

U.S. Customs and Border Protection



19 CFR PART 177

REVOCAION OF ONE RULING LETTER AND REVOCAION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF ARM SLEEVES

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

ACTION: Notice of revocation of one ruling letter and of revocation of treatment relating to the tariff classification of arm sleeves.

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 arm sleeves under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 53, No. 29, on August 21, 2019. No comments supporting the proposed revocation 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EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after May 10, 2020.

FOR FURTHER INFORMATION CONTACT: John Rhea, Food, Textiles & Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325–0035.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

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

Pursuant to 19 U.S.C. §1625(c)(1), a notice was published in the *Customs Bulletin*, Vol. 53, No. 29, on August 21, 2019, proposing to revoke one ruling letter pertaining to the tariff classification of arm sleeves. 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 ("NY") N258826, dated November 24, 2014, CBP classified arm sleeves in heading 6117, HTSUS, specifically in subheading 6117.80.9540, HTSUSA (Annotated), which provides for "Other made up clothing accessories: Other accessories: Other: Other, of man-made fibers: Other." CBP has reviewed N258826 and has determined the ruling letter to be in error. It is now CBP's position that arm sleeves are properly classified, in heading 6307, HTSUS, specifically in subheading 6307.90.9889, HTSUS (Annotated), which provides for "Other made up articles, including dress patterns: Other: Other: Other: Other."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking N258826 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter ("HQ") H262218, set forth as an attachment to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

CRAIG T. CLARK,
Director
Commercial and Trade Facilitation Division

Attachment

N258826

November 24, 2014

CLA-2-61:OT:RR:NC:N3:348

CATEGORY: Classification

TARIFF NO.: 6117.80.9540

MS. MONA ASBERRY
FRACHT USA
150 BOUSH STREET
SUITE 203
NORFOLK, VA 23510

RE: The tariff classification of arm sleeves from Pakistan.

DEAR MS. ASBERRY:

In your letter dated October 30, 2014, you requested a tariff classification ruling. The sample will be returned to you, as requested.

The submitted sample, identified as FANSLEEVEES, is a pair of arm sleeves. The sleeves are composed of 85% polyester, 15% spandex knit fabric. The tapered sleeves measure 15" in length and are designed to be worn on the arms of sports fans during sporting events.

In your letter, you suggested classification of the FANSLEEVEES under 6307.90.9889, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other made up textile articles, other. We disagree with your proposed classification. GRI 1 provides that classification is determined according to the terms of the headings and any relevant section or chapter notes. Explanatory Notes (EN) to the HTSUS provides guidance in the interpretation of the Harmonized Commodity Description and Coding System at the international level. The EN for heading 6117 provides for made up knitted or crocheted clothing accessories and state that the heading includes sleeves protectors.

The applicable subheading for the FANSLEEVEES will be 6117.80.9540, HTSUS, which provides for Other made up clothing accessories, knitted or crocheted; knitted or crocheted parts of garments or of clothing accessories: Other accessories: Other: Other, Of man-made fibers: Other. The duty rate will be 14.6% 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/>.

In response to your request on whether the proposed marking of the container with the country of origin in lieu of marking the article itself is acceptable. You state the fan sleeves will enter the U.S. packaged for sale in a hard plastic case. Each case will contain a thin piece of cardboard that will wrap around the sleeve, clearly marked with the country of origin, "Made in Pakistan" to be easily seen by the consumer. A marked sample of the plastic case was with your letter for review.

The marking statute, section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, 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 its container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article.

Part 134, Customs Regulations (19 CFR Part 134), implements the country of origin marking requirements and exceptions of 19 U.S.C. 1304. Section 134.41(b), Customs Regulations (19 CFR 134.41(b)), mandates that the ultimate purchaser in the U.S. must be able to find the marking easily and read it without strain. Section 134.1(d), defines the ultimate purchaser as generally the last person in the U.S. who will receive the article in the form in which it was imported. If an imported article is to be sold at retail in its imported form, the purchaser at retail is the ultimate purchaser. In this case, the ultimate purchaser of the fan sleeves is the consumer who purchases the product at retail.

An article is excepted from marking under 19 U.S.C. 1304 (a)(3)(D) and section 134.32(d), Customs Regulations (19 CFR 134.32(d)), if the marking of a container of such article will reasonably indicate the origin of such article. Accordingly, if Customs is satisfied that the article will remain in its container until it reaches the ultimate purchaser and if the ultimate purchaser can tell the country of origin of the fan sleeves by viewing the container in which it is packaged, the individual fan sleeve would be excepted from marking under 19 U.S.C. 1304 (a)(3)(D) and 19 CFR 134.32(d). Accordingly, marking the container in which the fan sleeves are imported and sold to the ultimate purchaser in lieu of marking the article itself is an acceptable country of origin marking for the imported fan sleeves provided the port director is satisfied that the article will remain in the marked container until it reaches the ultimate purchaser.

In reference to the fiber content, information on these labeling requirements may be obtained at the Federal Trade Commission website at www.ftc.gov. For information on the acceptability of the marking on this product, you should contact the Federal Trade Commission, Division of Enforcement, 6th and Pennsylvania Ave, N.W., Washington, D.C. 20508 to ascertain whether the proposed marking satisfies their requirements.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Rosemarie Hayward via email at rosemariecasey.hayward@cbp.dhs.gov.

Sincerely,

GWENN KLEIN KIRSCHNER

Director

National Commodity Specialist Division

HQ H262218
OT:RR:CTF:FTM H262218 JER
CATEGORY: Classification
TARIFF NO.: 6307.90.98

Ms. LISA HAMPTON
FTZ COMPLIANCE & DEVELOPMENT
FRACHT FORWARDING, INC.
150 BOUSH ST.
NORFOLK, VA 23510

RE: Revocation of NY N258826; classification of arm sleeves

DEAR Ms. HAMPTON:

This is in response to your request of January 5, 2015, for reconsideration of New York Ruling Letter (“NY”) N258826, issued on November 24, 2014, to your client, T-Shirts International, concerning the classification of certain merchandise under the Harmonized Tariff Schedule of the United States (“HTSUS”). In NY N258826, U.S. Customs and Border Protection (“CBP”) classified the imported arm sleeves under heading 6117, HTSUS, in particular, under subheading 6117.80.9540, HTSUS, as, “Other made up clothing accessories: Other accessories: Other: Other, of man-made fibers: Other.” It is your contention that heading 6117, HTSUS, is not the proper heading and that it does not describe the merchandise at issue. You contend that the merchandise is properly classified under heading 9505, HTSUS, as a festive article. In reaching our decision, we considered the information presented in your January 5, 2015 submission as well additional information obtained during our research. For the reasons set forth below, we hereby revoke NY N258826.

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 August 21, 2019, in Volume 53, Number 29, of the *Customs Bulletin*. No comments were received in response to this notice.

FACTS:

The merchandise at issue is a pair of arm sleeves marketed as the FANSLEEVE (hereinafter, “Fan-Sleeve”). The arm sleeves are composed of 85% polyester and 15% spandex knit fabric. The tapered sleeves measure 15 inches in length and are designed to be worn on each arm covering the top of the bicep, elbow, forearm and wrist area. The website of the producer of the subject arm sleeves, Pro-Sleeves, the parent company of FANSLEEVE, indicates that the fundamental use of the Fan-Sleeve is to provide compression support during training, fitness, exercise and other sports related activities. The sample submitted, along with images available on both Pro-Sleeves.com and Fansleeves.net, indicate that each of the varying arm sleeves bear a logo and/or mascot of one of the many National Collegiate Athletic Association (“NCAA”) sports teams (e.g., the University of Florida Gators, the Texas A&M Aggies, etc.). The retail labeling on the sample provided states: “Premium Fan Apparel for Game Day or Any Day.” In your January 5, 2015 submission, the Fan-Sleeve is described as being intended for use to celebrate or acknowledge [fan’s] enthusiasm and support for a particular team, sport or affiliation during various types of festivities as a novelty item.

ISSUE:

Whether the subject merchandise is classifiable under heading 6117, HTSUS, as a clothing accessory, or under heading 6307, HTSUS, as other made-up articles or under 9505, HTSUS, as a festive article.

LAW AND ANALYSIS

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

The 2019 HTSUS provisions under consideration are as follows:

6117	Other made up clothing accessories, knitted or crocheted; knitted or crocheted or parts of garments or of clothing accessories:
6117.80	Other accessories:
	* * *
	Other...
6117.80.95	Other...
	Of man-made fibers:
6117.80.95.40	Other
6307	Other made up articles, including dress patterns:
6307.90	Other:
	Other...
6307.90.98	Other...
	Other:
6307.90.98.89	Other...
9505	Festive, carnival or other entertainment articles, including magic tricks and practical jokes; parts and accessories thereof:
9505.90	Other:
9505.90.60.00	Other...

Chapter 95, Note 1 provides, in pertinent part, as follows:

1. This chapter does not cover:

* * *

(e) Sports clothing or fancy dress, of textiles, of chapter 61 or 62;

* * *

Chapter 90, Note 1 provides, in pertinent part, as follows:

Notes

1. This chapter does not cover:

* * *

(b) Supporting belts or other support articles of textile material, whose intended effect on the organ to be supported or held derives

solely from their elasticity (for example, maternity belts, thoracic support bandages, abdominal support bandages, support for joints or muscles (section XI);

* * *

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 or dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

The EN to 63.07 states, in relevant part, that:

This heading covers made up articles of any textile material which are **not included** more specifically in other headings of Section XI or elsewhere in the Nomenclature.

It includes, in particular:

* * *

(26) Support articles of the kind referred to in Note 1(b) to Chapter 90 for joints (e.g., knees, ankles, elbows or wrist) or muscles (e.g., thigh muscles), other than those falling in other headings of Section XI.

* * *

The EN to 95.05 states, in relevant part, that:

This heading covers:

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

- (1) Festive decorations used to decorate rooms, tables, etc. (such as garlands, lanterns, etc.); decorative articles for Christmas trees (tinsel, coloured balls, animals and other figures, etc); cake decorations which are traditionally associated with a particular festival (e.g., animals, flags).
- (2) Articles traditionally used at Christmas festivities, e.g., artificial Christmas trees, nativity scenes, nativity figures and animals, angels, Christmas crackers, Christmas stockings, imitation yule logs, Father Christmases.
- (3) Articles of fancy dress, e.g., masks, false ears and noses, wigs, false beards and moustaches (**not being** articles of postiche – **heading 67.04**), and paper hats. However, the heading **excludes** fancy dress of textile materials, of **Chapter 61** or **62**.

* * *

In your request for reconsideration of NY N258826, you contend that the subject Fan-Sleeve “closely resembles” the tattoo sleeves of NY N012644, dated June 19, 2007 and NY L88410 dated, October 27, 2005, in which CBP classified tattoo sleeves under heading 9505, HTSUS, which provides for: “Festive, carnival or other entertainment articles, including magic tricks and practical jokes; parts and accessories thereof.” As such, you assert that NY N258826 incorrectly classified the subject Fan-Sleeves as clothing accessories under heading 6117, HTSUS, and that the subject Fan-Sleeves should be classified under heading 9505, HTSUS, as a festive article.

Initially we note that not all costume articles associated with entertainment or celebratory occasions are classifiable as “festive articles” under heading 9505, HTSUS. However, when addressing the classification of arm sleeves generally, CBP has previously determined that headings 6117, 6307 and 9505, HTSUS are implicated. *See e.g.*, Headquarters Ruling Letter (“HQ”) 963734, dated March 28, 2003 and NY N276138, June 10, 2016 (wherein CBP determined that certain arm sleeves were classified under heading 6117, HTSUS). In determining the proper classification of arm sleeves, CBP has examined the design, use, and primary purpose of the arm sleeve.

As concerns “festive articles” of heading 9505, HTSUS, the United States Court of Appeals for the Federal Circuit (“CAFC”) noted that the lower court “correctly ruled that articles with symbolic content associated with a particular recognized holiday, such as Christmas trees, Halloween jack-o-lanterns, or bunnies for Easter, were festive articles.” *Park B. Smith, Ltd. v. United States*, 347 F.3d 922, 929 (2003); *citing, Park B. Smith v. United States*, 25 C.I.T. 506 (2001). Similarly, in *Midwest of Cannon Falls v. United States*, 122 F.3d, 1423 (Fed. Cir. 1997), the court held that classification as a “festive article” under Chapter 95 requires that the article satisfy two criteria: (1) it must be closely associated with a festive occasion and (2) the article is used or displayed principally during that festive occasion. *Id.*, at 1429. The U.S. Court of International Trade further explained that the phrase “closely associated with a festive occasion” requires that “the physical appearance of an article is so intrinsically linked to a festive occasion that its use during other time periods would be aberrant.” *Park B. Smith v. United States*, 25 C.I.T. 506, 2001 Ct. Intl. Trade LEXIS 71, 23 Int’l Trade Rep. (BNA) 1545, SLIP OP. 2001–63 *Park B. Smith*, 25 C.I.T. 506 (*citing, Brookside Veneers, Ltd. v. United States*, 847 F.2d 786 (Fed. Cir. 1988)).

Under our facts, the subject Fan-Sleeve is not associated with any particular holiday. It is neither symbolic of any annually celebrated occasion, nor is it associated with any particular festive event. Instead, the subject Fan-Sleeve can be worn daily and is closely associated with sports teams and everyday fitness activities, while having the capacity to provide compression support to the arm, elbow and wrist area. Accordingly, the Fan-Sleeve is marketed as being “Premium Fan Apparel for Game Day or Any Day.” An article which is amenable to use on “game day” or “any day”, cannot be said to be an article that is closely associated with a festive occasion because there are hundreds if not thousands of sports games and training activities occurring throughout the calendar year. Likewise, if the Fan-Sleeve can be worn on “any day” then the article is not used or displayed principally during any particular festive occasion of the kind discussed in *Park B. Smith* and *Midwest*. Hence, wearing a Fan-Sleeve arm cover during athletic training, exercise activities or during a sports event does not transform the subject article into a festive article as defined by the courts in *Park B. Smith* and *Midwest*.

Furthermore, the subject Fan-Sleeve arm covers are not costumes or costume accessories akin to those found in NY N012644 and NY L88410. A costume is defined as being “an outfit worn to create the appearance or characteristic of a particular person, period, place or thing.” Merriam-Webster’s Collegiate Dictionary (10th Ed. 2001). Hence, the primary purpose of wearing a costume is the act of creating a characterization, appearance, or impersonation.

Unlike the tattoo sleeves of NY N012644 and NY L88410, the wearing of the subject Fan-Sleeves does not give the appearance or impression that the wearer is anything other than a person participating in fitness training or that of a fan of a particular sports team. By contrast, wearing an arm sleeve that impersonates a tattoo is tantamount to wearing a costume or disguise. Hence, the tattoo sleeves of NY N012644 and NY L88410, by giving the appearance or impression that the wearer has tattoos on his or her arm, were determined to be a costume or an accessory to a costume. Moreover, the subject Fan-Sleeve arm covers are neither intended nor designed to deceive, characterize or impersonate a person, place or thing. As such, the subject Fan-Sleeves cannot be construed as being a costume for purposes of heading 9505, HTSUS.

Having eliminated the possibility of classification of the Fan-Sleeve under heading 9505, HTSUS, we now examine whether the sleeve is properly classified as a clothing accessory of heading 6117, HTSUS. In your submission, you state that the “tagline or slogan, ‘Wear Your Heart on Your Sleeve’ is a common phrase that does not indicate that the product is clothing or accessories of clothing.” In your statement, you opine that the subject Fan-Sleeve is not an accessory to any clothing item and is therefore not classifiable under heading 6117, HTSUS. We agree. Although the subject Fan-Sleeve can be worn in conjunction with a team jersey or other apparel associated with a team logo applied thereto, its fundamental design and purpose is not limited to use as a clothing accessory.

In HQ 963782, dated March 22, 2002, CBP addressed the distinction between clothing accessories of heading 6117, HTSUS, and other made up articles of heading 6307, HTSUS. In that regard, HQ 963782 noted that accessories must be related to or exhibit some connection to the primary clothing article and must be intended for use solely or principally as an accessory. For example, belts used as clothing accessories need not rely or depend on a particular article of clothing. However, they must clearly be intended for use solely or principally as an accessory to the clothing. Under our facts, there are no specific clothing articles for which the Fan-Sleeve is solely or principally used.

As we noted in HQ H281032, dated February 6, 2017, arm sleeves are often worn as fashion statements, even when a player or trainer does not have an injury. In HQ H281032, CBP noted that beyond any advantages related to compression or protective support, there is a placebo effect to wearing such sleeves, as some basketball players continue to wear them after an injury has healed to prevent future injuries. Steven Kotler, *Allen Iverson, Kobe Bryant, and Basketball's Placebo Effect*, PSYCHOL. TODAY, Apr. 17, 2008, <https://www.psychologytoday.com/blog/the-playing-field/200804/allen-iverson-kobe-bryant-and-basketballs-placebo-effect>, (last visited 03/28/2018). Yet, fashion statements, logos, and artistic designs applied to compression sleeves, do not alter the fundamental purpose and primary function of the sleeve.

Similarly, in HQ 950659, dated January 21, 1992, CBP revoked HQ 086378, dated April 9, 1990, which classified arm covers under heading 6117, HTSUS. In making its decision to rescind HQ 086378, CBP considered whether the arm covers had a logical nexus with clothing. In short, the analysis in HQ 086378 inquired whether the article added to the clothing's: (1) beauty, (2) convenience, or its (3) effectiveness. In its determination, CBP examined the function and use of the arm covers and concluded that the arm

covers could not be considered clothing accessories because they did not satisfy any of the three requirements. Based on the standard set out in HQ 963782 and HQ 950659, the record establishes that the subject Fan-Sleeves are not solely or principally intended to be used with any particular clothing item, and have no logical nexus to any other clothing article. Accordingly, we find that the subject Fan-Sleeves are not a clothing accessory and therefore do not meet the terms of heading 6117, HTSUS.

Hence, we turn to the remaining HTSUS heading for consideration, heading 6307, HTSUS. Heading 6307, HTSUS, is a residual provision for made-up textile articles that are not more specifically provided for in other headings of Section XI. *See* EN 63.07. The EN to heading 63.07, specifically states that the heading covers “support articles of the kind referred to in Note 1(b) to Chapter 90, HTSUS, for joints (e.g., knees, ankles, elbows or wrists) or muscles (e.g., thigh muscles), other than those falling in other headings of Section XI.” Note 1(b) to Chapter 90 defines “support articles” as being, “other support articles of textile material, whose intended effect on the organ to be supported or held derives solely from their elasticity (for example, maternity belts, thoracic support bandages, abdominal support bandages, supports for joints or muscles).”

The subject Fan-Sleeve is marketed, in part, as a compression sleeve with microfiber yarns that offer support. The Fan-Sleeve is marketed as having the capacity to “treat sore muscles.” Additional marketing states that “compression sleeves may help alleviate pain, recover faster from injuries, protect your forearms, and even improve blood circulation.” Likewise, compression arm sleeves are marketed as having the capacity to provide compression support to joints and muscles while their wearer is participating in physical fitness activities or athletic training. *See* FanSleeves at <https://www.amazon.com/d/Sports-Fan-T-Shirts/FanSleeves-Nebraska-Cornhuskers-Clothing> (last visited 11/08/2018); *see also*, Pro-Compression at <https://procompression.com/collections/arm-sleeves>. (last visited 03/28/2018). In fact, the *Wall Street Journal* reports that at least 65% of National Basketball Association players wear at least one shooting sleeve (on their shooting arm) for support and protection; while 57% wear sleeves on one or two legs. *Allen Iverson and the NBA's Sleeve Revolution*, Zolan Kanno-Younga, *Wall Street Journal*, 11/25/2015 <https://www.wsj.com/articles/allen-iverson-and-the-nbas-sleeve-revolution-1448488382> (last visited 11/08/2018).

Additionally, CBP has previously classified substantially similar support sleeves under heading 6307, HTSUS, for the same reasons presented herein. *See e.g.*, NY N240245, May 1, 2013; NY N057848, April 23, 2009; HQ 965110, May 21, 2002; and NY G80012, August 3, 2000 (wherein CBP classified arm sleeves as joint and muscle support articles under heading 6307, HTSUS). In NY N248199, dated December 12, 2013, for example, CBP classified a compression sleeve made up of 80% nylon and 20% spandex knit textile fabric designed to support joints and muscles under heading 6307, HTSUS. Likewise, in NY N221556, dated July 11, 2012, CBP classified a therapeutic compression arm sleeve under heading 6307, HTSUS, because the article was designed to provide compression support to the wearer’s arm. The arm sleeve in NY N221556 was constructed of 70% polypropylene and 30% elastane (spandex) knit textile fabric (referred to as “graduated compression” fabric). The aforementioned material used to construct the arm sleeve of NY

N221556 is substantially similar to that which is used to construct the subject Fan-Sleeve (85% polyester and 15% spandex knit fabric).

Moreover, characteristics such as improved circulation, joint and muscle support, each fall squarely within the exemplars set forth in the ENs to heading 63.07. As previously noted, EN 63.07 specifically provides for articles such as the Fan-Sleeve in Note (26), i.e., support articles for joints of the knees, elbows or wrist. In this regard, CBP has previously classified similar support articles under heading 6307, HTSUS, utilizing the same analysis as offered here. In HQ 965234, dated December 5, 2001, for example, CBP classified a hinged knee support garment under heading 6307, HTSUS, reasoning that the hinged knee support garment was not an orthopedic appliance of heading 9021, HTSUS, or a body supporting garment of heading 6212, HTSUS. Instead, HQ 965234 determined that the hinged knee support was not covered by any more specific heading, and thus it was classifiable in heading 6307, HTSUS, as a support article as described in EN 63.07 Note (26). Likewise, HQ 952568, dated January 28, 1993, determined that knee and joint braces used for sprains and bursitis were properly classified in heading 6307, HTSUS, as they met the definition of support articles as described in Note 1(b) to Chapter 90, HTSUS.

Lastly, in HQ 964317, dated May 1, 2001, CBP classified a knee brace and an ankle brace in heading 6307, HTSUS. Much like the subject Fan-Sleeve, the knee and ankle braces of HQ 964317 were made up of 90% neoprene and 10% nylon elastic. Each brace was designed to allow normal joint bending yet restrict side to side movement during sport activities. As a result, CBP reasoned that the knee and ankle braces of HQ 964317 were support articles as described in EN 63.07. According to the facts of this case, we find the subject Fan-Sleeve to be substantially similar in design, function and in principal use to the aforementioned merchandise. As such, we find that the subject Fan-Sleeve meets the definition for support articles as set forth in EN 63.07 Note (26) and is therefore classified under heading 6307, HTSUS.

HOLDING:

By application of GRI 1 and Note 1(b) to Chapter 90, we find that the instant arm sleeve is provided for in heading 6307, HTSUS, specifically, under subheading 6307.90.98.89, HTSUS (Annotated), which provides for: "Other made up articles, including dress patterns: Other: Other: Other: Other." The 2019 column one, general rate of duty is 7% *ad valorem*.

EFFECT ON OTHER RULINGS:

NY N258826, dated November 24, 2014, is hereby 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

19 CFR PART 177

REVOCATION OF A RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF THREE WOOD NESTING BOXES

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

ACTION: Notice of revocation of one ruling letter and of revocation of treatment relating to the tariff classification of three wood nesting boxes.

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 the tariff classification of three wood nesting boxes under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 53, No. 47, on December 26. 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 May 10, 2020.

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

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

Pursuant to 19 U.S.C. § 1625(c)(1), a notice was published in the *Customs Bulletin*, Vol.53, No. 47, on December 26, 2019, proposing to revoke one ruling letter pertaining to the tariff classification of three nesting boxes. 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 NY N248789, dated January 9, 2014, CBP classified three nesting boxes in heading 4202, HTSUS, specifically in subheading 4202.12, HTSUS, which provides for "Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; Trunks, suitcases, vanity cases, attache cases, briefcases, school satchel and similar containers: With outer surface of plastics or textile materials: with outer surface of plastics." CBP has reviewed NY N248789 and has determined the ruling letter to be in error. It is now CBP's position that three wood nesting boxes are properly classified, in heading 4420, HTSUS, specifically in subheading 4420.90.65, HTSUS, which provides for "Wood marquetry and inlaid wood; caskets and cases for jewelry or cutlery and similar articles, of wood; statuettes and other ornaments, of wood: wooden articles of furniture not falling within chapter 94: Other: Lines with textile fabrics."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY N248789 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in HQ H284371, set forth as an attachment to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

CRAIG T. CLARK,
Director
Commercial and Trade Facilitation Division

Attachment

N248789

January 9, 2014

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

CATEGORY: Classification

TARIFF NO.: 4202.12.2020

TONJA DAVENPORT
DOLLAR GENERAL CORPORATION
100 MISSION RIDGE
GOODLETTSVILLE, TN 37072

RE: The tariff classification of trunks from China

DEAR MS. DAVENPORT:

In your letter dated December 10, 2013, you requested a tariff classification ruling. You have submitted samples, which are being returned to you.

Item 13610701 consists of three small hard-sided trunks. They are constructed with an outer surface of plastic sheeting material. They each feature a textile-lined interior storage compartment, a metal latch closure, and a top opening. They are durable and suitable for repetitive use.

The information you provided with your ruling request suggests that the articles are classified under subheading 4202.99.3000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for containers and cases, other, of materials (other than leather, composition leather, sheeting of plastic, textile materials, vulcanized fiber or paperboard) wholly or mainly covered with paper, of wood, lined with textile fabrics. However, your samples are not constructed with an outer surface of paper. The outer surface of each trunk is plastic sheeting material. Moreover, this subheading provides for "other" containers and cases of Heading 4202. Trunks are specifically provided for previously in the heading and will be classified therein.

The applicable subheading for the trunks will be 4202.12.2020, HTSUS, which provides for trunks, suitcases, vanity cases and similar containers, with outer surface of plastics, structured rigid on all sides. The rate of duty will be 20 percent ad valorem.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Vikki Lazaro at (646) 733-3041.

Sincerely,

GWENN KLEIN KIRSCHNER

Acting Director

National Commodity Specialist Division

HQ H284371
OT:RR:CTF: CPMM H284371 KSG
CATEGORY: Classification
TARIFF NO.: 4420.90.65

TONYA DAVENPORT
DOLLAR GENERAL CORPORATION
100 MISSION RIDGE
GOODLETTSVILLE TN 37072

RE: Revocation of NY N248789, dated January 9, 2014; tariff classification of three wood nesting boxes

DEAR Ms. DAVENPORT:

This letter is in reference to New York Ruling Letter (NY) N248789, dated January 9, 2014, regarding the classification of three wood nesting boxes in the Harmonized Tariff Schedule of the United States (HTSUS).

In NY N248789, U.S. Customs & Border Protection (CBP) classified the three wood nesting boxes in subheading 4202.12, HTSUS, which provides for “Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; Trunks, suitcases, vanity cases, attache cases, briefcases, school satchel and similar containers: With outer surface of plastics or textile materials: with outer surface of plastics.”

We have reviewed NY N248789 and determined that the ruling is in error. Accordingly, for the reasons set forth below, CBP is revoking NY N248789.

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, notice proposing to modify NY N248789 was published on December 26, 2019, in Volume 53, Number 47, of the *Customs Bulletin*. No comments were received in response to this Notice.

FACTS:

This ruling involves three decorative wood nesting boxes that are square-shaped, with the largest box measuring 8” x 8” x 8”, the middle box measuring 6.5” x 6.5” x 6.5” and the smallest box measuring 5” x 5” x 5”. The boxes are sized to fit inside each other. The boxes are made of medium density fiber (MDF) with plastic sheeting exteriors and black textile lining. The largest box is pink, the middle box is purple and the smallest box is teal. No marketing information was submitted by the importer. A sample was provided.

ISSUE:

Whether the three nesting boxes are classified in heading 4202, HTSUS, as trunks or as similar containers, or in heading 4420, HTSUS, as wood boxes.

LAW AND ANALYSIS:

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

GRI 6 provides that for legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related Subheading Notes and, *mutatis mutandis*, to the above Rules, on the understanding that only subheadings at the same level are comparable. For the purposes of this Rule the relative Section and Chapter Notes also apply, unless the context otherwise requires.

The HTSUS subheadings under consideration are the following:

- | | |
|------------|--|
| 4202 | Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper: |
| 4202.12 | Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels and similar containers:

With outer surface of plastics or of textile materials:

With outer surface of plastics |
| *** | |
| 4420 | Wood marquetry and inlaid wood; caskets and cases for jewelry or cutlery and similar articles, of wood; statuettes and other ornaments, of wood: wooden articles of furniture not falling within chapter 94: |
| 4420.90 | Other:

Jewelry boxes, silverware chests, cigar and cigarette boxes, microscope cases, tool or utensil cases and similar boxes, cases and chests, all the foregoing of wood:

Other: |
| 4420.90.45 | Not lined with textile fabrics. |
| 4420.90.65 | Lined with textile fabrics |

In understanding the language of the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System, 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).

Chapter Note 1 (e), Chapter 44, HTSUS, provides that the chapter does not cover articles of heading 4202. The Chapter Notes have the same legal force as the text of the headings. *See Roche Vitamins, Inc. v. United States*, 772 F.3d 728 at 730 (Fed. Cir. 2014). The EN to heading 4202 states that “this heading covers only the articles specifically named therein and similar containers.” Therefore, the first question presented is whether the above described articles are classified in heading 4202, HTSUS.

The initial question in this case is whether the nesting boxes described above are considered “trunks” which is listed as the first exemplar in heading 4202, HTSUS. Neither the HTSUS nor the ENs define the term “trunk.”

When terms are not defined in the HTSUS or the ENs, they are construed in accordance with their common and commercial meanings, which are presumed to be the same. In determining the common meaning of a term in the tariff, courts may and do consult dictionaries, scientific authorities and other reliable sources of information. *Nippon Kogaku (USA), Inc. v. United States*, 673 F.2d 380 (C.C.P.A. 1982); *Carl Zeiss, Inc. v. United States*, 195 F.3d 1375 (Fed. Cir. 1999.)

Heading 4202 is an *eo nomine* provision for trunks because it covers the article by name. Since we cannot determine the meaning of the word “trunk” based on the HTSUS or the ENs, we examine dictionary definitions of the word “trunk.”

The word “trunk” is defined as: “a large sturdy box or chest for holding or transporting clothes, personal effects, or other articles.” Trunk Definition, DICTIONARY.COM, <http://dictionary.reference.com/browse/trunk> (last visited Apr. 17, 2018). Based on the dictionary definition, trunks are containers designed to transport various items of clothing and personal effects; they are rugged containers designed for travel; they may have a lock to secure the items and they likely have compartments, trays or drawers to organize clothing and personal effects.

The three nesting boxes are not designed to transport various items of clothing and personal effects, do not have handles, compartments, trays or drawers, or a lock to provide security and are not rugged or durable to withstand the rigors of travel. The containers involved in this case are primarily decorative articles that might store a few items if not nested, but are not primarily utilitarian. Accordingly, we find that the nesting boxes described in this case are not “trunks.”

Further, the articles described above are not “similar containers” to the list of exemplars in heading 4202, HTSUS. The Court of International Trade held in *Totes, Inc. v. United States*, 865 F. Supp. 867 (Ct. Int’l Trade 1994), that containers that organized an automobile trunk were classified in heading 4202, HTSUS, as “similar containers” by application of *eiusdem generis* (which means of the same kind). The court noted that the individual exemplars are “disparate in their physical characteristics, purposes and uses ranging from such small containers as spectacle and cigarette cases, wallets, and tobacco pouches to such large containers as trunks and suitcases.” The court then concluded that the listed exemplars in heading 4202 possess four essential characteristics or common purposes that unite them: to organize, store, protect and carry various items. Since the automobile trunk organizers shared the four essential characteristics of the exemplars, the court concluded that they were properly classified in heading 4202, HTSUS.

In *Otter Products, LLC v. United States*, 70 F. Supp. 3d 1281 (Ct. Int’l Trade 2015), *aff’d* in 834 F.3d 1369 (Fed. Cir. 2016), Otterbox cellphone cases of the Commuter and Defender series (cellphone cases comprised of either a rigid outer plastic shell and a silicone mid-layer or a clear protective plastic membrane, a high-impact polycarbonate shell, a plastic belt clip holster and a durable outer silicone cover) were classified in subheading 3926.90.99, HTSUS and not in heading 4202, HTSUS. Of the four essential characteristics of “similar containers” in heading 4202, HTSUS, the court found that

only one, “protecting” was clearly shared with the subject cases and the Otterbox products. Accordingly, the court concluded that the Otterbox products were not classified in heading 4202, HTSUS.

The following cases are distinguishable.¹ In accordance with *Otter Products*, the nesting boxes, which possess at most one or none of the characteristics of the containers classified in heading 4202 as “similar containers,” are not properly classified as “similar containers.” Accordingly, we find that the nesting boxes are not classified in heading 4202 as “similar containers.”

Since we have concluded that the nesting boxes are not classified in heading 4202, HTSUS, and the nesting boxes are made of wood (MDF), we look at heading 4420, HTSUS. The EN for heading 4420 states that “articles of this heading may be made of ordinary wood or particle board or similar board, fiberboard, laminated wood or densified wood.”²

Because the nesting boxes are made of wood³, we conclude that the nesting boxes are classified in heading 4420, HTSUS. Having determined that the subject merchandise is classified in heading 4420, HTSUS, we apply GRI 6 to determine the proper subheading classification.

Heading 4420, HTSUS, covers among other things, “cases for jewelry or cutlery and similar articles, of wood...” Subheading 4420.90 lists jewelry boxes, silverware chests, cigar and cigarette boxes, microscope cases, tool or utensil cases and similar boxes....The EN to heading 4420 states that the heading covers a wide variety of articles of wood...such as... small furnishing goods. The list of exemplars set forth above are all small wood boxes or containers designed to hold specific small objects (and, except for microscope cases, contain small household goods) that would be placed on a table, desk or other piece of furniture. The wooden nesting boxes are articles of wood that

¹ In NY N234128, dated November 9, 2012, the container classified in heading 4202, HTSUS, had a removable plastic tray, a chrome carrying handle, a combination lock for security and a side keyhole. In NY N224635, dated July 9, 2012, the container, which was classified in heading 4202, HTSUS, had a handle and a latch closure. In NY N103895, dated May 7, 2010, the container had an interior compartment, a metal carrying handle and a metal latch that secures with a key. Unlike the containers that are the subject of the NY rulings cited above that are classified in heading 4202, the nesting boxes do not have a handle, lock, drawers or a tray; and are not durable. In this case, the nesting boxes are primarily decorative. Therefore, the nesting boxes are not useful for carrying and are of limited use for protecting. Because of their size, they are useful only for storage of small items, if not nested inside each other. If the boxes are nested inside each other, they possess none of the features of the exemplars as a primary characteristic.

² Consistent with chapter note 1(o), chapter 44, HTSUS, chapter 44 excludes articles of chapter 94. Therefore, we must next consider whether the articles fall within chapter 94, HTSUS. Chapter 94 provides, as follows: Furniture; bedding, mattresses, mattress supports, cushions and similar stuffed furnishings; lamps and lighting fittings, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like; prefabricated buildings. Chapter Note 2 to chapter 94, HTSUS, states that the articles referred to in headings 9401 to 9403 are to be classified in those headings only if they are designed for placing on the floor or ground. Based on size, the nesting boxes in this case are not designed for placing on the floor or ground and therefore, are not classified in chapter 94.

³ While the nesting boxes are covered in plastic sheeting, they remain a wooden article. See NY L82942, dated August 30, 2005. In NY L82942, dated August 30, 2005, CBP classified a round box measuring 18.5” in diameter and 22” high made of MDF covered on the inside and outside with faux plastic leather in subheading 4420.90.45, HTSUS. The lid has a decorative patchwork design and genuine leather trim. The MDF greatly exceeded the other materials in weight and value.

are small furnishing goods; they are of the size and design that they would be placed on furniture and used to contain small household objects.

In comparable cases, CBP has classified wooden nesting containers in subheading 4420.90, HTSUS. For instance, in NY R04221, dated June 27, 2006, in which CBP classified hand painted floral designed plywood nesting containers lined in velvet in subheading 4420.90.65, HTSUS (there were three (3) sizes: 17.3" L x 7.5" W x 8.7" H; 20.5" L x 10.2" W x 12.2" H; and 25.2" L x 13.4" W x 15.4" H).

In NY N032230, dated July 18, 2008, small unlined containers made of wood, with a PVC handle, an iron clasp closure, and with iron rivets were classified in subheading 4420.90.45, HTSUS. They measured 4" in length x 2 3/4" in width x 2 3/4" in height.

In NY R01495, dated March 3, 2005, CBP classified three sizes of decorative spruce wood and plywood containers placed on top of each other in subheading 4420.90.45, HTSUS. The rectangular-shaped containers have hinged lids, metal clasp closures and unlined interiors. The three sizes are: 17.25" x 9.5" x 7.75"; 22.5" x 12.5" x 11.5"; and 30.5" x 19.75" x 15".

Similarly, in NY R01546, dated March 3, 2005, CBP classified three sizes of hand painted floral nesting containers made of plywood with hinged lids and metal clasp closures lined with a "velvety paper" in subheading 4420.90.45, HTSUS.

In NY N238344, dated March 12, 2013, two wooden nesting containers made of MDF covered with a woven textile, trimmed with polyurethane strips and metal hardware, and lined with non-woven textile were classified by CBP in subheading 4420.90.80, HTSUS.

Lastly, in NY I89663, dated January 30, 2003, unlined nesting rectangular-shaped containers made of wood and covered on the outside with decorative leather straps were classified by CBP in subheading 4420.90.80, HTSUS.

Like the exemplars listed in subheading 4420.90, HTSUS, the goods in the instant case are small wood boxes or containers designed to hold small household goods that would be placed on a table, desk or other piece of furniture. Further, like the merchandise in NY L82942, where plastic sheeting covers the MDF and there is a metal clasp, the essential character of the good is determined by the MDF as it exceeds the weight of other components and contributes more to the storage role of the good.

Based on the above, we find that the three wooden nesting boxes are classified in subheading 4420.90, HTSUS. Since the three nesting boxes have a textile lining, they are classified in subheading 4420.90.65, HTSUS.

HOLDING:

Pursuant to GRIs 1 and 6, the three nesting boxes are classified in subheading 4420.90.65, HTSUS. The column one, general rate of duty is free.

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

EFFECT ON OTHER RULINGS:

NY N248789 is revoked in accordance with the above analysis.

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

Sincerely,
CRAIG T. CLARK,
Director
Commercial and Trade Facilitation Division



19 CFR PART 177

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

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

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

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is modifying three ruling letters and revoking two ruling letters concerning tariff classification of embroidered motifs under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 53, No. 48, on January 2, 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 May 10, 2020.

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), a notice was published in the *Customs Bulletin*, Vol. 53, No. 48, on January 2, 2020, proposing to modify three ruling letters and revoke two ruling letters pertaining to the tariff classification of embroidered motifs. 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") B85277, dated May 13, 1997, NY 801210, dated August 22, 1994, NY 889565, dated August 26, 1993, NY 800463, dated July 24, 1994, and NY 881559, dated January 6, 1993, CBP classified embroidered motifs imported in strips in heading 5810, HTSUS, specifically in subheading 5810.92.0040, HTSUS, or its successor subheading 5810.92.1000, HTSUS, which provides for "Embroidery in the piece, in strips or in motifs: Other embroidery: Of man-made fibers: Badges, emblems and motifs." CBP has reviewed NY B85277, NY 801210, NY 889565, NY 800463, and NY 881559, and has determined the ruling letters to be in error. It is now CBP's position that embroidered motifs are properly classified in subheading 5810.92.90, HTSUS, which provides for "Embroidery in the piece, in strips or on motifs: Other embroidery: Of man-made fibers: Other."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is modifying NY B85277, NY 801210, and NY 889565, and revoking NY 800463 and NY 881559, and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter ("HQ") H301424, set forth as an attachment to this notice.

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

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

CRAIG T. CLARK,
Director

Commercial and Trade Facilitation Division

Attachment

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

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

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

DEAR MR. GONZALEZ,

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), a notice of the proposed action was published in the Customs Bulletin, Vol. 53, No. 48, on January 2, 2020. No comments were received in response to the proposed action.

FACTS:

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

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

NY 889565 classified four styles of fully beaded embroidered motifs imported in strip form and one style of beaded fringe. At issue here was the classification of the embroidered motifs, items BT-501, WT-235, WT-222 and WT-227. BT-501 was a gold-colored ornament trim with beads and sequins, measuring approximately 3 ¼ inches by 2 ½ inches. WT-235 was a black leaf-shaped motif measuring two inches by two inches. WT-222 was a bow tie-shaped motif with dangling plastic imitation pearl beads. WT-227 was a cluster motif with various sizes of imitation plastic pearls sewn onto the ground fabric or dangling. These four motifs had beads embroidered to their sheer plain woven ground fabrics, which were continuous strips attaching the motifs for the convenience of transportation and to facilitate attachment. The ground fabrics, which were assumed to be of man-made fibers, could be cut without damaging the appliqué.

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

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

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

ISSUE:

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

LAW AND ANALYSIS:

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

The HTSUS provisions under consideration are as follows:

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

* * * *

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

EN 58.10 provides, in relevant part:

(III) APPLIQUE WORK

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

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

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

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

* * * *

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

The classification of the subject embroidered motifs will depend on their condition upon importation, i.e., whether they are imported individually or in the piece. We note that although the subject merchandise is referred to as “motifs,” a “motif” is merely “a single or repeated design or color.” *Merriam-Webster Dictionary*, <https://www.merriam-webster.com/dictionary/motif> (last accessed Oct. 9, 2019). The subject merchandise consists of motifs, but it must be determined whether they are “in the form of motifs” for tariff classification purposes. EN 58.10 distinguishes embroidery “in the piece or in strips of various widths” from embroidery “in the form of motifs.” Embroidery is “in the form of motifs” if it is imported as individual pieces and its sole purpose is to be incorporated or appliquéd as elements of embroidery. *See, e.g.*, Headquarter Ruling Letter (“HQ”) 957317 (Mar. 10, 1995) (classifying embroidered motifs in subheading 5810.92.10, HTSUS, as “in the form of motifs” because they were no longer “in the piece” once cut to irregular shapes to accommodate embroidered designs and to enable a dress designer to use those designs to his/her needs.) Subsequent separation into individual pieces after importation does not preclude the embroidery from being considered in the piece. Therefore, the fact that the subject embroidered motifs could be easily cut apart into individual pieces, and may be intended to do so, does not make them eligible for classification as an individual motif. The subject embroidered motifs fall within the scope of “in the piece or in strips of various widths” under EN 58.10 because they are imported in continuous strips or by the yard and bear a series of identical designs.

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

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

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

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

lengths or by the yard, the user can apply the motifs in the form they desire, whether that be as individual appliqués or as strips of various lengths. Because the embroidered motifs do not need to be separated to be commercially capable of use, we find that the subject embroidered motifs are not classifiable according to their individual character.

In accordance with the above, the subject embroidered motifs are classified as “in the piece or in strips of various widths.” Embroidery, of man-made fibers, that is imported in continuous lengths is classified under subheading 5810.92.90, HTSUS. *See, e.g.*, NY N260125 (Jan. 6, 2015); NY N137843 (Jan. 13, 2011); and NY G86149 (Jan. 19, 2001) (classifying a floral motif imported in continuous lengths to be used as trimming). Thus, the subject embroidered motifs are classified in subheading 5810.92.90, HTSUS.

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

HOLDING:

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

EFFECT ON OTHER RULINGS:

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

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

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

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

Sincerely,
CRAIG T. CLARK,
Director
Commercial and Trade Facilitation Division



19 CFR PART 177

**LIMITATION OF THE APPLICATION OF THE DECISIONS
OF THE COURT OF INTERNATIONAL TRADE AND THE
COURT OF APPEALS FOR THE FEDERAL CIRCUIT IN
IRWIN INDUSTRIAL TOOL COMPANY V. UNITED STATES**

**222 F. SUPP. 3D 1210 (CIT 2017),
AFFIRMED IN 920 F. 3D 1356 (FED. CIR. 2019)**

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

ACTION: Notice of U.S. Customs and Border Protection’s (CBP) limitation of the application of the decisions of the Court of Appeals for the Federal Circuit and the Court of International Trade (“CIT”) in the case of *Irwin Industrial Tool Company v. United States*, 222 F. Supp. 3d 1210 (CIT 2017) (“*Irwin I*”), motion for reconsideration *denied in* 269 F. Supp. 3d 1294 (2017) (“*Irwin II*”), affirmed in 920 F. 3d 1356 (Fed. Cir. 2019), to the entries before the courts in that litigation (“*Irwin III*”) (collectively, *Irwin*).

SUMMARY: Pursuant to section 625(d), Tariff Act of 1930 (19 U.S.C. § 1625(d)), as amended (19 U.S.C. § 1625(d)), and § 177.10(d) of the CBP Regulations (19 C.F.R. § 177.10(d)), this notice advises interested parties that CBP is limiting the application of the decisions of the Court of International Trade and the Court of Appeals for the Federal Circuit (“CAFC”) in *Irwin Industrial Tool Company v. United States* to the merchandise in the specific entries before the Court and to locking pliers identical in all material respects to the merchandise in those entries before the Court. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 53, No. 42, on November 20, 2019. Two comments were received in response to this notice.

EFFECTIVE DATE: Pursuant to 19 C.F.R. § 177.10(e), this action is effective upon the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Reema Bogin, Chemicals, Petroleum, Metals and Miscellaneous Articles Branch, Regulations and Rulings, Office of Trade, at reema.bogin@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION: BACKGROUND

Pursuant to 19 U.S.C. § 1625(d), a notice was published in the *Customs Bulletin*, Vol. 53, No. 42, on November 20, 2019, proposing to limit the application of the decisions of the Court of International Trade and the Court of Appeals for the Federal Circuit in *Irwin Industrial Tool Company v. United States* to the merchandise in the specific entries before the Court and to locking pliers identical in all material respects to the merchandise in those entries before the Court. Two comments were received in response to the notice.

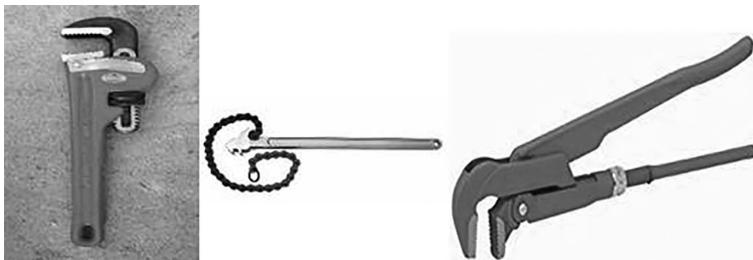
Irwin involved the classification of several styles of hand tools, including straight jaw locking pliers, large jaw locking pliers, curved jaw locking pliers with and without wire cutters, and long nose locking pliers with wire cutters. Based on the function they perform and the manner in which they operate, CBP classified these tools as “wrenches” under heading 8204 of the Harmonized Tariff Schedule of the United States (“HTSUS”), and denied each of Irwin Tool Company’s (“Irwin”) protests to classify them as “pliers” under heading 8203, HTUS. Irwin then filed suit in the CIT, challenging CBP’s classification of the merchandise. The CIT denied CBP’s motion for summary judgment that the tools are properly classified as wrenches under heading 8204, HTSUS, and granted Irwin’s motion for summary judgment that the tools are properly classified as pliers under heading 8203, HTSUS.

At the CIT, CBP relied on dictionary definitions in support of its argument that a wrench is a “tool used to grasp an object and then turn or twist it (*i.e.*, apply torque).” See *Irwin III*, 920 F. 3d 1356, 1358 (citing Appellant’s Br. 17). The CIT found that although a wrench may be designed for a particular use, nothing about the tariff term for “wrenches” suggests a type of use such that the court should declare the tariff term one controlled by use. *Irwin I*, 222 F. Supp. 3d at 1220. Therefore, the CIT concluded that “wrench” is an *eo nomine* term, not one controlled by use. *Id.* It rejected CBP’s proffered definition and defined a wrench referring only to its physical attributes as a “hand tool that has a head with jaws or socks having surfaces adapted to snugly or exactly fit and engage the head of a fastener (as a bolt-head or nut) and a singular handle with which to leverage hand pressure to turn the fastener without damaging the fastener’s head.” *Id.* at 1221.

The CIT held that the products under consideration were not wrenches because they incorporate two handles and jaws that do not necessarily snugly fit the head of a fastener. The CIT specifically noted that the “Defendant has not established that Plaintiff’s tools

have a head with jaws having surfaces adapted to snugly or exactly fit and engage the head of a fastener (such as a bolt-head or nut). Defendant has not established that Plaintiff's tools have a singular handle with which to exert pressure to turn a fastener without damaging the fastener's head." *Irwin I*, 222 F. Supp. 3d. at 1226–27. Instead, the CIT found that the merchandise is classified as pliers under heading 8203, HTSUS, because the tools "1) are versatile hand tools, 2) have two handles, and 3) have two jaws that are flat or serrated and on a pivot, which can be squeezed together to enable the tools to grasp an object." *Irwin II*, 269 F. Supp. 3d 1302.

CBP appealed the decision of the CIT, urging, among other things, that the definition of a wrench proffered therein was too narrow. The definition would not include chain wrenches or oil wrenches, which do not have jaws at all, or pipe wrenches, which sometimes have two handles and have serrated jaws not designed for use on a fastener, or wrenches containing a second lever to lock the jaws around the pipe or fastener. Below are pictures of some of the wrenches the court's definition would exclude:



Furthermore, the description of a wrench in merely physical terms ignores the key difference between a wrench and pliers: the wrench's greater ability to apply torque to the grasped object. However, the Court of Appeals for the Federal Circuit ("CAFC") affirmed the trial court's definition of the term "wrenches" in heading 8204 and held that the tools at issue were properly classified as pliers.

The authority of CBP to limit the application of court decisions involving the classification of imported merchandise has been recognized by the United States Supreme Court and by the U.S. Congress. In *United States v. Stone & Downer*, 274 U.S. 225, 71 L. Ed. 1013, 47 S Ct. 616 (1927), the Supreme Court recognized that the principle of *res judicata* does not apply to judicial decisions involving customs classification of merchandise. In *Stone & Downer*, the Court stated, in relevant part:

The effect of adjudicated controversies arising over classification of importations may well be distinguished from the irrevocable

effect of ordinary tax litigation tried in the regular courts. There of course should be an end of litigation as well in customs matters as in other tax cases; but circumstances justify limiting the finality of the conclusion in customs controversies to the identical importation. . . The evidence which may be presented in one case may be much varied in the next. The important of a classification and its far-reaching effect may not have been fully understood or clearly known when the first litigation was carried through.

Stone & Downer, 274 U.S. at 235.

The CAFC in *Schott Optical Glass, Inc. v. United States*, 750 F. 2d 62, 64 (1984), citing *Stone & Downer*, acknowledged “that in customs classification cases a determination of fact or law with respect to one importation is not *res judicata* as to another importation of the same merchandise by the same parties. The opportunity to relitigate applies to questions of construction of the classifying statute as well as to questions of fact as to the merchandise.”

CBP and Legacy Customs have a long history of limiting the application of certain judicial decisions adverse to the government when it was decided that the same issues should be relitigated in regards to merchandise not identical to those in a particular judicial decision. Congress specifically recognized Customs’ authority by enacting 19 U.S.C. § 1625(d), which states:

(d) Publication of customs decisions that limit court decisions

A decision that proposes to limit the application of a court decision shall be published in the Customs Bulletin together with notice of opportunity for public comment thereon prior to a final decision.

In addition, the CBP Regulations provide at 19 C.F.R. § 177.10(d):

Limiting rulings. A published ruling may limit the application of a court decision to the specific article under litigation, or to an article of a specific class or kind of such merchandise, or to the particular circumstances or entries which were the subject of the litigation.

For the reasons set forth above, CBP believes that the definition applied by the court unduly limits the scope of the term wrench and precludes articles that function as wrenches and are commonly and commercially known as wrenches from classification as wrenches. Accordingly, CBP proposes to limit the application of the decisions of the Court of International Trade and the Court of Appeals for the

Federal Circuit in the case of *Irwin Industrial Tool Company v. United States* to the merchandise in the specific entries before the courts and to locking pliers identical in all material respects to those in *Irwin*. In all other cases, CBP will continue to define a wrench as a tool with a special ability to fixedly grasp an object and allow the user to exert a twisting or wrenching force. A wrench usually contains fixed and adapted jaws or sockets or adjustable jaws, one of which is fixed at the end of a lever for holding or turning a bolt, pipe, or other object. A wrench may have a second handle or lever which serves to lock and release the moveable jaw. Once locked, no force is needed to compress the handles. In the case of a chain pipe wrench or oil wrench, no jaws are necessary.

After CBP's proposed action to limit the application of the CIT and CAFC's decisions in *Irwin* was published in the *Customs Bulletin*, Vol. 53, No. 42, November 20, 2019, it received two comments in response to the notice, which we will address below.

Comment:

One commenter is requesting that CBP clearly define those products and parameters that would be considered "identical in all material respects" to the locking pliers in *Irwin*. The commenter asserts that CBP's proposed limitation of the *Irwin I* and *II* decisions creates unnecessary ambiguity as it fails to provide clear definitions for substantially identical products. To address this purported ambiguity, the commenter requests that CBP provide clear guidance on the definition it intends to apply to classify similar products and to confirm that "locking pliers," as the term is commercially recognized, are appropriately classified in heading 8203, HTSUS.

In particular, the commenter sets forth the following definition for locking pliers:

Locking pliers are pliers that can be locked into a single position, using an over-center action that allows them to be temporarily locked into place. They generally incorporate a bolt that adjusts the spacing of the jaws, and a lever that allows the jaw to release after locked. The jaws are typically serrated. The shape and size of the jaws can vary and are available in many different configurations, such as needle-nose locking pliers, locking clamps, straight, curved, and long nose. . .

CBP Response:

CBP agrees that merchandise that meets the above definition of "locking pliers" would be considered "identical in all material respects" to the locking pliers in *Irwin*.

Comment:

A second commenter is requesting that CBP clarify the intended scope of its limitation of *Irwin I* and *II* to confirm that it will apply the definition of “pliers” as determined by the CIT and the CAFC to all products, including locking pliers, that satisfy that definition. They also assert that CBP can state that it is limiting *Irwin I* and *II* only to the extent that the definition of wrenches established by the decisions does not fully account for the range of tools that are used to turn work pieces without applying compressive pressure, such as chain wrenches. In particular, the commenter requests that CBP either abandon its proposal to limit the *Irwin I* and *II* decisions or specifically limit it to note that CBP will continue to classify merchandise other than locking pliers as wrenches provided it has a single handle and a means of engaging the work piece without applying compressive force to grip the item.

CBP Response:

CBP asserts that it will apply the definition of “pliers” as determined by the CIT and the CAFC in *Irwin I* and *II*, to locking pliers identical in all material respects to those in *Irwin*. We also confirm that this action limits the *Irwin* decisions to the extent that the definition of wrenches therein does not fully account for the range of tools that are classified as “wrenches” (i.e. those that are used to turn work pieces without applying compressive pressure, including chain wrenches). For example, oil wrenches and pipe wrenches, which sometimes have two handles and serrated jaws not designed for use on a fastener, are also “wrenches” of heading 8204, HTSUS. Because the definition of wrench in *Irwin I* and *II* was too narrow and unduly limits the scope of the term by precluding various articles that function as wrenches, we find our proposed limitation to be proper in order to address this discrepancy while continuing to apply the decisions in *Irwin* to locking pliers identical in all material respects to those in *Irwin*.

For the reasons set forth above, CBP is limiting the application of the decisions of the Court of International Trade and the Court of Appeals for the Federal Circuit in the case of *Irwin Industrial Tool Company v. United States* to the merchandise in the specific entries before the courts and to locking pliers identical in all material respects to those in *Irwin*. This action is effective upon the date of publication in the *Customs Bulletin*.

CRAIG T. CLARK,
Director

Commercial and Trade Facilitation Division

19 CFR PART 177**REVOCATION OF THREE RULING LETTERS AND
REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF INSTANT NOODLE SOUP**

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

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

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking three ruling letters concerning tariff classification of instant noodle soup under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 53, No. 48, on January 2, 2020. One comment was received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after May 10, 2020.

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), a notice was published in the *Customs Bulletin*, Vol. 53, No. 48, on January 2, 2020, proposing to revoke three ruling letters pertaining to the tariff classification of instant noodle soup. 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") N125119, dated October 12, 2010, Headquarters Ruling Letter ("HQ") 953104, dated April 1, 1993, and HQ 086309, dated March 1, 1990, CBP classified instant noodle soup in heading 1902, HTSUS, which provides for "Pasta, whether or not cooked or stuffed (with meat or other substances) or otherwise prepared, such as spaghetti, macaroni, noodles, lasagna, gnocchi, ravioli, cannelloni; couscous, whether or not prepared." CBP has reviewed NY N125119, HQ 953104, and HQ 086309 and has determined the ruling letters to be in error. It is now CBP's position that instant noodle soup is properly classified, in heading 2104, HTSUS, specifically in subheading 2104.10.00, HTSUS, which provides for "Soups and broths and preparations therefor; homogenized composite food preparations: Soups and broths and preparations therefor."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY N125119, HQ 953104, and HQ 086309, and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in HQ H304896, set forth as an attachment to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

CRAIG T. CLARK,
Director

Commercial and Trade Facilitation Division

Attachment

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

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

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

DEAR MS. ROWE,

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), a notice of the proposed action was published in the Customs Bulletin, Vol. 53, No. 48, on January 2, 2020. CBP received one comment in support of the proposed action.

FACTS:

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

The product in HQ 086309 was a soup product manufactured in Japan consisting of dried, uncooked wonton noodles and a sealed packet of a soup

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

base. The consumer prepared the soup by adding a specified amount of boiling water to the ingredients and then simmering the mixture for two minutes. HQ 086309 classified the soup product under subheading 1902.19.40, HTSUS, which includes uncooked pasta packaged with other ingredients, provided that the pasta has not been otherwise prepared.² CBP held that the mere inclusion of a sealed soup base packet in the same package as the noodles did not constitute a “preparation” of the pasta for classification purposes and that the noodle and soup base product was analogous to “pasta packaged with sauce,” which is one of the exemplars noted in subheading 1902.19, HTSUS.

ISSUE:

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

LAW AND ANALYSIS:

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

The following HTSUS headings are under consideration:

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

* * *

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

EN 19.02 provides, in relevant part, the following:

The heading does not cover:

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

* * *

EN 21.04 provides, in pertinent part, the following:

(A) SOUPS AND BROTHS AND PREPARATIONS THEREFOR

This category includes:

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

(1) Preparations for soups or broths requiring only the addition of water, milk, etc.

(2) Soups and broths ready for consumption after heating.

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

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

* * *

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

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

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

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

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

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

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

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

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

HOLDING:

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

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

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

EFFECT ON OTHER RULINGS:

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

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

Sincerely,

CRAIG T. CLARK,

Director

Commercial and Trade Facilitation Division



**PROPOSED REVOCATION OF RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF EVAPORATED CREAMER**

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

ACTION: Notice of proposed revocation of ruling letter and 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) intends to revoke a ruling letter concerning tariff classification of evaporated creamer 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 April 10, 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 D. Canedo at (202) 325-0439.

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), this notice advises interested parties that CBP is proposing to revoke a ruling letter pertaining to the tariff classification of evaporated creamer. Although in this notice, CBP is specifically referring to New York Ruling Letter ("NY") N305031, dated July 24, 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 N305031, CBP classified the evaporated creamer in heading 1901, HTSUS, specifically in subheading 1901.90.6100, HTSUSA, 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 1901.90.9195, 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.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke NY N305031 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H305298, 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

N305031

July 24, 2019

CLA-2-19:OT:RR:NC:N2:231

CATEGORY: Classification

TARIFF NO.: 1901.90.6100; 1901.90.6200

MR. ROBERT AVON

MTRES HOLDING INTERNATIONAL LIMITED

CAMINO REAL 961, OFFICE 502

SAN ISIDRO, LIMA 15074

PERU

RE: The tariff classification of Evaporated Creamer from Malaysia

DEAR MR. AVON:

In your letter dated June 27, 2019, you requested a tariff classification ruling.

The subject merchandise is “Evaporated Creamer”. The product is composed of milk, palm oleins, maltodextrin, emulsifier, stabilizers, vitamins A, and D³. You have stated that the product is prepared by homogenizing a recombined mix of palm oil powder (8 percent palm fat) and milk whey powder (25 percent milk solids). Evaporated Creamer is packed in cans with a net weight of 170 grams, 390 grams, and 400 grams, respectively.

The applicable subheading for the Evaporated Creamer, if imported in quantities that fall within the limits described in additional U.S. note 10 to chapter 4, will be 1901.90.6100, Harmonized Tariff Schedule of the United States (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.” The rate of duty will be 16 percent ad valorem.

If the quantitative limits of additional U.S. note 10 to chapter 4 have been reached, the product will be classified in subheading 1901.90.6200, HTSUS, which provides for “Food preparations of goods of headings 0401 to 0404, not containing cocoa...: Other: Other: Other. The rate of duty will be \$1.035 per kilogram plus 13.6 percent ad valorem. In addition, products classified in subheading 1901.90.6200, HTSUS, will be subject to additional duties based on their value, as described in subheadings 9904.04.50 to 9904.05.01, HTSUS.

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

Importations of this merchandise are subject to regulations administered by various U.S. agencies. Requests for information regarding applicable regulations administered by the U.S. Department of Agriculture (USDA) may be addressed to that agency at the following location:

USDA

APHIS, VS, NCIE

Products Program

4700 River Road, Unit 40

Riverdale, MD 20737-1231

Tel: (301) 851-3300

E-mail: AskNIES.Products@aphis.usda.gov

This merchandise is subject to The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (The Bioterrorism Act), which is regulated by the Food and Drug Administration (FDA). Information on the Bioterrorism Act can be obtained by calling FDA at telephone number (301) 575-0156, or at the Web site www.fda.gov/oc/bioterrorism/bioact.html.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Ekeng Manczuk at ekeng.b.manczuk@cbp.dhs.gov.

Sincerely,

STEVEN A. MACK

Director

National Commodity Specialist Division

HQ H305298
OT:RR:CTF:FTM: H305298 CDM
CATEGORY: Classification
TARIFF NO.: 1901.90.9195

MR. RENATO MONTENEGRO R.
MTRES HOLDING INTERNATIONAL LIMITED
CRAIGMUIR CHAMBERS
PO BOX 71
ROAD TOWN
BRITISH VIRGIN ISLANDS

RE: Revocation of NY N305031 (classification of evaporated creamer from Malaysia)

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.

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:

Other:

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

Dairy preparations containing over 10 percent by weight of milk solids

1901.90.61

Described in additional U.S. note 10 to chapter 4 and entered pursuant to its provisions

* * *

1901.90.91

Other:

Other:

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 head-

ing 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.

Sincerely,

CRAIG T. CLARK,

Director

Commercial and Trade Facilitation Division



19 CFR PART 177

**REVOCATION OF THREE RULING LETTERS AND
MODIFICATION OF ONE RULING LETTER, AND
REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF DORAMECTIN,
IVERMECTIN, ABAMECTIN TECHNICAL, AND
MILBEMECTIN TECHNICAL**

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

ACTION: Notice of revocation of three ruling letters, modification of one ruling letter, and of revocation of treatment relating to the tariff classification of Doramectin, Ivermectin, Abamectin Technical, and Milbemectin Technical.

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 three ruling letters concerning tariff classification of Doramectin, Ivermectin, Abamectin Technical, and is modifying one ruling letter concerning the tariff classification of Milbemectin Technical under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 53, No. 45, on December 11, 2019. Two comments were received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after May 10, 2020.

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to 19 U.S.C. § 1625(c)(1), a notice was published in the *Customs Bulletin*, Vol. 53, No. 45, on December 11, 2019, proposing to revoke three ruling letters pertaining to the tariff classification of Doramectin, Ivermectin and Abamectin Technical, and to modify one ruling letter pertaining to the tariff classification of Milbemectin Technical. 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”) 869250, dated February 6, 1992, CBP classified the Doramectin in heading 2941, specifically in sub-heading 2941.90.50, HTSUS, which provides for “Antibiotics: Other: Other: Other.” In NY H85785, NY K86757, and NY H87465, CBP classified the Ivermectin, the Abamectin Technical, and the Milbe-

mectin Technical, respectively, in heading 3824, specifically in subheading 3824.90.91, HTSUS, which provides for “Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included; residual products of the chemical or allied industries, not elsewhere specified or included: Other: Other: Other: Other: Other.” CBP has reviewed NY 869250, NY H85785, NY K86757 and NY H87465, and has determined the ruling letters to be in error. It is now CBP’s position that the Doramectin, the Ivermectin, the Abamectin Technical, and the Milbemectin Technical are properly classified, in heading 2932, HTSUS, specifically in subheading 2932.20.50, HTSUS, which provides for “Heterocyclic compounds with oxygen hetero-atom(s) only: Lactones: Other: Other.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY 869250, NY H85785 and NY K86757, and modifying NY H87465, and is revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter (“HQ”) H303359, set forth as an attachment to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

CRAIG T. CLARK,
Director

Commercial and Trade Facilitation Division

Attachment

HQ H303359
OT:RR:CTF:CPMMA H303359 APP
CATEGORY: Classification
TARIFF NO.: 2932.20.5050

MR. MICHAEL O'NEILL
O'NEILL & WHITAKER, INC.
1809 BALTIMORE AVENUE
KANSAS CITY, MO 64108

RE: Reconsideration of NY 869250, NY H85785, NY K86757, and NY H87465; Tariff classification of Doramectin, Ivermectin, Abamectin Technical, and Milbemectin Technical

DEAR MR. O'NEILL:

This is to inform you that U.S. Customs and Border Protection (“CBP”) has reconsidered New York Ruling Letter (“NY”) 869250, dated February 6, 1992 (issued to Pfizer, Inc.); NY H85785, dated January 10, 2002 (issued to Austin Chemical Company); NY K86757, dated July 26, 2004 (issued to Nations Ag II); and NY H87465, dated January 24, 2002 (issued to Sumitomo Corporation of America), regarding the classification, under the Harmonized Tariff Schedule of the United States (“HTSUS”), of Doramectin, Ivermectin, Abamectin Technical, and Milbemectin Technical.

In NY 869250, CBP classified the Doramectin under heading 2941, specifically under subheading 2941.90.50, HTSUS, free of duty, which provided for “Antibiotics: Other: Other: Other.” In NY H85785, NY K86757, and NY H87465, CBP classified the Ivermectin, the Abamectin Technical, and the Milbemectin Technical, respectively, under heading 3824, specifically under subheading 3824.90.91, HTSUS, at a duty rate of 5% *ad valorem*, which provided for “Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included; residual products of the chemical or allied industries, not elsewhere specified or included: Other: Other: Other: Other: Other.” We have determined that NY 869250, NY H85785, NY K86757, and NY H87465 are in error. Therefore, for the reasons set forth below, we hereby revoke NY 869250, NY H85785 and NY K86757, and modify NY H87465.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), a notice was published in the *Customs Bulletin*, Volume 53, No. 45, on December 11, 2019, proposing to revoke NY 869250, NY H85785 and NY K86757, and to modify NY H87465, and to revoke any treatment accorded to substantially identical transactions. One comment in favor of and one in opposition to the instant action were received in response to the notice and are addressed below.

FACTS:

The Doramectin from Japan in NY 869250 is described as: “[Chemical Abstract Number (“CAS”)] 117704–25–3, ... used as an antiparasitic agent for cattle and swine ... it will be imported in bulk form.” According to the USP Dictionary online, the Doramectin’s chemical name is known as: Avermectin

A1a, 25-cyclohexyl-5-O-demethyl-25-de(1-methylpropyl)-; (2) (2aE,4E,8E)-(5'S,6S,6'R,7S,11R,13S,15S,17aR,20R,20aR,20bS)-6'-cyclohexyl-5',6,6',7,10,11,14,15,17a,20,20a,20b-dodecahydro-20,20b-dihydroxy-5',6,8,19-tetramethyl-17-oxospiro[11,15-methano-2H,13H,17H-furo[4,3,2-pq][2,6]benzodioxacyclooctadecin-13,2'-[2H]pyran]-7-yl 2,6-dideoxy-4-O-(2,6-dideoxy-3-O-methyl- α -L-arabino-hexopyranosyl)-3-O-methyl- α -L-arabino-hexopyranoside.

The Ivermectin (CAS No. 70288-86-7) from China in NY H85785 is described as: "a mixture of (10E,14E,16E,22Z)-(1R,4S,5'S,6S,6'R,8R,12S,13S,20R,21R,24S)-6'-[(S)-sec-butyl]-21,24-dihydroxy-5',11,13,22-tetramethyl-2-oxo-(3,7,19-trioxatetracyclo [15.6.1.1^{4,8}.0^{20,24}] pentacosa-10,14,16,22-tetraene)-6-spiro-2'-(perhydropyran)-12-yl 2,6-dideoxy-4-O-(2,6-dideoxy-3-O-methyl- α -L-arabino-hexopyranosyl)-3-O-methyl- α -L-arabino-hexopyranoside (10E,14E,16E,22Z)-(1R,4S,5'S,6S,6'R,8R,12S,13S,20R,21R,24S)-21,24-dihydroxy-6'-isopropyl-5',11,13,22-tetramethyl-2-oxo-(3,7,19-trioxatetracyclo[15.6.1.1^{4,8}.0^{20,24}] pentacosa-10,14,16,22-tetraene)-6-spiro-2'-(perhydropyran)-12-yl 2,6-dideoxy-4-O-(2,6-dideoxy-3-O-methyl- α -L-arabino-hexopyranosyl)-3-O-methyl- α -L-arabino-hexopyranoside ... this product will be used as a pharmaceutical intermediate and will be packaged in bulk form."

The Abamectin Technical from China in NY K86757 is described as a product, "which ... will be used as a material for formulation into end-use products that are used as miticides/insecticides for the control of pests in agronomic, turf, nursery, and ornamental crops. The chemical name is Avermectin B1; 5-O-demethylavermectin Ala and 5-O-demethyl-25-de(1-methylpropyl)-25-(1-methylethyl) avermectin A1a(4:1)." The Abamectin Technical is a mixture of more than 80% avermectin B1a and less than 20% avermectin B1b, and will be mixed with water.

The Milbemectin Technical imported in bulk form from Japan in NY H87465 is described as consisting of "a natural (i.e., non-formulated), non-isomeric mixture composed of (by weight) approximately 30% milbemectin A3 (CAS-51596-10-2) and 70% milbemectin A4 (CAS-51596-11-3). The CAS Registry name for milbemectin is (6R,25R)-5-O-demethyl-28-deoxy-6,28-epoxy-25-ethylmilbemycin B mixture with (6R,25R)-5-O-demethyl-28-deoxy-6,28-epoxy-25-methylmilbemycin B." The Milbemectin Technical is advertised as soluble in ethanol, methanol, dimethylformamide, or dimethyl sulfoxide, and having poor water solubility.¹

ISSUES:

1. Whether the Doramectin and the Ivermectin are classified in heading 2932, HTSUS, as heterocyclic compounds with oxygen hetero atoms only or in heading 2941, HTSUS, as antibiotics, or in heading 3824, HTSUS, as chemical products.
2. Whether the Abamectin Technical and the Milbemectin Technical are classified in heading 2932, HTSUS, as heterocyclic compounds with oxygen hetero atoms only or in heading as 3808, HTSUS, as insecticides, or in heading 3824, HTSUS, as chemical products.

¹ See Milbemectin, <https://www.toku-e.com/Milbemectin-P3221.aspx> (last visited June 14, 2019).

LAW AND ANALYSIS:

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

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

2932	Heterocyclic compounds with oxygen hetero-atom(s) only:
2941	Antibiotics:
3808	Insecticides, rodenticides, fungicides, herbicides, antisprouting products and plant-growth regulators, disinfectants and similar products, put up in forms or packings for retail sale or as preparations or articles (for example, sulfur-treated bands, wicks and candles, and fly-papers):
3824	Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included:

Note 2 to Section VI, HTSUS, states:

Subject to note 1 above, goods classifiable in heading ... 3808 by reason of being put up in measured doses or for retail sale are to be classified in those headings and in no other heading of the tariff schedule.

Additional U.S. note 2(a) to section VI, HTSUS, defines the term “aromatic” as “applied to any chemical compound refers to such compound containing one or more fused or unfused benzene rings.”

Note 1(a) to chapter 29, HTSUS, states as follows:

1. Except where the context otherwise requires, the headings of this chapter apply only to:
 - (a) Separate chemically defined organic compounds, whether or not containing impurities;

Note 7 to chapter 29, HTSUS, states:

Headings 2932, 2933 and 2934 do not include epoxides with a three-membered ring, ketone peroxides, cyclic polymers of aldehydes or of thioaldehydes, anhydrides of polybasic carboxylic acids, cyclic esters of polyhydric alcohols or phenols with polybasic acids, or imides of polybasic acids. These provisions apply only when the ring-position hetero-atoms are those resulting solely from the cyclizing function or functions here listed.

Note 1(a) to chapter 38, HTSUS, states:

This chapter does not cover:

- (a) Separate chemically defined elements or compounds with the exception of the following: ... (2) Insecticides, rodenticides, fungicides, herbicides, antisprouting products and plant-growth regulators, disinfectants and similar products put up as described in heading 3808[.]

In interpreting the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) may be utilized. The ENs, though not dispositive or legally binding, provide commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The ENs to chapter 29 state, in relevant part:

The term “impurities” applies exclusively to substances whose presence in the single chemical compound results solely and directly from the manufacturing process (including purification). These substances may result from any of the factors involved in the process and are principally the following:

- (a) Unconverted starting materials.
- (b) Impurities present in the starting materials.
- (c) Reagents used in the manufacturing process (including purification).
- (d) By-products.

EN 29.32 states, in relevant part, that:

The **heterocyclic compounds** covered by this heading are: ...

B) **Lactones***.

These compounds may be considered as internal esters of carboxylic acids with alcohol or phenol function, formed by elimination of water. The molecules may contain one or more ester functions in a ring. They are known as mono-, di-, trilactones, etc., according to the number of ester functions present. However, cyclic esters of polyhydric alcohols with polybasic acids are **excluded** (see Note 7 to this Chapter).

Lactones are fairly stable compounds, but are characterized by the ease with which the lactone ring can be opened using an alkali ...

EN 29.41 states, in relevant part:

Antibiotics are substances secreted by living micro-organisms which have the effect of killing other micro-organisms or inhibiting their growth. They are used principally for their powerful inhibitory effect on pathogenic micro-organisms, particularly bacteria or fungi, or in some cases on neoplasms. They can be effective at a concentration of a few micrograms per ml in the blood.

Antibiotics may consist of a single substance or a group of related substances, their chemical structure may or may not be known or be chemically defined ...

This heading also includes chemically modified antibiotics used as such. These may be prepared by isolating ingredients produced by natural growth of the micro-organism and then modifying the structure by chemical reaction or by adding sidechain precursors to the growth-medium so that desired groups are incorporated into the molecule by the cell-processes (semi-synthetic penicillins); or by bio-synthesis (e.g., penicillins from selected amino-acids).

Natural antibiotics reproduced by synthesis (e.g., chloramphenicol) are classified in this heading, as are certain synthetic products closely related to natural antibiotics and used as such (e.g., thiamphenicol)

EN 38.08 states, in relevant part:

This heading covers a range of products ... intended to destroy pathogenic germs, insects (mosquitoes, moths, Colorado beetles, cockroaches, etc.), mosses and moulds, weeds, rodents, wild birds, etc. Products intended to repel pests or used for disinfecting seeds are also classified here.

These insecticides, disinfectants, herbicides, fungicides, etc., are applied by spraying, dusting, sprinkling, coating, impregnating, etc., or may necessitate combustion. They achieve their results by nerve-poisoning, by stomach-poisoning, by asphyxiation or by odour, etc ...

These products are classified here in the following cases only:

(2) When they have the character of preparations, whatever the presentation (e.g., as liquids, washes or powders). These preparations consist of suspensions or dispersions of the active product in water or in other liquids ... Intermediate preparations, requiring further compounding to produce the ready-for-use insecticides, fungicides, disinfectants, etc., are also classified here, **provided** they already possess insecticidal, fungicidal, etc., properties

EN 38.08 (I) defines “insecticides” as:

... products for killing insects, but also those having a repellent or attractant effect. The products may be in a variety of forms such as sprays or blocks (against moths), oils or sticks (against mosquitoes), powder (against ants), strips (against flies), cyanogen gas absorbed in diatomite or paperboard (against fleas and lice) The heading also includes products to control mites and ticks (acaricides), molluscs (molluscicides), nematodes (nematocides), rodents (rodenticides), birds (avicides), and other pests (e.g., lampreycides, predacides)

EN 38.24 states, in relevant part:

... The **chemical products** classified here are therefore products whose composition is not chemically defined, whether they are obtained as by-products of the manufacture of other substances ... or prepared directly.

The **chemical or other preparations** are either mixtures (of which emulsions and dispersions are special forms) or occasionally solutions The preparations classified here may be either wholly or partly of chemical products (this is generally the case) or wholly of natural constituents

1. Doramectin and Ivermectin

No comments were received regarding the tariff classification of the Doramectin and the Ivermectin, and our analysis and conclusion remain the same.

The Ivermectin and its derivative, the Doramectin, can only be classified in heading 3824 if they are not more specifically classifiable elsewhere in the HTSUS. See *Cargill, Inc. v. United States*, 318 F. Supp. 2d 1279, 1278–88 (CIT 2004) (characterizing heading 3824 as a basket provision). Accordingly,

we will first consider whether the Doramectin and the Ivermectin fall under the scope of headings 2932 and 2941, HTSUS. Only if they are not classifiable under one of these headings, we will then consider heading 3824, HTSUS.

The Doramectin is a non-aromatic lactone containing only oxygen hetero-atoms, which is a derivative of the Ivermectin. The Ivermectin is composed primarily of 2,23-dihydroavermectin B1a (CAS No. 71827–03–7) with lesser quantities of 22,23-dihydroavermectin B1b (CAS No. 70209–81–3). Specifically, the Ivermectin product is made of approximately 80% Ivermectin B1a and 20% Ivermectin B1b. The Ivermectin is synthesized through microbial fermentation using the bacterium *Streptomyces avermitilis*. Both the Ivermectin B1a and the Ivermectin B1b are produced by the bacteria in this process. The final product is therefore not a deliberate mixture of Ivermectin B1a and Ivermectin B1b; rather, both the Ivermectin B1a and the Ivermectin B1b are the direct result of the fermentation of the *Streptomyces avermitilis*. The Ivermectin B1b is typically left in the final product during purification. Therefore, Ivermectin B1b falls within the scope of “impurities” as described in the ENs to chapter 29; specifically Ivermectin B1b is a byproduct. Consistent with note 1(a) to chapter 29, HTSUS, separate chemically defined organic compounds with impurities meet the terms of chapter 29. The Ivermectin and its derivative the Doramectin both meet this description and are properly classified within the chapter.²

Further, both the Doramectin and the Ivermectin are part of a class of compounds known as Avermectins, which are parasiticides used to treat primarily heartworm and mite infestations such as scabies.³ EN 29.41 defines “antibiotics” as “substances secreted by living micro-organisms, which have the effect of killing other micro-organisms or inhibiting their growth.” The Doramectin and the Ivermectin do not meet this definition because they are used to treat and control parasites, more specifically roundworms and cattle ticks, which are multicellular organisms generally visible to the naked eye, and not micro-organisms, which are unicellular and can be seen with a microscope. As non-aromatic lactones containing oxygen hetero-atoms, the Doramectin and the Ivermectin are classifiable in heading 2932, HTSUS, specifically under subheading 2932.20.50, HTSUS.⁴

CBP has previously classified antiparasitic drugs in heading 2932, HTSUS. In Headquarters Ruling Letter (“HQ”) 956889, dated Jan. 2, 1996, CBP classified the antiparasitic drug Moxidectin, which is a Milbemycin, in heading 2932, HTSUS, specifically under subheading 2932.29.50, HTSUS. Avermectins are closely related to the Milbemycins.⁵ The Doramectin and the Ivermectin are part of compounds known as Avermectins, which are not specifically provided for in the HTSUS, and share a common macrocyclic

² This analysis is in agreement with the World Customs Organization, Harmonized System Committee Doc. NC1310E1b, Annex H/7, Classification of Ivermectin (INN) and Similar Products (Mar. 2008).

³ See Science Direct, Avermectin, <https://www.sciencedirect.com/topics/agricultural-and-biological-sciences/avermectin> (last visited June 14, 2019).

⁴ See Merck Manual: Veterinary Manual, Macrocylic Lactones, <https://www.merckvetmanual.com/pharmacology/anthelmintics/macrocylic-lactones> (last visited June 14, 2019). Subheading 2932.20.50, HTSUS, provides for: “Heterocyclic compounds with oxygen hetero-atom(s) only: Lactones: Other: Other.”

⁵ See *supra* note 3, at 7.

lactone ring.⁶ Therefore, the Doramectin and the Ivermectin are classified in heading 2932, HTSUS, under subheading 2932.20.50, HTSUS, as non-aromatic lactones containing only oxygen hetero-atoms, and there is no need to resort to heading 3824, HTSUS.

2. Abamectin Technical and Milbemectin Technical

Two comments were received regarding the tariff classification of the Abamectin Technical and the Milbemectin Technical. The first commenter suggests that we consider heading 2932, HTSUS. The first commenter notes that the Abamectin Technical and the Milbemectin Technical are similar to the Ivermectin and the Doramectin in terms of their chemical composition. The first commenter states that if the Abamectin Technical and the Milbemectin Technical are used in drug formulation or for research and development purposes, they would be classifiable under subheading 2932.20.50, HTSUS.

The second commenter asserts that the Abamectin Technical should be classified in heading 2932, HTSUS, specifically under subheading 2932.19.51, HTSUS, which provides for “Heterocyclic compounds with oxygen hetero-atom(s) only: Compounds containing an unfused furan ring (whether or not hydrogenated) in the structure: Other: Other.”

The Abamectin Technical and the Milbemectin Technical can only be classified in heading 3824 if they are not more specifically classifiable elsewhere in the HTSUS. See *Cargill, Inc., supra*. Thus, we will first determine whether they fall under the scope of headings 2932 and 3808, HTSUS.

The Abamectin Technical and the Milbemectin Technical are both lactones and have a chemical composition analogous to the Ivermectin and the Doramectin. The Abamectin Technical is a mixture of avermectins containing more than 80% avermectin B1a and less than 20% avermectin B1b. The Milbemectin Technical is a non-formulated, nonisomeric mixture composed of 30% milbemycin A3 and 70% milbemycin A4. The Abamectin Technical and the Milbemectin Technical are synthesized through microbial fermentation using the bacteria *Streptomyces* spp. and the final product is not a deliberate mixture of avermectin B1a and avermectin B1b (in the case of the Abamectin Technical) and milbemycin A3 and milbemycin A4 (in the case of the Milbemectin Technical). Rather, both the avermectin B1a and the avermectin B1b, and the milbemycin A3 and milbemycin A4, are the direct result of the fermentation of the *Streptomyces* spp. The avermectin B1b is typically left in the final avermectin product and the milbemycin A3 is typically left in the final milbemectin product during purification. Therefore, the avermectin B1b and the milbemycin A3 fall within the scope of “impurities” as described in the ENs to chapter 29. In accordance with note 1(a) to chapter 29, HTSUS, separate chemically defined organic compounds with impurities meet the terms of chapter 29, HTSUS. Thus, just like the Ivermectin and its derivative Doramectin, the Abamectin Technical and the Milbemectin Technical both meet this description of separate chemically defined organic compounds with impurities and are properly classified within chapter 29, HTSUS.

Accordingly, the Abamectin Technical and Milbemectin Technical are classified in heading 2932, HTSUS, under subheading 2932.20.50, HTSUS, as

⁶ We note that the subject Doramectin and Ivermectin are not classifiable under heading 3004, HTSUS, because they are imported in bulk form and are not put up in measured doses or in forms or packing for retail sale.

non-aromatic lactones containing only oxygen hetero-atoms.⁷ Insofar as the Abamectin Technical and the Milbemectin Technical are classifiable in heading 2932, HTSUS, per note 2 to section VI, HTSUS, they are not classifiable in other HTSUS headings, and resort to headings 3808 and 3824, HTSUS, is unnecessary.

HOLDING:

By application of GRIs 1 and 6, the Doramectin, the Ivermectin, the Abamectin Technical and the Milbemectin Technical are classified under heading 2932, HTSUS, specifically under subheading 2932.20.5050, Harmonized Tariff Schedule of the United States Annotated, as “Heterocyclic compounds with oxygen hetero-atom(s) only: Lactones: Other: Other: Other.” The current column one, duty rate is 3.7% *ad valorem*. The Doramectin, the Ivermectin and the Abamectin Technical⁸ are listed in the Pharmaceutical Appendix to HTSUS 2020, and are therefore duty free. The Milbemectin Technical is not listed in the Pharmaceutical Appendix to HTSUS 2020 and the current column one, duty rate, for the Milbemectin Technical is 3.7% *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 at <https://hts.usitc.gov/current>.

EFFECT ON OTHER RULINGS:

NY 869250, dated February 6, 1992; NY H85785, dated January 10, 2002; and NY K86757, dated July 26, 2004, are hereby REVOKED.

NY H87465, dated January 24, 2002, is hereby MODIFIED, with respect to the Milbemectin Technical.

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

Sincerely,

CRAIG T. CLARK,

Director

Commercial and Trade Facilitation Division

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⁷ The Abamectin Technical and the Milbemectin Technical cannot be classified in subheading 2932.19, HTSUS, as a compound containing an unfused furan ring because the furan in these compounds is fused and the only other named functional group is the lactone.

⁸ The Abamectin, which likely encompasses avermectin B1a and avermectin B1b, is listed in the Pharmaceutical Appendix. Hence, the Abamectin Technical would be covered.

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19 CFR PART 177

**MODIFICATION OF FOUR RULING LETTERS AND
REVOCACTION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF TOPPINGS**

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

ACTION: Notice of modification of four ruling letters and of revocation of treatment relating to the tariff classification of toppings.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is modifying four ruling letters concerning tariff classification of toppings under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 53, No. 47, on December 26, 2019. No comments were received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after May 10, 2020.

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

SUPPLEMENTARY INFORMATION:**BACKGROUND**

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

Pursuant to 19 U.S.C. § 1625(c)(1), a notice was published in the *Customs Bulletin*, Vol. 53, No. 47, on December 26, 2019, proposing to modify four ruling letters pertaining to the tariff classification of toppings. 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 NY F89129, dated July 19, 2000, NY A80432, dated March 4, 1996, NY D87491, dated February 16, 1999, and NY F87143, dated June 15, 2000, CBP classified toppings in heading 2106, HTSUS, which provides for "Food preparations not elsewhere specified or included." CBP has reviewed NY F89129, NY A80432, NY D87491 and NY F87143 and has determined the ruling letters to be in error. It is now CBP's position that certain toppings in these rulings are properly classified, in heading 2008, HTSUS, which provides for "Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is modifying NY F89129, NY A80432, NY D87491 and NY F87143 and revoking or modifying

any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter (“HQ”) H304024, set forth as an attachment to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

CRAIG T. CLARK,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H304024
OT:RR:CTF:FTM H304024 PJG
CATEGORY: Classification
TARIFF NO.: 2008.97

CLAUDE SCHELLENBERGER
MAX FELCHLIN AG
MAIN STREET 63
CH-6431 SCHWYZ/SWITZERLAND

RE: Modification of NY F89129, NY A80432, NY D87491 and NY F87143;
tariff classification of toppings

DEAR MR. SCHELLENBERGER:

On July 19, 2000, U.S. Customs and Border Protection (“CBP”) issued to you New York Ruling Letter (“NY”) F89129. The ruling pertains to the tariff classification under the Harmonized Tariff Schedule of the United States (“HTSUS”) of four toppings, specifically, TO18E Forest Berries Topping, TO19E Guava Topping, TO14E Mango Topping, and TO17E Tropical Topping. We have since reviewed NY F89129 and determined it to be in error with respect to the classification of the TO17E Tropical Topping. For the reasons set forth below, we hereby modify NY F89129. It is now CBP’s position that TO17E Tropical Topping is classified in heading 2008, HTSUS.

Similarly, we have reviewed NY A80432, dated March 4, 1996, NY D87491, dated February 16, 1999, and NY F87143, dated June 15, 2000, and determined them to be in error with respect to the classification of the Blueberry Compound, Cocco and Frutti di Bosco flavorings, and the TO10E Strawberry Topping, respectively. All of these products were classified in heading 2106, HTSUS. For the reasons set forth below, NY A80432, NY D87491, and NY F87143 are modified with respect to the tariff classification of the products identified here. It is now CBP’s position that the Blueberry Compound, Cocco and Frutti di Bosco flavorings, and the TO10E Strawberry Topping are classified in heading 2008, HTSUS.

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 December 26, 2019, in Volume 53, Number 47, of the *Customs Bulletin*. No comments were received in response to this notice.

FACTS:

In NY F89129 the toppings were described as follows:

TO18E Forest Berries Topping, TO19E Guava Topping, TO14E Mango Topping, and TO17E Tropical Topping, are viscous, fluid products, ready to use as toppings for plated desserts, ice cream, milk shakes, etc. The TO18E Forest Berries Topping consists of 40 percent sugar, 14 percent raspberry pulp, 13 percent cherry pulp, 11.7 percent glucose syrup, 9 percent sorbitol, 8 percent blueberry pulp, and 5 percent elder juice. TO19E Guava Topping consists of 40 percent guava pulp, 37 percent sugar, 16 percent glucose syrup, and 5 percent sorbitol. TO14E Mango Topping consists of 45 percent sugar, 35 percent mango pulp, 11.30 percent glucose syrup, 5 percent sorbitol, 2.40 and water. TO17E Tropical Topping consisting of 37 percent sugar, 20 percent glucose syrup, 12

percent mango pulp, 12 percent passion fruit, and 8 percent lemon juice. The toppings also contain thickening agents, preservatives, colors, and natural fruit flavor. The toppings will be sold to food service industry professionals in 1-kg bottles, 6 bottles to a carton.

In NY F89129, CBP classified TO18E Forest Berries Topping, TO19E Guava Topping, and TO14E Mango Topping in heading 2008, HTSUS, which provides for “Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included.” Conversely, in NY F89129, CBP classified the TO17E Tropical Topping in heading 2106, HTSUS, which provides for “Food preparations not elsewhere specified or included.” It is now CBP’s position that the TO17E Tropical Topping is classified under heading 2008, HTSUS.

ISSUE:

Whether TO17E Tropical Topping is classifiable in heading 2008, HTSUS, which provides for “Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included,” or in heading 2106, HTSUS, which provides for “Food preparations not elsewhere specified or included.”

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States (“HTSUS”) is determined 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:

- 2008** Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included:
- 2106** Food preparations not elsewhere specified or included:

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

General EN to Chapter 20 states, in relevant part, as follows:

This Chapter includes:

* * *

- (6) Vegetables, fruit, nuts and other edible parts of plants prepared or preserved by other processes not provided for in Chapter 7, 8 or 11 or elsewhere in the Nomenclature.

* * *

EN to 20.08 states, in relevant part, as follows:

This heading covers fruit, nuts and other edible parts of plants, whether whole, in pieces or crushed, including mixtures thereof, prepared or preserved otherwise than by any of the processes specified in other Chapters or in the preceding headings of this Chapter.

It includes, *inter alia*:

* * *

(3) Fruit (including fruit-peel and seeds) preserved in water, in syrup, in chemicals or in alcohol.

(4) Fruit pulp, sterilised, whether or not cooked.

* * *

The products of this heading may be sweetened with synthetic sweetening agents (e.g., sorbitol) instead of sugar. Other substances (e.g., starch) may be added to the products of this heading, provided that they do not alter the essential character of fruit, nuts or other edible parts of plants.

The products of this heading are generally put up in cans, jars or airtight containers, or in casks, barrels or similar containers.

* * *

EN to 21.06 states, in relevant part, as follows:

Provided that they are not covered by any other heading of the Nomenclature, this heading covers :

(A) Preparations for use, either directly or after processing (such as cooking, dissolving or boiling in water, milk, etc.), for human consumption.

(B) Preparations consisting wholly or partly of foodstuffs, used in the making of beverages or food preparations for human consumption. The heading includes preparations consisting of mixtures of chemicals (organic acids, calcium salts, etc.) with foodstuffs (flour, sugar, milk powder, etc.), for incorporation in food preparations either as ingredients or to improve some of their characteristics (appearance, keeping qualities, etc.) (see the General Explanatory Note to Chapter 38).

However, the heading **does not cover** enzymatic preparations containing foodstuffs (e.g., meat tenderisers consisting of a proteolytic enzyme with added dextrose or other foodstuffs). Such preparations fall in **heading 35.07 provided** that they are not covered by a more specific heading in the Nomenclature.

The heading includes, *inter alia* :

* * *

(4) Pastes based on sugar, containing added fat in a relatively large proportion and, sometimes, milk or nuts, not suitable for transformation directly into sugar confectionery but used as fillings, etc., for chocolates, fancy biscuits, pies, cakes, etc.

* * *

As heading 2106, HTSUS, provides for “[f]ood preparations not elsewhere specified or included,” the initial determination is whether the subject toppings are classifiable in another heading in the HTSUS. Consistent with the above-referenced ENs to 20.08, this heading covers fruit, whether whole, in pieces or crushed, including mixtures thereof, prepared or preserved in water, in syrup, in chemicals or in alcohol.

Similar to the other toppings classified in NY F89129 under heading 2008, HTSUS, TO17E Tropical Topping contains fruit pulp, sugar, and glucose syrup. Additionally, TO17E Tropical Topping contains passion fruit and lemon juice. In accordance with General EN to Chapter 20 and EN to 20.08, fruit that is prepared otherwise than by any of the processes specified in other Chapters or in the preceding headings of Chapter 20, are classifiable in heading 20.08. In this case, TO17E Tropical Topping is preserved in syrup. Moreover, neither the passion fruit nor the lemon juice preclude the classification of the TO17E Tropical Topping from heading 2008, HTSUS. There is no language in the legal notes, heading, or the ENs that precludes lemon juice as an ingredient of a product of heading 2008, HTSUS. Also, heading 2008, HTSUS, and EN 20.08 specifically allow for prepared fruit, so the passion fruit combined with the other ingredients does not preclude TO17E Tropical Topping from being classified in heading 2008, HTSUS. NY F89129 does not provide sufficient details concerning the processing of the ingredients into the toppings to preclude their classification in heading 2008, HTSUS.¹

NY F89129 also does not provide sufficient details concerning whether TO17E Tropical Topping will be imported in airtight containers. Accordingly, if packed in airtight containers, the applicable subheading for TO17E Tropical Topping is 2008.97.10, HTSUS, which provides for “Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included: Other, including mixtures other than those of subheading 2008.19: Mixtures: In airtight containers and not containing apricots, citrus fruits, peaches or pears.” If imported not in airtight containers, then the applicable subheading for TO17E Tropical Topping is 2008.97.90, HTSUS, which provides for “Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included: Other, including mixtures other than those of subheading 2008.19: Mixtures: Other.”

In NY A80432, CBP classified a product called the Blueberry Compound and described as “viscous syrups and pastes, packed in 2.2-pound plastic jars or 10-pound plastic pails, used to flavor baked products, creams, fonds, and ice creams” in heading 2106, HTSUS. The Blueberry compound was described to “consist[] of 68 percent ‘blueberry fruit preparation’ (65 percent fructose, 30 percent blueberries, and 5 percent pectin, sodium benzoate, water and sugar), 28 percent glucose, 2 percent water, and one percent each of citric acid and artificial flavor.” Consistent with the analysis provided in this ruling, it is now CBP’s position that the Blueberry Compound is properly classified in heading 2008, HTSUS, and specifically in subheading 2008.99.18, HTSUS, which provides for “Fruit, nuts and other edible parts of

¹ Pursuant to correspondence from the National Commodity Specialist Division, the file for NY F89129 was destroyed in the World Trade Center tragedy on September 11, 2001.

plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included: Other, including mixtures other than those of subheading 2008.19: Other: Berries: Blueberries.”

In NY D87491, CBP classified four products, one of which was called Cocco flavoring and another was called Frutti di Bosco flavoring. Both of these products were described as “ice cream flavorings, in fluid form, imported in 6-kilogram tins, for use in the manufacture of ice cream.” The Cocco flavoring was said to contain 33 percent sugar, 30 percent coconut, 17.6 percent water, 16 percent glucose syrup, and 3.4 percent flavor. The Frutti di Bosco flavoring was stated to contain 42 percent sugar, 28 percent glucose syrup, 24 percent wildberries, 3.4 percent flavor, one percent each of citric and tartaric acid, and less than one percent pectin. CBP classified these products in heading 2106, HTSUS. Consistent with the analysis provided in this ruling, it is now CBP’s position that the Cocco and Frutti di Bosco flavorings are properly classified in heading 2008, HTSUS, and specifically, in subheading 2008.99.91, HTSUS, which provides for “Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included: Other, including mixtures other than those of subheading 2008.19: Other: Other: Other.”

In NY F87143, CBP classified three products, one of which was called the TO10E Strawberry Toppings and were described as “colored, viscous, fluid products, ready to use as toppings for plated desserts, ice cream, milk shakes, etc.” The TO10E Strawberry Toppings were stated to contain “47 percent sugar, 27.7 percent water, 23 percent strawberry pulp, and 1.4 percent thickener” and “less than one percent each of acidulant, preservatives, colors and natural fruit flavor.” The ruling further stated that “[t]he toppings will be sold to food service industry professionals in 1-kg bottles, 6 bottles to a carton.” CBP classified this product in heading 2106, HTSUS. Consistent with the analysis provided in this ruling, it is now CBP’s position that the TO10E Strawberry Toppings are properly classified in heading 2008, HTSUS, and specifically, in subheading 2008.80.00, HTSUS, which provides for “Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included: Strawberries.”

HOLDING:

Under the authority of GRIs 1 and 6, TO17E Tropical Topping, if imported in airtight containers, is classified in subheading 2008.97.10, HTSUS, which provides for “Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included: Other, including mixtures other than those of subheading 2008.19: Mixtures: In airtight containers and not containing apricots, citrus fruits, peaches or pears.” The 2019 column one, general rate of duty is 5.6 percent *ad valorem*.

If imported not in airtight containers, then the applicable subheading for TO17E Tropical Topping is 2008.97.90, HTSUS, which provides for “Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included: Other, including mixtures other than

those of subheading 2008.19: Mixtures: Other.” The 2019 column one, general rate of duty is 14.9 percent *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY F89129, dated July 19, 2000, is MODIFIED.

NY A80432, dated March 4, 1996, is MODIFIED only with respect to the classification of the Blueberry Compound.

NY D87491, dated February 16, 1999, is MODIFIED only with respect to the classification of the Cocco and Frutti di Bosco flavorings.

NY F87143, dated June 15, 2000, is MODIFIED only with respect to the classification of the TO10E Strawberry Topping.

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

19 CFR PART 177

**REVOCATION OF THREE RULING LETTERS AND
REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF LIGHTED METAL TREES**

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

ACTION: Notice of revocation of three ruling letters, and of revocation of treatment relating to the tariff classification of lighted metal trees.

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 three ruling letters concerning tariff classification of lighted metal trees under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 53, No. 47, on December 26, 2019. No comments were received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after May 10, 2020.

FOR FURTHER INFORMATION CONTACT: Marina Mekheil, Chemicals, Petroleum, Metals and Miscellaneous Articles Branch, Regulations and Rulings, Office of Trade, at (202) 325-0974.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to 19 U.S.C. § 1625(c)(1), a notice was published in the *Customs Bulletin*, Vol. 53, No. 47, on December 26, 2019, proposing to revoke three ruling letters pertaining to the tariff classification of lighted metal trees. 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 Letters ("NY") N236262, dated January 4, 2013, N260368, dated January 21, 2015, and N255988, dated September 4, 2014, CBP classified lighted metal trees in heading 9405, HTSUS, specifically in subheading 9405.40.6000, HTSUS, which provides for "Lamps and lighting fittings...not elsewhere specified or included: Other electric lamps and lighting fittings: Of base metal:

Other” and subheading 9405.40.8000, HTSUS, which provides for “Lamps and lighting fittings...: Other electric lamps and lighting fittings: Other.”

CBP has reviewed NY N236262, NY N260368, and NY N255988 and has determined the ruling letters to be in error. It is now CBP’s position that lighted metal trees are properly classified, in heading 6702, HTSUS and in heading 8306, HTSUS, specifically in subheadings 6702.90.6500, HTSUS, which provides for “Artificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit: of other materials: Other: Other” and 8306.29.0000, HTSUS, which provides for “Bells, gongs and the like, nonelectric, of base metal...; Statuettes and other ornaments, and parts thereof; Other.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY N236262, NY N260368, and NY N255988 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter (“HQ”) H305354, set forth as an attachment to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

CRAIG T. CLARK,

Director

Commercial and Trade Facilitation Division



**PROPOSED REVOCATION OF THREE RULING LETTERS
AND PROPOSED REVOCATION OF TREATMENT
RELATING TO THE TARIFF CLASSIFICATION OF
LIGHTED METAL TREES**

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

ACTION: Notice of proposed revocation of three ruling letters, and proposed revocation of treatment relating to the tariff classification of lighted metal trees.

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

to revoke three ruling letters concerning tariff classification of lighted metal trees 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 **[30 days from the date of publication in the Customs Bulletin]**.

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

FOR FURTHER INFORMATION CONTACT: Marina Mekheil, Chemicals, Petroleum, Metals & Miscellaneous Articles Branch, Regulations and Rulings, Office of Trade, at (202) 325–0974.

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 3 ruling letters pertaining to the tariff classification of lighted metal trees. Although in this notice, CBP is specifically referring to New York Ruling Letters (“NY”) N236262, dated January 4, 2013, (Attachment A), N260368, dated January 21, 2015, (Attachment B), and N255988, dated September 4, 2014 (Attachment C), this notice also covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing

databases for rulings in addition to the three identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the comment period.

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

In N236262, N260368, and N255988, CBP classified lighted metal trees in heading 9405, HTSUS, specifically in subheadings 9405.40.60, HTSUS, which provides for "Lamps and lighting fittings ...not elsewhere specified or included: Other electric lamps and lighting fittings: Of base metal: Other," and 9405.40.84, HTSUS, which provides for "Lamps and lighting fittings...: Other electric lamps and lighting fittings: Other."¹ CBP has reviewed N236262, N260368, and N255988 and has determined the ruling letters to be in error. It is now CBP's position that lighted metal trees are properly classified, in headings 6702, HTSUS, and 8306, HTSUS, specifically in subheadings 6702.90.65, HTSUS, which provides for "Artificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit: of other materials: Other: Other," and 8306.29.00, HTSUS, which provides for "Bells, gongs and the like, nonelectric, of base metal...; Statuettes and other ornaments, and parts thereof; Other."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY N236262, NY N260368, and NY N255988 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed HQ H305354, set forth as Attachment D to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

¹ 9405.40.80 in the 2014 edition of the HTSUS.

N236262

January 4, 2013

CLA-2-94:OT:RR:NC:1:110

CATEGORY: Classification

TARIFF NO.: 9405.40.6000

Ms. ALICE LIU
ATICO INTERNATIONAL USA INC.
501 SOUTH ANDREWS AVENUE
FT. LAUDERDALE, FL 33301

RE: The tariff classification of a lighted metal tree from China.

DEAR Ms. LIU:

In your letter dated December 3, 2012, you requested a tariff classification ruling.

The item under consideration is identified as the Halloween Spooky Tree, Item Number A079AA02291. A sample was submitted with your ruling request and will be returned to you.

Item Number A079AA02291 is a light sculpture in the shape of a leafless tree, measuring approximately 60 inches tall. The light sculpture is constructed of a black-painted metal (non brass) wire frame intertwined with a light string. The light string consists of two insulated wire conductors twisted together and wrapped in black tape incorporating 50 black lamp-holders. The lamp-holders enclose orange-colored miniature plastic LED (light emitting diode) lamps. The end of the light string comprised of a 30 inch lead wire with a combination of two-prong plug, a socket rated for 125 volt (V) and two 3 amp (A) fuses. There is a rectangular metal anchor at the base for mounting the light sculpture onto the flat surface, i.e. ground or floor. Although the light sculpture is referenced as a Halloween Spooky Tree designed for indoor and outdoor use, neither the "tree" nor the orange-colored bulbs are recognized as a festive motifs. Item Number A079AA02291, therefore, is not limited to holiday use, and not classified as a festive article.

The applicable subheading for the Halloween Spooky Tree, Item Number A079AA02291, will be 9405.40.6000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Lamps and lighting fittings...not elsewhere specified or included: Other electric lamps and lighting fittings: Of base metal: Other." The general 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 Hope Abada at (646) 733-3016.

Sincerely,

THOMAS J. RUSSO

Director

National Commodity Specialist Division

N260368

January 21, 2015
CLA-2-94:OT:RR:NC:N4:110
CATEGORY: Classification
TARIFF NO.: 9405.40.6000

Ms. MARILYN-JOY CERNY
CERNY ASSOCIATES, P.C.
24 SMITH STREET, BUILDING 2, SUITE 102
PAWLING, NY 12564

RE: The tariff classification of an LED lighted leafless trees from China

DEAR Ms. CERNY:

In your letter dated December 16, 2014, you requested a tariff classification ruling on behalf of your client Santa's Best. A sample of Item Number 2407031 was submitted and will be returned to you as requested.

The merchandise consists of 5 LED leafless trees identified as the "Lighted Branch Tree" or a "Lighted Deciduous Tree." It is stated that the 5 LED leafless trees Items Number 2407031, 7407200, 7407237, 2407029 and 2407025 are identical in construction however, they vary in the light system configurations, and sizes that range from 4 feet to 8 feet tall. The sample, Item Number 2407031 is a lighted leafless tree that measures approximately 7 feet tall, inserted into a round steel wire base. The item is comprised of a collapsible steel framework with pliable steel wires that resembles bare tree branches, and LED light strings powered by a two-prong plug wire. The steel tree trunk and branches are welded together. The light strings feature 300 miniature LED lamps (bulbs) inserted into weather-resistant sealed lamp holders and attached to the trunk and branches by plastic clips. The remote controlled lights feature changing bulb colors and function as a steady, pulsating or twinkling lights. The remote control is included.

The applicable subheading for Items Number 2407031, 7407200, 7407237, 2407029, 2407025, will be 9405.40.6000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Lamps and lighting fittings...: Other electric lamps and lighting fittings: Of base metal: Other than of brass." 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 Hope Abada at hope.abada@cbp.dhs.gov.

Sincerely,

GWENN KLEIN KIRSCHNER
Director
National Commodity Specialist Division

N255988

September 4, 2014

CLA-2-94:OT:RR:NC:N4:110

CATEGORY: Classification

TARIFF NO.: 9405.40.8000

MS. MARTHA DE CASTRO
BED BATH & BEYOND
700 LIBERTY AVE.
UNION, NJ 07083

RE: The tariff classification of LED branch stakes from China

DEAR MS. CASTRO:

In your letter dated August 4, 2014, you requested a tariff classification ruling.

The items under consideration are the 24" LED Lighted Flocked Tree, SKU number 42666134, and the 24" LED Lighted Glitter Tree, SKU 42666141. Based on the samples and the information that you have provided, the items are identical in construction except for their color appearance. SKU number 42666134 is painted in dark brown color and decorated with white flocking to mimic snow. SKU number 42666141 is painted in gold color with glitter. The items are described as light sculptures in the shape of leafless trees. The leafless trees measure approximately 24 inches tall. The trees' branches are made of thin wires intertwined with a light string. The plastic wires and pole are wrapped with brown PVC tape. The tips of the branches contain clear miniature LED bulbs, powered by three AA batteries that are located underneath the rectangular base. The battery box is equipped with an On/Off slide switch. It is stated that the trees are composed of 55 percent plastic and 45 percent metal. Samples were submitted with your ruling request and will be returned to you.

The applicable subheading for the 24" LED Lighted Flocked Tree, SKU number 42666134, and the 24" LED Lighted Glitter Tree, SKU 42666141 will be 9405.40.8000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Lamps and lighting fittings...: Other electric lamps and lighting fittings: Other." The general rate of duty will be 3.9 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

HQ H305354
OT:RR:CTF:CPMM H305354MMM
CATEGORY: Classification
TARIFF NO.: 6702.90.6500; 8306.29.0000

Ms. ALICE LIU
ATICO INTERNATIONAL USA INC.
501 SOUTH ANDREWS AVENUE
FT. LAUDERDALE, FL 33301

RE: Revocation of NY N236262, NY N260368, and NY N255988;
Classification of lighted metal trees

DEAR Ms. LIU,

This is in reference to the New York Ruling Letter (NY) N236262, issued to you by U.S. Customs and Border Protection (CBP) on January 4, 2013, concerning classification of a lighted metal tree under the Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed your ruling, and determined that it is incorrect, and for the reasons set forth below, are revoking your ruling in regard to the lighted tree.

We have also reviewed the following rulings: NY N260368, dated January 21, 2015 and NY N255988, dated September 4, 2014 and determined that they are also incorrect, and for the reasons set forth below, we are also revoking those rulings.

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, notice of the proposed action was published on December 26, 2019, in Volume 53, Number 47, of the Customs Bulletin. No comments were received in response to this notice.

FACTS:

In your ruling NY N236262, CBP stated as follows with respect to the subject merchandise:

[The] [i]tem ... is a light sculpture in the shape of a leafless tree, measuring approximately 60 inches tall. The light sculpture is constructed of a black-painted metal (non brass) wire frame intertwined with a light string. The light string consists of two insulated wire conductors twisted together and wrapped in black tape incorporating 50 black lamp-holders. The lamp-holders enclose orange-colored miniature plastic LED (light emitting diode) lamps.

The end of the light string comprised of a 30 inch lead wire with a combination of two-prong plug, a socket rated for 125 volt (V) and two 3 amp (A) fuses. There is a rectangular metal anchor at the base for mounting the light sculpture onto the flat surface, i.e. ground or floor. Although the light sculpture is referenced as a Halloween Spooky Tree designed for indoor and outdoor use, neither the "tree" nor the orange-colored bulbs are recognized as a festive motifs.

Additionally in ruling NY N260368, CBP stated as follows with respect to the subject merchandise:

The merchandise consists of 5 LED leafless trees identified as the "Lighted Branch Tree" or a "Lighted Deciduous Tree..." The sample...is a lighted leafless tree that measures approximately 7 feet tall, inserted into a round steel wire base. The item is comprised of a collapsible steel

framework with pliable steel wires that resembles bare tree branches, and LED light strings powered by a two-prong plug wire. The steel tree trunk and branches are welded together. The light strings feature 300 miniature LED lamps (bulbs) inserted into weather-resistant sealed lamp holders and attached to the trunk and branches by plastic clips. The remote controlled lights feature changing bulb colors and function as a steady, pulsating or twinkling lights. The remote control is included.

CBP classified the lighted metal trees in NY N236262 and NY N260368 in heading in 9405 HTSUS, specifically in subheading 9405.40.6000, HTSUS, which provides for “Lamps and lighting fittings...not elsewhere specified or included: Other electric lamps and lighting fittings: Of base metal: Other.”

In ruling NY N255988, CBP stated as follows with respect to the subject merchandise:

The items under consideration are the 24” LED Lighted Flocked Tree..., and the 24” LED Lighted Glitter Tree...The items are described as light sculptures in the shape of leafless trees. The leafless trees measure approximately 24 inches tall. The trees’ branches are made of thin wires intertwined with a light string. The plastic wires and pole are wrapped with brown PVC tape. The tips of the branches contain clear miniature LED bulbs, powered by three AA batteries that are located underneath the rectangular base. The battery box is equipped with an On/Off slide switch. It is stated that the trees are composed of 55 percent plastic and 45 percent metal.

CBP classified the lighted metal tree in NY N255988 in heading 9405 HTSUS, specifically in subheading 9405.40.8000, HTSUS, which provides for “Lamps and lighting fittings...: Other electric lamps and lighting fittings: Other.”

ISSUE:

Whether the lighted metal trees are classified in heading 6702, as artificial flowers, foliage and fruit and parts thereof, in 8306, as statuettes and other ornaments, of base metal, or 9405, as lamps.

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 provisions of law for all purposes.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the heading and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order. GRI 2(a) provides, in relevant part, that “[a]ny reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as entered, the incomplete or unfinished articles has the essential character of the complete or finished article.”

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 2020 HTSUS provisions under consideration are as follows:

- 6702** Artificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit
- 8306** Bells, gongs and the like, nonelectric, of base metal; statuettes and other ornaments, of base metal; photograph, picture or similar frames, of base metal; mirrors of base metal; and base metal parts thereof
- 9405** Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included

We begin our analysis with Heading 6702, which applies to artificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit. Note 3(b) to Chapter 67 states:

3. Heading 67.02 does not cover:

(b) Artificial flowers, foliage or fruit of pottery, stone, metal, wood or other materials, obtained in one piece by moulding, forging, carving, stamping or other process, or consisting of parts assembled otherwise than by binding, glueing, fitting into one another or similar methods.

Additionally, the General Explanatory Notes to Heading 6702 states:

This heading covers:

(1) Artificial flowers, foliage and fruit in forms resembling the natural products, made by assembling various parts (by binding, glueing, assembling by fitting into one another or similar methods). This category also includes conventional representations of flowers, foliage or fruit made up in the manner of artificial flowers, etc.

(2) Parts of artificial flowers, foliage or fruit (e.g., pistils, stamens, ovaries, petals, calyces, leaves and stems).

(3) Articles made of artificial flowers, foliage or fruit (e.g., bouquets, garlands, wreaths, plants), and other articles, for use as trimmings or as ornaments, made by assembling artificial flowers, foliage or fruit.

Heading 8306 applies to Bells, gongs and the like, non-electric, of base metal; statuettes and other ornaments, of base metal; photograph, picture or similar frames, of base metal; mirrors of base metal. Section XV, in Note 3 defines “base metals” as:

Throughout the Nomenclature, the expression “base metals” means : iron and steel, copper, nickel, aluminium, lead, zinc, tin, tungsten (wolfram), molybdenum, tantalum, magnesium, cobalt, bismuth, cadmium, titanium, zirconium, antimony, manganese, beryllium, chromium, germanium, vanadium, gallium, hafnium, indium, niobium (columbium), rhenium and thallium.

The subject merchandise in the above rulings, NY N236262, NY N260368, and NY N255988, are composite goods within the meaning of GRI 3 in that they are comprised of two different components, a metal frame and a light string. However, the trunk and branches provide the merchandise with its essential character and not the lights. When the lights are turned off, the artificial tree will continue to be displayed for ornamental or decorative purposes. Therefore, the subject merchandise is not classifiable under Heading 9405.²

The subject merchandise found in the above rulings are made of metal and are in forms that resemble natural products. According to Note 3(b) of Chapter 67, heading 6702 does not include artificial flowers and foliage made of metal when the merchandise is “obtained in one piece by molding, forging, carving, stamping or other process[es.]” The processes described in the first part of Note 3(b) are of the type that leave the product inseparable. Note 3(b) goes on to say that merchandise can be classified in heading 6702 when put together by binding, gluing, and fitting parts into one another. The methods described in the second part of Note 3(b) would allow merchandise to be unbound, unglued, and taken apart, and thus not “obtained in one piece.”

Following this language, the merchandise in Ruling N260368 cannot be classified in heading 6702 because the merchandise is obtained in one piece, and put together through welding, which leaves the trunk and branches inseparable, i.e. the branches and the trunk are melted together in a way that makes it impossible to take apart. The subject merchandise in NY N260368 is classified under heading 8306.

Conversely, in NY N236262 and NY N255988 the subject merchandise, based on the descriptions given, is not “obtained in one piece.”³ The subject merchandise is constructed by intertwining materials and the use of PVC tape. The subject merchandise in these rulings are classified under 6702.

HOLDING:

By application of GRI 1 and 3(b), the subject artificial lighted metal trees in NY N236262 and NY N255988 are classified in heading 6702, HTSUS. The subject merchandise is specifically classified in subheading 6702.90.6500, HTSUSA (Annotated), which provides for: “Artificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit: of other materials: Other: Other.” The 2018 column one general rate of duty for subheading, HTSUSA, is 17% *ad valorem*.

By application of GRI 1 and 3(b), the subject artificial lighted tree in NY N260368 is classified in heading 8306. The subject merchandise is specifically classified in subheading 8306.29.0000, HTSUSA (Annotated), which provides for: “Bells, gongs and the like, nonelectric, of base metal...; Statuettes and other ornaments, and parts thereof; Other.” The 2018 column one general rate of duty for subheading 8306.29.0000, HTSUSA, is free.

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

² See New York Ruling Letter N186342, dated October 25, 2011.

³ See Chapter 67 Note 3(b) (If it were determined that the branches and trunk of the trees were molded, forged, etc. together, the subject merchandise would be classified under heading 8306).

EFFECT ON OTHER RULINGS:

New York Ruling Letters N236262, dated January 4, 2013, N260368, dated January 21, 2015, and N255988, dated September 4, 2014 are hereby REVOKED in accordance with the above analysis.

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

Sincerely,

CRAIG T. CLARK,

Director

Commercial and Trade Facilitation Division

- CC: Marilyn-Joy Cerny
Cerny Associates, P.C.
24 Smith Street, Building 2, Suite 102
Pawling, NY 12564
- CC: Martha De Castro
Bed Bath & Beyond
700 Liberty Ave.
Union, NJ 0708



**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>

Dated: February 4, 2020.

DAVE FLUTY,
*Executive Director,
Laboratories and Scientific
Services Directorate.*

[Published in the Federal Register, February 21, 2020 (85 FR 10181)]

AGENCY INFORMATION COLLECTION ACTIVITIES:

Lien Notice

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

ACTION: 30-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and must be submitted (no later than March 23, 2020) to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to dhsdeskofficer@omb.eop.gov.

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

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (84 FR 63888) on November 19, 2019, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Lien Notice.

OMB Number: 1651-0012.

Form Number: CBP Form 3485.

Abstract: Section 564, Tariff Act of 19, as amended (19 U.S.C. 1564) provides that the claimant of a lien for freight, charges, or contribution in general average can notify CBP in writing of the existence of a lien, and CBP shall not permit delivery of the merchandise from a public store or a bonded warehouse until the lien is satisfied or discharged. The claimant shall file the notification of a lien on CBP Form 3485, Lien Notice. This form is usually prepared and submitted to CBP by carriers, cartmen and similar persons or firms. The data collected on this form is used by CBP to ensure that liens have been satisfied or discharged before delivery of the freight from public stores or bonded warehouses, and to ensure that proceeds from public auction sales are distributed to the lienholder. CBP Form 3485 is provided for by 19 CFR 141.112, and is accessible at <https://www.cbp.gov/newsroom/publications/forms?title=3485&=Apply>.

Current Actions: This submission is being made to extend the expiration date with no change to the burden hours. There are no changes to the information collected or to Form 3485.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 112,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 112,000.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 28,000.

Dated: February 18, 2020.

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

[Published in the Federal Register, February 21, 2020 (85 FR 10180)]



AGENCY INFORMATION COLLECTION ACTIVITIES:

Application to Pay Off or Discharge an Alien Crewman

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

ACTION: 30-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and must be submitted (no later than March 23, 2020) to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to dhsdeskofficer@omb.eop.gov.

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

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (84 FR 64911) on November 25, 2019, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Application to Pay Off or Discharge an Alien Crewman.

OMB Number: 1651-0106.

Form Number: I-408.

Abstract: CBP Form I-408. Application to Pay Off or Discharge an Alien Crewman, is used as an application by the owner, agent, consignee, charterer, master, or commanding officer of any vessel or aircraft arriving in the United States to obtain permission

from the Secretary of the Department of Homeland Security to pay off or discharge an alien crewman. This form is submitted to the CBP officer having jurisdiction over the area in which the vessel or aircraft is located at the time of application. CBP Form I-408 is authorized by Section 256 of the Immigration and Nationality Act (8 U.S.C. 1286) and provided for 8 CFR 252.1(h). This form is accessible at: <https://www.cbp.gov/newsroom/publications/forms>.

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 85,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 85,000.

Estimated Time per Response: 25 Minutes.

Estimated Total Annual Burden Hours: 35,360.

Dated: February 18, 2020.

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

[Published in the Federal Register, February 21, 2020 (85 FR 10180)]