankle, is produced in one piece by molding and has three small holes situated along the inside front portion of the upper, under subheading 6402.99.27, HTSUS); NY N239755, dated April 12, 2013 (classifying a closed toe/closed heel slip-on clog which does not cover the ankle, is produced in one piece by molding and has two small holes above the sole, under subheading 6402.99.27, HTSUS); and NY N234556, dated November 21, 2012 (classifying a closed toe/closed heel shoe with two vent holes incorporated into the medial side, produced of one-piece molded rubber or plastics, under subheading 6402.99.27, HTSUS).

In accordance with the foregoing, we find that footwear Style 203105 and footwear Style 7749010, are classified under heading 6402, HTSUS, and specifically under subheading 6402.99.27, HTSUS.

#### **HOLDING:**

Based on the information submitted, we find that footwear Style 203105, at issue in NY N266867, and footwear Style 7749010, at issue in NY N267221, have features similar to sandals, produced in one piece by molding. Therefore, they are classified under heading 6402, HTSUS, and specifically under subheading 6402.99.27, HTSUS, as “Other footwear with outer soles and uppers of rubber or plastics: Other footwear: Other: Other: Having uppers of which over 90 percent of the external surface area (including any accessories or reinforcements such as those mentioned in note 4(a) to this chapter) is rubber or plastics (except footwear having a foxing or a foxing-like band applied or molded at the sole and overlapping the upper and except footwear designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather): Other: Sandals and similar footwear of plastics, produced in one piece by molding.” The 2019 column one, general rate of duty is 3% *ad valorem*.

**EFFECT ON OTHER RULINGS:**

NY N266867, dated August 10, 2015, is hereby **MODIFIED**, and NY N267221, dated August 20, 2015, is 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,*

CRAIG T. CLARK,

*Director*

*Commercial and Trade Facilitation Division*