

U.S. Customs and Border Protection



PROPOSED REVOCATION OF ONE RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF COMBINATION AUTOMOBILE ICE SCRAPER, SQUEEGEE, AND BRISTLE BRUSH WITH DETACHABLE HANDLE (“THE 3-IN-1 CAR CLEANER”)

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

ACTION: Notice of proposed revocation of one ruling letter and revocation of treatment relating to the tariff classification of a combination automobile ice scraper, squeegee, and bristle brush with a detachable handle (“the 3-In-1 Car Cleaner”).

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke one ruling letter concerning the tariff classification of the 3-In-1 Car Cleaner 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 November 13, 2020.

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

FOR FURTHER INFORMATION CONTACT: Claudia Garver, Chemicals, Petroleum, Metals and Miscellaneous Classification Branch, Regulations and Rulings, Office of Trade, at (202) 325-0024.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to 19 U.S.C. §1625(c)(1), this notice advises interested parties that CBP is proposing to revoke one ruling letter pertaining to the tariff classification of the 3-In-1 Car Cleaner. Although in this notice, CBP is specifically referring to Headquarters Ruling Letter ("HQ") 952654, dated January 27, 1993 (Attachment A), this notice also covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the comment period.

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

In HQ 952654, CBP classified the 3-In-1 Car Cleaner in heading 9603, HTSUS, specifically in subheading 9603.90.80, HTSUS, which

provides for “brushes . . . squeegees.” CBP has reviewed HQ 952654 and has determined the ruling letter to be in error. It is now CBP’s position that the 3-In-1 Car Cleaner is properly classified in heading 8708, HTSUS, specifically in subheading 8708.99.81, HTSUS, which provides for “Parts and accessories of the motor vehicles of headings 8701 to 8705.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke HQ 952654 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed HQ H313099, set forth as Attachment B to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: September 15, 2020

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

Attachments

HQ H313099
OT:RR:CTF:CPMM H313099 AAK/CKG
CATEGORY: Classification
TARIFF NO: 8708.99.8180

DAVID A. EISEN, ESQ.
SIEGEL, MANDELL & DAVIDSON, P.C.
COUNSELORS AT LAW
1515 BROADWAY, 43RD FLOOR
NEW YORK, NEW YORK 10036

RE: Revocation of HQ 952654; classification of combination automobile ice scraper, squeegee, and bristle brush with a detachable handle

DEAR MR. EISEN:

This is in reference to Headquarters Ruling Letter (HQ) 952654, dated January 27, 1993, concerning the tariff classification of a combination automobile ice scraper, squeegee, and bristle brush with a detachable handle. In HQ 952654, CBP classified the item, referred to as the “3-in-1 Car Cleaner,” in heading 9603, HTSUS. We have reviewed HQ 952654, and have determined that the classification of the 3-in-1 Car Cleaner in heading 9603, HTSUS, was incorrect.

FACTS:

The merchandise at issue was described in HQ 952654 as follows:

The “3-in-1 Car Cleaner” consists of a plastic handle and three interchangeable components: a plastic ice scraper, a foam squeegee with rubber blade, and a bristle brush. Each component may be separately secured to the handle and may be detached by pressing the handle “clip.”

ISSUE:

Whether the 3-in-1 Car Cleaner is classifiable as a brush or squeegee under heading 9603, HTSUS, or as a part or accessory of the motor vehicles of headings 8701 to 8705 under heading 8708, HTSUS.

LAW AND ANALYSIS:

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification 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 or notes do not require otherwise, the remaining GRIs 2 through 6 may be applied.

The HTSUS provisions under consideration are as follows:

9603: Brooms, brushes (including brushes constituting parts of machines, appliances or vehicles), hand-operated mechanical floor sweepers, not motorized, mops and feather dusters; prepared knots and tufts for broom or brush making; paint pads and rollers; squeegees (other than roller squeegees).

8708: Parts and accessories of the motor vehicles of headings 8701 to 8705.

Note 2 to Section XVII provides, in pertinent part:

The expressions “parts” and “parts and accessories” do not apply to the following articles, whether or not they are identifiable as for the goods of this section:

...

- (l) Brushes of a kind used as parts of vehicles (heading 9603).

Note 3 to Section XVII provides, in pertinent part:

References in chapters 86 to 88 to “parts” or “accessories” do not apply to parts or accessories which are not suitable for use solely or principally with the articles of those chapters.

The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the HTSUS. While not legally binding or dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings at the international level. *See* T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

Part III of the General EN’s to Section XVII, HTSUS, provides, in pertinent part:

[T]hese headings apply **only** to those parts or accessories which comply with **all three** of the following conditions:

- (a) They must not be excluded by the terms of Note 2 to this Section (see paragraph (A) below).
- and (b) They must be suitable for use solely or principally with the articles of Chapters 86 to 88 (see paragraph (B) below).
- and (c) They must not be more specifically included elsewhere in the Nomenclature (see paragraph (C) below).

EN 87.08 provides, in pertinent part:

This heading covers parts and accessories of the motor vehicles of headings 87.01 to 87.05, **provided** the parts and accessories fulfil **both** the following conditions:

- (i) They must be identifiable as being suitable for use solely or principally with the above-mentioned vehicles;
- and (ii) They must not be excluded by the provisions of the Notes to Section XVII (see the corresponding General Explanatory Note).

* * * *

As a preliminary matter, we wish to clarify that Note 2(l) to Section XVII, which excludes “brushes of a kind used as parts of vehicles (heading 9603)” from classification under heading 8708 as a part or accessory of motor vehicles of headings 8701 to 8705, does not apply to the 3-in-1 Car Cleaner, as we held in HQ 952654. Note 2(l) only excludes as a part or accessory of motor vehicles of headings 8701 to 8705 an item that is classified in its entirety under heading 9603. Here, only part of the 3-in-1 Car Cleaner is classified under heading 9603—the brush and the squeegee, but not the ice scraper—and so Note 2(l) does not exclude the 3-in-1 Car Cleaner from classification under heading 8708 as a part or accessory of motor vehicles of headings 8701 to 8705.

The 3-in-1 Car Cleaner is classifiable in heading 8708 as an accessory to a motor vehicle of headings 8701 to 8705. An “accessory” is not defined in the HTSUS. The term accessory is generally understood to mean an article which is not necessary to enable the goods with which it is intended to function. Accessories are of secondary importance, but must, however, contribute to the effectiveness of the principal article (e.g., facilitate the use or handling of the particular article, widen the range of its uses, or improve its operation). HQ 958710, dated April 8, 1996; HQ 950166, dated November 8, 1991. We also employ the common and commercial meanings of the term “accessory”, as the courts did in *Rollerblade v. United States*, wherein the Court of International Trade derived from various dictionaries that an accessory must relate directly to the thing accessorized. *See Rollerblade, Inc. v. United States*, 116 F.Supp. 2d 1247 (CIT 2000), *aff’d*, 282 F.3d 1349 (Fed. Cir. 2002) (holding that inline roller skating protective gear is not an accessory because the protective gear does not directly act on or contact the roller skates in any way, and does not affect the skates’ operation); *See also* HQ 966216, dated May 27, 2003.

The 3-in-1 Car Cleaner contributes to the effectiveness and affects the operations of motor vehicles of headings 8701 to 8705 by enabling the removal of ice or snow from their windows, lights, and other parts for better visibility while driving. The item appears identifiably suitable for use solely or principally for a motor vehicle of headings 8701 to 8705. Moreover, the item is not excluded from classification as an accessory to a motor vehicle of headings 8701 to 8705, and it is not further specified elsewhere in the Nomenclature. Accordingly, the 3-in-1 Car Cleaner is classifiable under heading 8708 under GRI 1.

Conversely, the 3-in-1 Car Cleaner is not wholly described by heading 9603 as a brush or squeegee, and there is no need for an essential character determination under GRI 3.

This conclusion is consistent with prior CBP rulings classifying other ice scrapers and similar articles as accessories under heading 8708, HTSUS. *See, e.g.*, HQ 081825, dated June 22, 1988; NY 860694, dated March 8, 1991; NY 896244, dated April 6, 1994; HQ 956382, dated September 28, 1994; NY A82053, dated April 15, 1996; NY G88216, dated March 12, 2001; NY R01280, dated January 19, 2005; NY N012544, dated June 27, 2007; NY N022822, dated February 12, 2008; NY N073479, dated September 22, 2009; NY N082460, dated November 20, 2009; NY N110536, dated July 12, 2010; and NY N251145, dated March 31, 2014. The instant merchandise is accordingly classified in heading 8708, HTSUS.

HOLDING:

By application of GRI 1, the 3-in-1 Car Cleaner is classified in heading 8708, HTSUS, specifically subheading 8708.99.8180, which provides for “Parts and accessories of the motor vehicles of headings 8701 to 8705: Other parts and accessories: Other: Other: Other: Other: Other: Other.” The 2020 column one, general rate of duty is 2.5% *ad valorem*.

EFFECT ON OTHER RULINGS:

HQ 952654, dated January 27, 1993, is hereby revoked.

Sincerely,

CRAIG T. CLARK,

Director

Commercial and Trade Facilitation Division

HQ 952654

January 27, 1993

CLA-2-CO:R:C:F 952654 K

CATEGORY: Classification

TARIFF No.: 9603.90.8050

DAVID A. EISEN, Esq.
SIEGEL, MANDELL & DAVIDSON, P.C.
COUNSELORS AT LAW
1515 BROADWAY, 43RD FLOOR
NEW YORK, NEW YORK 10036

RE: Classification of a Combination Automobile Ice Scraper, Squeegee, and Bristle Brush With a Detachable Handle

DEAR SIR:

The following is in response to your request of August 13, 1992, for a classification ruling of a "3-in-1 Car Cleaner". A sample was submitted.

FACTS:

The "3-in-1 Car Cleaner" consists of a plastic handle and three interchangeable components; a plastic ice scraper, a foam squeegee with rubber blade, and a bristle brush. Each component may be separately secured to the handle and may be detached by pressing the handle "clip".

ISSUE:

The issue is whether the combination article is excluded from classification under heading 8708, Harmonized Tariff Schedule of the United States (HTSUS) as parts and accessories of the motor vehicles of headings 8701 to 8705.

LAW AND ANALYSIS:

The General Rules of Interpretation (GRI), set forth the manner in which merchandise is to be classified under the HTSUS. GRI 1 requires that classification be determined first according to the terms of the headings of the tariff and any relative section or chapter notes and, unless otherwise required, according to the remaining GRI, taken in order.

Heading 8708, HTSUS, provides for parts and accessories of the motor vehicles of headings 8701 to 8705. However, Note 2(l), Section XVII, HTSUS, states that the "expressions 'parts' and 'parts and accessories' do not apply to the following articles, whether or not they are identifiable as for goods of this section:...brushes of a kind used as parts of vehicles (heading 9603)." The "3-in 1 Car cleaner" may be solely or principally used with a motor vehicle. However, the article can not be classifiable as a motor vehicle accessory because one of the components, the brush, is excluded by Note 2(l).

Since the article cannot be classifiable according to GRI 1, GRI 2(b) then requires that "the classification of goods consisting of more than one material or substance shall be according to the principles of rule 3." The article meets the definition of a composite article because it is partially described in two subheadings, 8708.99.50 and 9603.90.8050 and GRI 3(a) governs the classification of composite goods. GRI 3(a) provides that when classification of goods is under two or more headings (in this case, subheadings) "the heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings

each refer to part only of the materials or substance contained in...composite goods...those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.” Accordingly, the article cannot be classifiable under GRI 3(a).

GRI 3(b) provides that “composite goods...made up of different components...which cannot be classified by reference to 3(a), shall be classified as if they consisted of the...component which gives them their essential character...” Each component, the ice scraper, the squeegee, and the brush, is equally essential in character. Accordingly, the article cannot be classifiable by GRI 3(b).

GRI 3(c) provides that “when goods cannot be classified by reference to 3(a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.” The composite articles are classified as follows:

Brush-----subheading, 9603.90.8050, dutiable at 5.6 %ad valorem

Squeegee-----subheading, 9603.90.8050, dutiable at 5.6 %ad valorem

Scraper-----subheading, 8708.99.50, dutiable at 3.1 % ad valorem

Since the brush and the squeegee are classified under a subheading which occurs last in numerical order among those subheadings which equally merit consideration, the “3-in-1 Car Cleaner” is classifiable as a set under subheading 9603.90.8050, HTSUS, dutiable at 5.6 percent ad valorem.

HOLDING:

A combination ice scraper, brush, and squeegee with an interchangeable plastic handle, used as a motor vehicle accessory, is classifiable by reference to GRI 3(c), HTSUS, as a set under subheading 9603.90.8050, HTSUS, dutiable at 5.6 percent ad valorem.

Sincerely,

JOHN DURANT,

Director

Commercial Rulings Division

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

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

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

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (“CBP”) intends to revoke one ruling letter concerning tariff classification of certain footwear 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 November 13, 2020.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K St., NE, 10th Floor, Washington, DC 20229–1177. Submitted comments may be inspected at the address stated above during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Ms. Cammy Canedo at (202) 325–0439.

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether any other applicable legal requirement is met.

Pursuant to 19 U.S.C. §1625(c)(1), this notice advises interested parties that CBP is proposing to revoke one ruling letter pertaining to the tariff classification of certain footwear. Although in this notice CBP is specifically referring to New York Ruling Letter (“NY”) N298995, dated August 2, 2018 (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 N298995, dated August 2, 2018, CBP classified certain footwear in heading 6404, HTSUS, specifically in subheading 6404.11.90, HTSUS, which provides for “Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials: Footwear with outer soles of rubber or plastics: Sports footwear; tennis shoes, basketball shoes, gym shoes, training shoes and the like: Other: Valued over \$12/pair.” CBP has reviewed NY N298995, and has determined this ruling letter to be in error. It is now CBP’s position that the footwear at issue in these rulings is properly classified in subheading 6404.19.90, HTSUS, which provides for “Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials: Footwear with outer soles of rubber or plastics: Other: Other: Valued over \$12/pair.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke NY N298995, and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquar-

ters Ruling Letter (“HQ”) H301907, 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

N298995

August 2, 2018

CLA-2-64:OT:RR:NC:N2:247

CATEGORY: Classification

TARIFF NO.: 6404.11.9050

Ms. PRISCILLA DOBBS
CONVERSE INC.
160 N. WASHINGTON STREET
BOSTON, MA 02114

RE: The tariff classification of footwear from China

DEAR Ms. DOBBS:

In your letter dated June 28, 2018, you requested a tariff classification ruling. Your sample will be returned at your request.

Style ID: G30947-CTA39W-19S01 Converse All Star Sasha is a woman's, closed toe/closed-heel, above-the-ankle sneaker. The shoe has nine eyelets on each side of the tongue facilitating a lace closure. The external surface area of the upper is predominantly cotton canvas textile. Although you suggest the footwear is not designed for athletic purposes, the shoe has most of the characteristics of athletic footwear. It has a rubber/plastics foxing band, a cushioned midsole, a general athletic appearance, including a toe cap. The flexible rubber or plastics outer sole provides adequate traction. You've provided an F.O.B. value over \$12 per pair.

The applicable subheading for style ID: G30947-CTA39W-19S01 Converse All Star Sasha will be 6404.11.9050, Harmonized Tariff Schedule of the United States (HTSUS), which provides for footwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials: tennis shoes, basketball shoes, gym shoes, training shoes and the like: other: valued over \$12/pair: for women: other. 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 <https://hts.usitc.gov/current>.

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

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

Sincerely,

STEVEN A. MACK

Director

National Commodity Specialist Division

HQ H301907
OT:RR:CTF:FTM H301907 TSM
CATEGORY: Classification
TARIFF NO.: 6404.19.90

Ms. PRISCILLA DOBBS
CONVERSE INC.
160 N. WASHINGTON STREET
BOSTON, MA 02114

RE: Revocation of NY N298995; Tariff classification of certain women's footwear

DEAR Ms. DOBBS:

This is in reference to New York Ruling Letter ("NY") N298995, issued to Converse, Inc. on August 2, 2018. In NY N298995, U.S. Customs and Border Protection ("CBP") classified certain Converse footwear, identified as style G30947-CTA39W-19S01, under subheading 6404.11.90, HTSUS, which provides for "Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials: Footwear with outer soles of rubber or plastics: Sports footwear; tennis shoes, basketball shoes, gym shoes, training shoes and the like: Other: Valued over \$12/pair." We have reviewed NY N298995 and found it to be incorrect. For the reasons set forth below, we are revoking NY N298995.

FACTS:

In NY N298995, style G30947-CTA39W-19S01 was described as follows:

Style ID: G30947-CTA39W-19S01 Converse All Star Sasha is a woman's, closed toe/closed-heel, above-the-ankle sneaker. The shoe has nine eyelets on each side of the tongue facilitating a lace closure. The external surface area of the upper is predominantly cotton canvas textile. ... [The shoe also] has a rubber/plastics foxing band, a cushioned midsole, [and] a general athletic appearance, including a toe cap. The flexible rubber or plastics outer sole provides adequate traction. You've provided an F.O.B. value over \$12 per pair.

In a letter dated, November 9, 2018, filed on behalf of Converse, Inc., you requested reconsideration of NY N298995, arguing that the footwear style G30947-CTA39W-19S01 should be classified under subheading 6404.19.90, HTSUS, which provides for "Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials: Footwear with outer soles of rubber or plastics: Other: Valued over \$12/pair."

ISSUE:

What is the tariff classification of the footwear style at issue?

LAW AND ANALYSIS:

Merchandise imported into the United States is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation ("GRIs") and, in the absence of special language or context which requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provision of law for all purposes. GRI 1 requires that classification be determined first according to

the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in their appropriate order.

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

The HTSUS provisions under consideration are as follows:

- 6404 Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials:
- Footwear with outer soles of rubber or plastics:
- 6404.11 Sports footwear; tennis shoes, basketball shoes, gym shoes, training shoes and the like:
- Other:
- 6404.11.90 Valued over \$12/pair
* * *
- 6404.19 Other:
- Other:
- 6404.19.90 Valued over \$12/pair
* * *

Additional U.S. Note 2 to Chapter 64 provides as follows:

For the purposes of this chapter, the term “tennis shoes, basketball shoes, gym shoes, training shoes and the like” covers athletic footwear other than sports footwear (as defined in subheading note 1 above), whether or not principally used for such athletic games or purposes.¹

* * *

“Footwear Definitions” T.D. 93–88, dated October 25, 1993, provides in relevant part:

“Athletic” footwear (sports footwear included in this context) includes:

1. Shoes usable only in the serious pursuit of a particular sport, which have or have provision for attachment of spikes, cleats, clips or the like.
2. Ski, wrestling & boxing boots; cycling shoes; and skating boots w/o skates attached.

¹ Subheading Note 1 to Chapter 64 provides as follows:

For the purposes of subheadings 6402.12, 6402.19, 6403.12, 6403.19 and 6404.11, the expression “sports footwear” applies only to:

- (a) Footwear which is designed for a sporting activity and has, or has provision for the attachment of spikes, sprigs, cleats, stops, clips, bars or the like;
- (b) Skating boots, ski-boots and cross-country ski footwear, snowboard boots, wrestling boots, boxing boots and cycling shoes.

3. Tennis shoes, basketball shoes, gym shoes (sneakers), training shoes (joggers) and the like whether or not principally used for such games or purposes.

It does not include:

1. Shoes that resemble sport shoes but clearly could not be used at all in that sporting activity. Examples include sneakers with a sequined or extensively embroidered uppers.
2. A “slip-on”, except gymnastic slippers.
3. Skate boots with ice or roller skates attached.

In NY N298995, footwear style G30947-CTA39W-19S01 was classified under subheading 6404.11.90, HTSUS, because CBP concluded that it had most of the characteristics of athletic footwear, such as a rubber/plastics foxing band, a cushioned midsole, a flexible rubber or plastics outer sole that provides adequate traction, as well as a general athletic appearance. Upon additional review, we find that to be incorrect, as CBP did not consider a certain feature that is not indicative of athletic footwear. Although the footwear style at issue has a general athletic appearance and most of the other construction features identifiable with athletic footwear, referenced above, further review shows that due to a certain design feature, this footwear is not properly classified as athletic. Specifically, footwear style G30947-CTA39W-19S01 has a pointed toe, which could make running long distances uncomfortable. Accordingly, we find that footwear style G30947-CTA39W-19S01 is not athletic footwear of subheading 6404.11, HTSUS. *See* NY N299439, dated August 23, 2018 (classifying footwear with a pointed toe under subheading 6404.19, HTSUS, as footwear other than athletic, because the pointed toe could make running long distances uncomfortable).

In accordance with the foregoing, we find that footwear style G30947-CTA39W-19S01 is classified under heading 6404, HTSUS, and specifically under subheading 6404.19.90, HTSUS.

HOLDING:

By application of GRI 1, we find that footwear style G30947-CTA39W-19S01, at issue in NY N298995, is classified under heading 6404, HTSUS, and specifically under subheading 6404.19.90, HTSUS, which provides for “Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials: Footwear with outer soles of rubber or plastics: Other: Other: Valued over \$12/pair.” The 2018 column one, general rate of duty is 9% *ad valorem*.

EFFECT ON OTHER RULINGS:

NY N298995, dated August 2, 2018, is REVOKED in accordance with the above analysis.

Sincerely,

CRAIG T. CLARK,

Director

Commercial and Trade Facilitation Division

PROPOSED REVOCATION OF ONE RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF FOIL PRINT FABRIC

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

ACTION: Notice of proposed revocation of one ruling letter and revocation of treatment relating to the tariff classification of foil print fabric.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke one ruling letter concerning tariff classification of foil print fabric 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 November 13, 2020.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K St., NE, 10th Floor, Washington, DC 20229–1177. Submitted comments may be inspected at the address stated above during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Ms. Cammy Canedo at (202) 325–0439.

FOR FURTHER INFORMATION CONTACT: John Rhea, Food, Textiles, and 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), this notice advises interested parties that CBP is proposing to revoke one ruling letter pertaining to the tariff classification of foil print fabric revoking New York Ruling Letter (“NY”) N267195. Although in this notice, CBP is specifically referring to tariff classification NY N267195, dated September 10, 2015 (Attachment B), this notice also covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the 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 N267195, CBP classified foil print fabric in heading 6004, HTSUS, specifically in subheading 6004.10.85, HTSUS, which provides for “Knitted or crocheted fabrics of a width exceeding 30 cm, containing by weight 5 percent or more of elastometric yarn or rubber thread, other than those of heading 6001: Containing by weight 5 percent or more of elastometric yarn but not containing rubber thread, Other.” CBP has reviewed NY N267195 and has determined the ruling letter to be in error. It is now CBP’s position that foil print fabric is properly classified, in heading 5903, HTSUS, specifically in subheading 5903.90.25, HTSUS, which provides for “Textile fabrics impregnated, coated, covered or laminated with plastics, other than those of heading 5902: Other: Of man-made fibers: Other: Other.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke NY N267195 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed HQ H27099, set forth as Attachment A to this notice. Additionally, pur-

suant 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

HQ H270911
OT:RR:CTF:FTM H270911 JER
CATEGORY: Classification/Origin
TARIFF NO.: 5903.90.2500

MR. ROBERT LEO
MEEKS, SHEPPARD, LEO & PILLSBURY
570 LEXINGTON AVENUE, 24TH FLOOR
NEW YORK, NY 10022

RE: Modification of NY N267195; classification of foil print fabric

DEAR MR. LEO:

This is in response to your request of October 12, 2015, for reconsideration of New York Ruling Letter (“NY”) N267195, issued on September 10, 2015, to your client, Nipkow & Kolbelt, Inc., concerning the classification of certain merchandise under the Harmonized Tariff Schedule of the United States (“HTSUS”) and the eligibility of the merchandise for preferential tariff treatment under the United States-Korea Free Trade Agreement (“UKFTA”). In NY N267195, U.S. Customs and Border Protection (“CBP”) classified the imported fabric under heading 6004, HTSUS, in particular, under subheading 6004.10.8500, HTSUS, as, “Knitted or crocheted fabrics of a width exceeding 30 cm, containing by weight 5 percent or more of elastomeric yarn or rubber thread, other than those of heading 6001: Containing by weight 5 percent or more of elastomeric yarn but not containing rubber thread, Other.” CBP also determined that the merchandise was not eligible for preferential tariff treatment under the UKFTA and found that the country of origin of fabric was the Republic of Korea (“South Korea”).

It is your contention that heading 6004, HTSUS, is not the proper heading because it does not describe the merchandise at issue. You contend that the merchandise is properly classified under heading 5903, HTSUS, as a textile fabric, which has been coated or covered with plastics. Upon additional review, we have found the classification under heading 6004, HTSUS, to be incorrect. In reaching our decision, we considered the information presented in your October 12, 2015 submission as well as the sample submitted to our office on March 19, 2020. For the reasons set forth below, we hereby revoke NY N267195 with respect to the classification of the foil-printed fabric and the eligibility of the subject merchandise for the preferential tariff treatment under the UKFTA and modify NY N267195 with respect to the analysis of the country of origin, utilizing the correct classification.

FACTS:

In NY N267195, CBP described the subject merchandise, referred to as the Variflex Mystique fabric, as follows:

Style Varsiflex Mystique is a heavy knit fabric, foil-printed on one surface with a pattern of small dots arranged in a series of concentric semi-circles in a swirling design reminiscent of a fingerprint's whorl inside a loop. According to the information provided, this fabric is of weft knit construction, composed of 88% polyester and 12% spandex (elastomeric) yarns and weighing 306 g/m². You state that this fabric will be imported into the United States in widths of 58 to 60 inches, and will be used for apparel.

NY N267195 described the manufacturing process of the Variflex Mystique fabric as follows: (1) Polyester yarns are imported into South Korea from Taiwan; (2) Elastomeric yarns are extruded in South Korea from resin chips from South Korea or China; (3) Fabric is knitted in South Korea; (4) Greige fabric is piece-dyed in South Korea; (5) Fabric is foil-printed with polyester plastic dots in South Korea; (6) All subsequent finishing operations are performed in South Korea; and, (7) Fabric is exported directly to the United States.

In your 2015 submission the Variflex Mystique fabric is described as being piece dyed and then coated with foil on one side with small closely spaced dots, approximately 0.25 millimeters (mm), which are composed of polyester plastic. The plastic application comprises approximately less than 70 percent by weight of the total weight of the material.

ISSUE:

1) Whether the subject merchandise is classifiable under heading 5903, HTSUS, as a textile fabric coated with plastic, or whether the subject merchandise is precluded from heading 5903, HTSUS, by application of Note 2(a)(4) to Chapter 59 and therefore classifiable under heading 6004, HTSUS.

2) Whether the subject merchandise qualifies for preferential tariff treatment under the UKFTA.

3) What is the country of origin of foil print fabric?

LAW AND ANALYSIS:

1) Whether the subject merchandise is classifiable under heading 5903, HTSUS, as a textile fabric coated with plastic, or whether the subject merchandise is precluded from heading 5903, HTSUS, by application of Note 2(a)(4) to Chapter 59 and therefore classifiable under heading 6004, HTSUS.

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 2020 HTSUS provisions under consideration are as follows:

5903 Textile fabrics impregnated, coated, covered or laminated with plastics, other than those of heading 5902:

* * *

5903.90 Other:
Of man made fibers:

5903.90.25.00 Other...
Other..

* * *

6004 Knitted or crocheted fabrics of a width exceeding 30 cm, containing by weight 5 percent or more of elastomeric yarn or rubber thread, other than those of heading 6001:

6004.10.00 Containing by weight 5 percent or more of elastomeric yarn but not containing rubber thread...

6004.10.0085

Other...

* * *

U.S. Note 2(a)(4) to Chapter 59, HTSUS, provides, in pertinent part, as follows:

(a) Textile fabrics, impregnated, coated, covered or laminated with plastics, whatever the weight per square meter and whatever the nature of the plastic material (compact or cellular), other than:

- (1) Fabrics in which the impregnation, coating or covering cannot be seen with the naked eye (usually chapters 50 to 55, 58 or 60): for the purposes of this provision, no account should be taken of any resulting change in color;
- (2) Products which cannot, without fracturing, be bent manually around a cylinder of a diameter of 7 mm, at a temperature between 15 C and 30 C (usually chapter 39);
- (3) Products in which the textile fabric is either completely embedded in plastics or entirely coated or covered on both sides with such material, provided that such coating or covering can be seen with the naked eye with no account being taken of any resulting change of color (chapter 39);
- (4) Fabrics partially coated or partially covered with plastic and bearing designs resulting from these treatments (usually chapters 50 to 55, 58 or 60); [...]

* * *

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 5903, HTSUS, states, in relevant part, that:

This heading covers textile fabrics which have been impregnated, coated, covered or laminated with plastics (e.g., poly(vinyl chloride)).

Such products are classified here whatever their weight per m² and whatever the nature of the plastic component (compact or cellular), **provided:**

- (1) That, in the case of impregnated, coated or covered fabrics, the impregnation, coating or covering can be seen with the naked eye otherwise than by a resulting change in colour.

Textile fabrics in which the impregnation, coating or covering cannot be seen with the naked eye or can be seen only by reason of a resulting change in colour usually fall in **Chapters 50 to 55, 58 or 60**. Examples of such fabrics are those impregnated with substances designed solely to render them crease-proof, moth-proof, unshrinkable or waterproof (e.g., waterproof gabardines and poplins). Textile fabrics partially coated or partially covered with plastics and bearing designs resulting from these treatments are also classified in **Chapters 50 to 55, 58 or 60**.

* * *

In your request for reconsideration of NY N267195, you contend that the subject Variflex Mystique fabric is classifiable under heading 5903, HTSUS, because it is substantially similar to other fabrics, which CBP previously classified under heading 5903, HTSUS. In particular, you argue that the subject Variflex Mystique fabric is substantially similar to the Mystique fabric of NY N095385, dated March 9, 2010, wherein CBP classified the Mystique fabric under heading 5903, HTSUS, and specifically under sub-heading 5903.90.2500, HTSUS. In this regard, you maintain the decision in NY N267195 incorrectly determined that the placement of plastic dots in the swirling pattern of the fabric resulted in a visible design which precluded it from classification in heading 5903, HTSUS, pursuant to Note 2(a)(4) to Chapter 59.

Note 2(a)(4) to Chapter 59, precludes fabrics which are partially coated or partially covered with plastic and bearing designs which result from the partial coating or covering treatment of the plastic; such fabrics are usually classified in Chapters, 50, 55, 58 or 60. In NY N267195, CBP determined that the plastic coating of the subject Variflex Mystique fabric constituted dots, which formed a pattern.

According to our research, a pattern is a repeating of an element or motif used to create a unique decoration on fabrics. An example of an easily identifiable pattern is a checkered pattern or striped pattern. *Fabric & Textile Pattern Encyclopedia & Textile*, Ivy & Pearl Boutique (August 27, 2018), at <https://www.ivyandpearlboutique.com/fashion-and-news/fashion-school/fabric-and-textile-pattern-encyclopedia-complete-pattern-dictionary-illustrating-the-various-types-of-patterns-used-in-fabric-textile-and-clothing-design/>. All patterns can be categorized as geometric or organic. Geometric patterns can be further categorized as abstract patterns or a pattern of repeated shapes and sizes with no relationship to natural objects. Examples of geometric patterns include geometric shapes and plaids. *Id.* See also, *Fabric Patter: 100 Plus Different Prints and Patterns*, *Sew Guide*, at <https://sewguide.com/fabric-patterns/>.

Based upon a review of the sample submitted, the subject Variflex Mystique does not present characteristics, which remotely satisfy the definition of a pattern. There are no individually apparent or visible dots, which form a motif, repeated design or pattern. Instead, the Variflex Mystique presents as a foil printed fabric with a shiny metallic coating on one side. This shiny plastic coating is better described as having a solid lamé effect. The French term “lamé” once translated, means “metal plate.” In the textile industry, lamé fabric is defined as being a knit fabric with metallic coating on the surface. Lamé, *Fabric.com*, <https://www.fabric.com/fabric-type/lame>. Lamé fabric is also defined as being a shiny fabric with metallic threads, often gold or silver. *Freedictionary.com*, <https://www.thefreedictionary.com/lam%C3%A9>. In the instant case, the foil print coating consists of polyester plastic dots, which are approximately 0.25 mm in size, which are closely spaced on the surface area of the fabric. The 0.25 mm dots present as sprayed on glitter, creating a solid lamé effect or the visual effect of shiny metal or foil.

In previous rulings, CBP has consistently classified substantially similar fabric with a shiny metallic surface coating (i.e., lamé effect) under heading 5903, HTSUS. For example, in NY B83935, dated April 17, 1997, certain foil printed fabrics coated with 1mm dots were classified under heading 5903, HTSUS. Likewise, in NY N095385, CBP classified foil printed fabric identified as “Mystique” under heading 5903, HTSUS. The decision in NY N095385

stated that the fabric was being coated, foil printed, on one side with small closely spaced dots composed of polyester plastic. Moreover, in NY N095385, CBP noted that the “Mystique” dots did not form any kind of design or pattern, but rather created a solid lamé type effect across the surface. *See also*, NY E80224, dated April 19, 1999 (CBP classified fabric described as Slinky Fog Foil under heading 5903, HTSUS, as it was plastic coated, (foil printed) with a uniform silvery appearance on the surface area).

Much like, the fabric of NY N095385 and NY B83935, the surface side of the subject Variflex Mystique is coated with a shiny metallic coating which is uniform and visible. This shiny metallic coating (of .25mm plastic dots) does not create a pattern or design but instead, consists of features which are consistent with terms of heading 5903, HTSUS, as the subject fabric is coated with plastic or is otherwise foil printed. Therefore, the Variflex Mystique fabric is classified in subheading 5903.90.2500, HTSUS, which provides for: “Textile fabrics impregnated, coated, covered or laminated with plastics, other than those of heading 5902: Other: Of man-made fibers: Other: Other.”

2) Whether the subject merchandise qualifies for preferential tariff treatment under the UKFTA.

The requirements for eligibility for preferential tariff treatment under the UKFTA are set forth in General Note (GN) 33 of the HTSUS (19 U.S.C. § 1202). Under GN 33(b), HTSUS, and subject to the provisions of subdivisions (c), (d), (n), and (o) thereof, goods imported into the U.S. are eligible for duty-free treatment under the UKFTA if:

- (i) the good is wholly obtained or produced entirely in the territory of Korea or of the United States, or both;
- (ii) the good is produced entirely in the territory of Korea or of the United States, or both, and—
 - (A) each of the non-originating materials used in the production of the good undergoes an applicable change in tariff classification specified in subdivision (o) of this note; or
 - (B) the good otherwise satisfies any applicable regional value-content or other requirements set forth in such subdivision (o); and satisfies all other applicable requirements of this note and of applicable regulations; or
- (iii) the good is produced entirely in the territory of Korea or of the United States, or both, exclusively from materials described in subdivisions (i) or (ii), above.

With respect to textile and apparel articles, GN 33(d), HTSUS, states as follows:

- (i) For purposes of this note, a textile or apparel good provided for in subheadings 4202.12, 4202.22, 4202.32 or 4202.92, chapters 50 through 63, heading 7019 or subheading 9404.90 of the tariff schedule is an originating good if:
 - (A) each of the nonoriginating materials used in the production of the good undergoes an applicable change in tariff classification specified in subdivision (o) of this note as a result of production occurring entirely in the territory of Korea or of the United States, or both, or the good

otherwise satisfies the applicable requirements of this note where a change in tariff classification for each nonoriginating material is not required, and

(B) the good satisfies any other applicable requirements of this note.

The provisions of subdivision (o) of this note shall not apply in determining the country of origin of a textile or apparel good for nonpreferential purposes.

As referenced above, the Variflex Mystique fabric is classified in subheading 5903.90, HTSUS. The applicable rule set forth in GN 33(o) for goods classified under Chapter 59 of the HTSUS provides:

A change to headings 5903 through 5908 from any other chapter, except from headings 5111 through 5113, 5208 through 5212, 5310 through 5311, 5407 through 5408 or 5512 through 5516.

Under the UKFTA there is another requirement that must be satisfied for a fabric to be originating. Elastomeric yarn is required to be wholly formed and finished in South Korea or the United States. General Note 33(d) provides in relevant part:

(iii) For purposes of this note, the expression “*wholly formed and finished*” means:

[...]

(B) when used in reference to yarns, all production processes and finishing operations, beginning with the extrusion of filaments, strips, film or sheets, and including drawing to fully orient a filament or slitting a film or sheet into strip, or the spinning of all fibers into yarn, or both, and ending with a finished yarn or plied yarn.

(iv) A textile or apparel good may be considered to be an originating good if—

(A) the total weight of all fibers and yarns that are used in the production of the component of the good that determines the tariff classification of the good and that do not undergo an applicable change in tariff classification is not more than 7 percent of the total weight of that component;

[...]

Notwithstanding the provisions of subdivision (d)(iv)(A), a good containing elastomeric yarns in the component of the good that determines the tariff classification of the good shall be considered to be an originating good only if such yarns are wholly formed and finished in the territory of Korea or of the United States.

(v) For purposes of this note, in the case of a good that is a yarn, fabric or fiber, the term “*component of the good that determines the tariff classification of the good*” means all of the fibers in the good.

Based on the facts provided, the non-originating polyester yarn meets the requisite tariff shift requirement of GN 33(o), as it is classified in heading 5402, HTSUS, and the finished foil print fabric is classified in subheading 5903.90, HTSUS.

However, a textile or apparel good containing elastomeric yarn in the component of the good that determines the tariff classification of the good

shall be considered to be an originating good only if such yarns are wholly formed in the territory of a party to the UKFTA. Under our facts, the origin of the resin chips used to produce the elastomeric yarn by melting is either South Korea or China. The elastomeric yarn meets the above requirements of GN 33(d)(iii) because it is extruded (and thus wholly formed) in South Korea.

3) What is the country of origin of foil print fabric?

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

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

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

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

HTSUS Tariff shift and/or other requirements

5901–5903 (1) Except for fabric of wool or of fine animal hair, a change from greige fabric of heading 5901 through 5903 to finished fabric of heading 5901 through 5903 by both dyeing and printing when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decatizing, permanent stiffening, weighting, permanent embossing, or moireing; or,

(2) If the country of origin cannot be determined under (1) above, a change to heading 5901 through 5903 from any other heading, including a heading within that group, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5803, 5806, 5808, and 6002 through 6006, and provided that the change is the result of a fabric-making process.

Pursuant to 19 C.F.R. § 102.21 (b)(2), a fabric-making process is any manufacturing operation that begins with polymers, fibers, filaments (including strips), yarns, twine, cordage, rope, or fabric strips and results in a textile fabric.

In this case, the fabric is knitted in South Korea from polyester yarn produced in Taiwan and the elastomeric yarn, extruded and produced in South Korea from resin of South Korean or Chinese origin, which confers a

tariff shift to heading 5903, HTSUS. Moreover, during the fabric making process the fabric is foil-printed with polyester plastic dots (which stem from the resin) in South Korea and all subsequent finishing operations occur in South Korea. Hence, because the change to subheading 5903.90, HTSUS, is a result of a fabric making process, the merchandise complies with the requisite tariff shift rule for heading 5903, HTSUS. Accordingly, the country of origin of the instant Variflex Mystique fabric is the country in which the fabric-making process occurs, that is, South Korea.

HOLDING:

By application of GRI 1 and Note 2(a)(4) to Chapter 59, HTSUS, we find that the instant Variflex Mystique fabric is provided for in heading 5903, HTSUS, specifically, under subheading 5903.90.2500, HTSUS, which provides for: “Textile fabrics impregnated, coated, covered or laminated with plastics, other than those of heading 5902: Other: Of man-made fibers: Other: Other.” The 2020 column one, general rate of duty is 7.5% *ad valorem*. We further find that, the subject merchandise qualifies for preferential tariff treatment under the UKFTA pursuant to GN 33(b). Finally, pursuant to 19 C.F.R. § 102.21(c)(2), the country of origin of the Variflex Mystique fabric is the Republic of Korea.

EFFECT ON OTHER RULINGS:

NY N267195, dated September 10, 2015, is hereby MODIFIED.

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

N267195

September 10, 2015

CLA-2-60:OT:RR:NC:N3:352

CATEGORY: Classification

TARIFF NO.: 6004.10.0085

MS. DIANE L. WEINBERG
MEEKS, SHEPPARD, LEO & PILLSBURY
570 LEXINGTON AVENUE, 24TH FLOOR
NEW YORK, NY 10022

RE: The tariff classification, country of origin and status under the United States - Korea Free Trade Agreement (UKFTA) of a polyester/spandex foil-printed knit fabric from Korea.

DEAR MS. WEINBERG:

In your letter dated July 27, 2015, on behalf of your client Nipkow & Kobelt, Inc., you requested a ruling on the status of a knit fabric from Korea, Style Varsiflex Mystique, under the United States-Korea Free Trade Agreement (UKFTA). A sample of the fabric was provided.

FACTS:

Style Varsiflex Mystique is a heavy knit fabric, foil-printed on one surface with a pattern of small dots arranged in a series of concentric semi-circles in a swirling design reminiscent of a fingerprint's whorl inside a loop. According to the information provided, this fabric is of weft knit construction, composed of 88% polyester and 12% spandex (elastomeric) yarns and weighing 306 g/m². You state that this fabric will be imported into the United States in widths of 58 to 60 inches, and will be used for apparel.

In your letter and subsequent communications you described the manufacturing operations as follows:

Polyester yarns are imported into Korea from Taiwan.

Elastomeric yarns are extruded in Korea from resin chips from Korea or China.

Fabric is knitted in Korea.

Greige fabric is piece-dyed.

Fabric is foil-printed with polyester plastic dots.

All subsequent finishing operations are performed in Korea.

Fabric is exported directly to the United States.

ISSUE:

What are the classification, status under the UKFTA, and country of origin of the subject merchandise?

CLASSIFICATION:

Note 2 to Chapter 59, Harmonized Tariff Schedule of the United States (HTSUS), defines the scope of heading 5903, under which textile fabrics which are coated, covered, impregnated, or laminated with plastics are classifiable. In addition, it provides guidance on the classification of combinations of textile and plastics. Note 2 states in part that heading 5903, HTSUS, applies to:

(a) Textile fabrics, impregnated, coated, covered or laminated with plastics, whatever the weight per square meter and whatever the nature of the plastic material (compact or cellular), other than:

- (1) Fabrics in which the impregnation, coating or covering cannot be seen with the naked eye (usually chapters 50 to 55, 58 or 60): for the purposes of this provision, no account should be taken of any resulting change in color;
- (2) Products which cannot, without fracturing, be bent manually around a cylinder of a diameter of 7 mm, at a temperature between 15 C and 30 C (usually chapter 39);
- (3) Products in which the textile fabric is either completely embedded in plastics or entirely coated or covered on both sides with such material, provided that such coating or covering can be seen with the naked eye with no account being taken of any resulting change of color (chapter 39);
- (4) Fabrics partially coated or partially covered with plastic and bearing designs resulting from these treatments (usually chapters 50 to 55, 58 or 60); [...]

In your submission you suggest classification as a fabric coated with plastics, under subheading 5903.90.2500, HTSUS, asserting that the foil-printed dots are closely spaced, thereby giving an overall shine to the fabric and not forming a design or pattern. However, the deliberate placement of the dots in the swirling pattern does result in a visible design, which precludes classification in Chapter 59, as per Note 2(a)(4) to Chapter 59, cited above.

The applicable subheading for the foil-printed weft knit fabric Style Var-siflex Mystique will be 6004.10.0085, HTSUS, which provides for knitted or crocheted fabrics of a width exceeding 30 cm, containing by weight 5 percent or more of elastomeric yarn or rubber thread, other than those of heading 6001: containing by weight 5 percent or more of elastomeric yarn but not containing rubber thread, other. The general rate of duty will be 12.3% 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/>.

UKFTA ELIGIBILITY – LAW AND ANALYSIS:

General Note 33, HTSUS, sets forth the criteria for determining whether a good is originating under the UKFTA. General Note 33(b), HTSUS, (19 U.S.C. § 1202), states that

For the purposes of this note, subject to the provisions of subdivisions (c), (d), (n) and (o) thereof, a good imported into the customs territory of the United States is eligible for treatment as an originating good of a UKFTA country under the terms of this note if-

- (i) the good is wholly obtained or produced entirely in the territory of Korea or of the United States, or both;
- (ii) the good is produced entirely in the territory of Korea or of the United States or both, and -
 - (A) each of the nonoriginating materials used in the production of the good undergoes an applicable change in tariff classification specified in subdivision (o) of this note; or

(B) the good otherwise satisfies any applicable regional value-content or other requirements set forth in such subdivision (o); and satisfies all other applicable requirements of this note and of applicable regulations; or

(iii) the good is produced entirely in the territory of Korea or the United States, or both, exclusively from materials described in subdivisions (i) or (ii), above.

For the purposes of this note, the term “*UKFTA country*” refers only to Korea or to the United States.

For goods classified in heading 6004, General Note 33(o)/60.1 requires:

A change to headings 6001 through 6006 from any other chapter, except from headings 5106 through 5113, chapter 52, headings 5307 through 5308, 5310 through 5311 or 5401 through 5402, subheadings 5403.33 through 5403.39 or 5403.42 through heading 5408, headings 5501 through subheading 5503.20, subheadings 5503.40 through 5503.90 or headings 5505 through 5516.

Under the UKFTA there is another requirement that must be satisfied for a fabric to be originating. Elastomeric yarn is required to be wholly formed and finished in Korea or the United States. General Note 33(d) provides in relevant part:

(iii) For purposes of this note, the expression “*wholly formed and finished*” means:

[...]

(B) when used in reference to yarns, all production processes and finishing operations, beginning with the extrusion of filaments, strips, film or sheets, and including drawing to fully orient a filament or slitting a film or sheet into strip, or the spinning of all fibers into yarn, or both, and ending with a finished yarn or plied yarn.

(iv) A textile or apparel good may be considered to be an originating good if—

(A) the total weight of all fibers and yarns that are used in the production of the component of the good that determines the tariff classification of the good and that do not undergo an applicable change in tariff classification is not more than 7 percent of the total weight of that component;

[...]

Notwithstanding the provisions of subdivision (d)(iv)(A), a good containing elastomeric yarns in the component of the good that determines the tariff classification of the good shall be considered to be an originating good only if such yarns are wholly formed and finished in the territory of Korea or of the United States.

(v) For purposes of this note, in the case of a good that is a yarn, fabric or fiber, the term “*component of the good that determines the tariff classification of the good*” means all of the fibers in the good

Based on the facts provided, the instant fabric is knitted in South Korea from polyester yarns produced in Taiwan and elastomeric yarns produced in South Korea. The origin of the resin chips used to produce the elastomeric yarns is Korea or China; melting the chips to produce the elastomeric yarns would meet the above requirements for the elastomeric yarns.

However, the polyester yarn from Taiwan, classifiable in heading 5402, does not undergo the tariff shift required by the tariff specific rule for heading 6004. Therefore, the fabric described above does not qualify for preferential treatment under the UKFTA, as it does not meet the requirements of HTSUS General Note 33(b), and the fabric will not be entitled to a free rate of duty under the UKFTA.

COUNTRY OF ORIGIN – LAW AND ANALYSIS:

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

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

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

6001–6006: (2) ...a change to heading 6001 through 6006 from any heading outside that group, provided that the change is the result of a fabric-making process.

As the fabric is knitted in Korea, country of origin is conferred in Korea.

HOLDING:

The applicable subheading for fabric Style Varsiflex Mystique will be 6004.10.0085, HTSUS, which provides for knitted or crocheted fabrics of a width exceeding 30 cm, containing by weight 5 percent or more of elastomeric yarn or rubber thread, other than those of heading 6001: containing by weight 5 percent or more of elastomeric yarn but not containing rubber thread, other. The general rate of duty will be 12.3% ad valorem.

Based on the facts provided, this merchandise does not qualify for preferential treatment under the United States-Korea Free Trade Agreement because the requirements for originating status under the UKFTA found in HTSUS General Note 33(b)(ii) are not met.

Pursuant to 19 CFR §102.21, the country of origin for marking purposes is Korea.

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

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

Should you wish to request an administrative review of this ruling, submit a copy of this ruling and all relevant facts and arguments within 30 days of the date of this letter, to the Director, Commercial Rulings Division, Headquarters, U.S. Customs and Border Protection, Regulations & Rulings, 90 K Street, N.E. – 10th floor, Washington, DC 20229–1177.

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 Maribeth Dunajski at Maribeth.Dunajski@cbp.dhs.gov.

Sincerely,

GWENN KLEIN KIRSCHNER

Director

National Commodity Specialist Division

19 CFR PART 177

REVOCATION OF TWO RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF DISPOSABLE BIBS, CHANGING PADS, AND POTTY TOPPERS

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

ACTION: Notice of revocation of two ruling letters, and of revocation of treatment relating to the tariff classification of disposable bibs, changing pads, and potty toppers.

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 two ruling letters concerning tariff classification of disposable bibs, changing pads, and potty toppers, under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 54, No. 30, on August 5, 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 December 13, 2020.

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

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

Pursuant to 19 U.S.C. §1625(c)(1), a notice was published in the *Customs Bulletin*, Vol. 54, No. 30, on August 5, 2020, proposing to revoke two ruling letters pertaining to the tariff classification of disposable bibs, changing pads, and potty toppers. 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 N243080 and NY N256859, CBP classified disposable bibs, changing pads and potty toppers in heading 9619, HTSUS, specifically in subheading 9619.00.11, HTSUS, which provides for "sanitary towels (pads) and tampons, diapers and diaper liners for babies and similar articles, of any material: Of paper pulp." CBP has reviewed NY N243080 and NY N256859 and has determined the ruling letters to be in error. It is now CBP's position that disposable bibs, changing pads and potty toppers are properly classified, in heading 4818, HTSUS, specifically in subheading 4818.50.00, HTSUS, which provides for "as articles of apparel and clothing accessories of paper pulp, paper, cellulous wading or webs of cellulose fibers.." and 4818.90.00, HTSUS, "as other articles of paper pulp, paper, cellulous wading or webs of cellulose fibers."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking N243080 and N245859 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in HQ H291001, set forth as an attachment to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: September 24, 2020

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

Attachment

HQ H291001

September 24, 2020

OT:RR:CTF:CPMM H291001 ABL

CATEGORY: Classification

TARIFF NO.: 4818.50.00, 4818.90.00

LYNN MARSHAL

HAMCO, INC.

P.O. BOX 1028

GONZALES, LA 70707

RE: Revocation of NY N243080 and NY N256859; Classification of disposable bibs, changing pads, and potty toppers.

DEAR MS. MARSHAL,

This is in reference to the New York Ruling Letter (NY) N243080, issued to you by U.S. Customs and Border Protection (CBP) on December 19, 2013, concerning the classification of sets containing disposable bibs, disposable potty toppers, and disposable changing pads under the Harmonized Tariff Schedule of the United States (HTSUS). We have also reviewed NY N256859, dated September 26, 2014, also issued to you, concerning the classification of adult disposable bibs. We have reviewed these rulings, and determined that they are incorrect. For the reasons set forth below, we are revoking them.

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 revoke HQ H291001 was published on August 5, 2020, in Volume 54, Number 30, of the Customs Bulletin. No comments were received in response to this Notice.

FACTS:

The merchandise described in NY N243080 consists of three combination packs of disposable items packaged for retail sale. The packaging contains two separate compartments. The combination pack is folded in half at a seam and inserted into a separate paperboard packing sleeve. Each of the combination pack's compartments has a re-sealable flap closure. Each of the three packs contains twelve wet wipes in the bottom compartment. The top compartment of each pack contains either six disposable bibs, six disposable potty toppers or six disposable changing pads of similar construction.

CBP's Laboratories and Scientific Services Division ("LSSD") analyzed the samples described in NY N243080 in report numbers NY20131372, NY20131373, and NY20131374, all dated July 10, 2013. LSSD found that the bibs, potty toppers and changing pads were similarly constructed of a top layer of 24 grams per square meter ("gsm") of polypropylene, a middle layer of 27 gsm of paper, and an outer plastic layer of 25 gsm polyethylene.

ISSUE:

Whether the subject merchandise consisting of sets containing disposable bibs, disposable potty toppers, and disposable changing pads should remain classified in heading 9619, as "sanitary towels (pads)...napkin and napkin liners for babies and similar articles of any material," or in heading 4818, as articles used for "household or sanitary purposes... bed sheets and similar household, sanitary or hospital articles, articles of apparel and clothing accessories, of paper pulp, paper, cellulose wadding or webs of cellulose fibers."

LAW AND ANALYSIS:

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied. Goods that are *prima facie* classifiable under two or more headings are classifiable in accordance with GRI 3. GRI 3(b) provides, in relevant part, that such sets are classified by the component that imparts the essential character of the set. If the essential character cannot be determined, GRI 3(c) provides that the set will be classified in the heading that occurs last in numerical order among those which equally merit consideration. GRI 3(c) applies only where GRI 3(a) and GRI 3(b) fail. *See* EN to GRI 3.

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 2018 HTSUS provisions under consideration are as follows:

* * * * *

9619 Sanitary towels (pads) and tampons, diapers and diaper liners for babies and similar articles, of any material:

* * * * *

4818 Toilet paper and similar paper, cellulose wadding or webs of cellulose fibers, of a kind used for household or sanitary purposes, in rolls of a width not exceeding 36 cm, or cut to size or shape; handkerchiefs, cleansing tissues, towels, tablecloths, table napkins, bed sheets and similar household, sanitary or hospital articles, articles of apparel and clothing accessories, of paper.

4818.50.00 Articles of apparel and clothing accessories.

4818.90.00 Other.

* * * * *

The EN for Chapter 96 states:

This heading covers sanitary towels (pads) and tampons, napkins (diapers) and napkin liners for babies and similar articles, including absorbent hygienic nursing pads, napkins (diapers) for adults with incontinence and panty-liners, of any material.

In general, the articles of this heading are disposable. Many of these articles are composed of (a) an inner layer (e.g., of nonwovens) designed to wick fluid from the wearer’s skin and thereby prevent chafing; (b) an absorbent core for collecting and storing fluid until the product can be disposed of; and (c) an outer layer (e.g., of plastics) to prevent leakage of fluid from the absorbent core. The articles of this heading are usually shaped so that they may fit snugly to the human body. This heading also includes similar traditional articles made up solely of textile materials, which are usually re-usable following laundering.

This heading **does not cover** products such as disposable surgical drapes and absorbent pads for hospital beds, operating tables and wheelchairs or non-absorbent nursing pads or other non-absorbent articles (in general, classified according to their constituent material).

In NY N243080, CBP determined that the combination packs were classified in accordance with GRI 3(c), as neither the wet wipes nor the disposable bibs, disposable potty toppers, or the disposable changing pads imparted the set with its essential character. We agree that classification of the combination packs proceeds under GRI 3(c).

Since the pre-moistened, infused baby wipes are classifiable in heading 3401, HTSUS, the subordination of the baby wipes remains true if the classification of the bibs, changing pads and potty toppers is in heading 4818 instead of in heading 9619, and therefore, the sets in NY N243080, as well as the disposable bibs in NY N256859, are not correctly classified in heading 3401, HTSUS.

Bibs have historically been classified under subheadings which describe apparel and clothing accessories. See HQ 063494, dated March 28, 1989 (finding bibs as “accessories” to garments). Furthermore, numerous rulings have classified paper bibs in heading 4818 HTSUS as paper articles of apparel and clothing accessories.¹ See also NY N153756, dated April 11, 2011 (finding the applicable subheading for the disposable bibs is 4818.50.00, HTSUS; NY 883701, dated March 29, 1993 (finding the applicable subheading for the geriatric and dental bibs, in all sizes, will be 4818.90.00, HTSUS); HQ 084024, dated June 30, 1989 (finding surgical drape made of Dexter Grade 9985Z is classified in subheading 4818.90.00, HTSUS).

However, Heading 9619 was introduced into the HTSUS in 2012, providing for “...diapers and diaper liners for babies *and similar articles*, of any material” (emphasis added). The term “and similar articles” appearing after a list of articles, invokes the rule of *ejusdem generis*, explained in *Sports Graphics, Inc., v. United States*, 24 F.3d 1390, 1392 (Fed. Cir. 1994) thus:

Under the rule of *ejusdem generis*, which means “of the same kind,” where an enumeration of specific things is followed by a general word or phrase, the general word or phrase is held to refer to things of the same kind as those specified. As applicable to classification cases, *ejusdem generis* requires that the imported merchandise possess the essential characteristics or purposes that unite the articles enumerated *eo nomine* [by name] in order to be classified under the general terms.

EN 96.19 explains that articles of the heading absorb bodily fluids and fit snugly to the human body. In HQ H293468, dated July 20, 2017, CBP found that absorbent nursing pads, which are designed to be placed in the brassiere of nursing mothers to absorb excess milk, are classified in heading 9619, HTSUS, as similar articles to those named, following the rule of *ejusdem generis* using the characteristics listed in EN 9619². Here, disposable bibs, potty toppers and changing pads lack the snug fit of the articles named in the heading. Furthermore, to the extent the disposable bibs absorb fluids at all,

¹ We note that the diapering accessory described in NY N257950, dated October 22, 2014, is distinguishable from the merchandise in the instant case. It is shaped and appropriately fitted to come in direct contact with the skin and absorb bodily fluids, similar to a diaper.

² See HQ H293468, Dated July 20, 2017 (finding nursing and breast pads are usually shaped so that they may fit snugly to the human body and thus classified in heading 9619, HTSUS); see also, NY N287629, Dated July 18, 2017; NY N24593, Dated October 17, 2013.

they are worn to protect clothing from food or drink, not body fluids. Similarly, potty toppers lay atop the toilet seat and changing pads lay on the changing table. Their main purpose is to keep the toilet seat or changing surface relatively clean, instead of absorbing copious amounts of bodily fluid. Like the flat, disposable surgical drapes and absorbent pads for hospital beds specifically precluded from classification in the heading under EN 96.19, bibs, potty toppers and changing pads are not *ejusdem generis* with the articles described in heading 9619, HTSUS.

Rather, the bibs, potty toppers and changing pads are composed of three different materials, and are thus composite goods. Paper comprises the highest percentage by weight and the absorption it provides contributes the most important role in relation to the use of the goods. Therefore, the goods at issue are classified in heading 4818, HTSUS, in accordance with GRI 3(b), and all three sets containing them are classified there in accordance with GRI 3(c). Furthermore, the disposable bib in NY N256859, which is also comprised of a middle layer of paper, is classified in heading 4818, HTSUS, under GRI 3(b). Therefore, the sets containing bibs in NY N243080 and the adult bibs in NY N256859 are classified in subheading 4818.50.00, HTSUS, as paper clothing accessories. The sets containing potty toppers and changing pads in NY N243080 are classified in 4818.90.00, HTSUS, as other similar paper articles.

HOLDING:

The sets containing disposable bibs and the adult disposable bibs are classified in 4818.50.00, HTSUS, as articles of apparel and clothing accessories of paper pulp, paper, cellulous wadding or webs of cellulose fibers. Additionally, the sets containing disposable potty toppers and changing pads are classified in 4818.90.00, HTSUS, as other articles of paper pulp, paper, cellulous wadding or webs of cellulose fibers. The general, column 1 rate of duty for subheadings 4818.50.00 and 4818.90.00, HTSUS, is free.

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

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

Pursuant to U.S. Note 20 to Subchapter III, Chapter 99, HTSUS, products of China classified under subheading 4818.50.00, HTSUS, unless specifically excluded, are subject to an additional 25 percent ad valorem rate of duty. At the time of importation, you must report the Chapter 99 subheading, i.e., 9903.88.01, in addition to subheading 4818.50.00, HTSUS, listed above.

Pursuant to U.S. Note 20 to Subchapter III, Chapter 99, HTSUS, products of China classified under subheading 4818.90.00, HTSUS, unless specifically excluded, are subject to an additional 15 percent ad valorem rate of duty. At the time of importation, you must report the Chapter 99 subheading, i.e., 9903.88.15, in addition to subheading 4818.90.00, HTSUS, listed above.

The HTSUS is subject to periodic amendment so you should exercise reasonable care in monitoring the status of goods covered by the Note cited above and the applicable Chapter 99 subheading. For background information regarding the trade remedy initiated pursuant to Section 301 of the Trade Act of 1974, you may refer to the relevant parts of the USTR and CBP

websites, which are available at <https://ustr.gov/issue-areas/enforcement/section-301-investigations/tariff-actions>, and <https://www.cbp.gov/trade/remedies/301-certain-products-china> respectively.

EFFECT ON OTHER RULINGS

New York Ruling letter N243080, dated December 19, 2013 and N256859, dated September 26, 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,

for

CRAIG T. CLARK,

Director

Commercial and Trade Facilitation Division

19 CFR PART 177

REVOCATION OF ONE RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF A CERAMIN MINERAL BOARD

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 a Ceramin Mineral Board.

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 a Ceramin Mineral Board under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 54, No. 28, on July 22, 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 December 13, 2020.

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

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

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

Pursuant to 19 U.S.C. § 1625(c)(1), a notice was published in the *Customs Bulletin*, Vol. 54, No. 28, on July 22, 2020, proposing to revoke one ruling letter pertaining to the tariff classification of a Ceramin Mineral Board. 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") N287603, dated October 12, 2017, CBP classified a Ceramin Mineral Board in heading 6810, HTSUS, specifically in subheading 6810.19.14, HTSUS, which provides for "Articles of cement, of concrete or of artificial stone, whether or not reinforced: Tiles, flagstones, bricks and similar articles: Other: Floor and wall tiles: Other." CBP has reviewed NY N287603 and has determined the ruling letter to be in error. It is now CBP's position that the Ceramin Mineral Board is properly classified, in heading 6815, HTSUS, specifically in subheading 6815.99.4, HTSUS, which provides for "Articles of stone or of other mineral substances (including carbon fibers, articles of carbon fibers and articles of peat), not elsewhere specified or included: Other articles: Other: Other."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY N287603 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter ("HQ") H298313, set forth as an attachment to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: September 23, 2020

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

Attachment

HQ H298313

September 23, 2020

OT:RR:CTF:CPMM: H298313 RRB

CATEGORY: Classification

TARIFF NO.: 6815.99.4070

MR. TRONG K. LE
INHAUS SURFACES LIMITED
940 WEST 7TH AVENUE
VANCOUVER, BC V5Z 1C3
CANADA

Re: Revocation of NY N287603; Classification of certain mineral board tiles from Germany

DEAR MR. LE:

This is in response to your letters, dated May 17, 2018, December 27, 2019, and February 5, 2020, in which you request reconsideration of New York Ruling Letter (“NY”) N287603, issued to you on October 12, 2017 by U.S. Customs and Border Protection (“CBP”), involving the classification of certain mineral board tiles known as “Ceramin Mineral Board” (“CMB”) under the Harmonized Tariff Schedule of the United States (“HTSUS”). You submitted the reconsideration request on behalf of your client, Inhaus Surfaces Ltd. (“Inhaus”). In NY N287603, the Ceramin Mineral Boards were classified under subheading 6810.19.1400, HTSUSA (“Annotated”), as “Articles of cement, of concrete or of artificial stone, whether or not reinforced: Tiles, flagstones, bricks and similar articles: Other: Floor and wall tiles: Other.” After reviewing the ruling in its entirety, along with your reconsideration request, we find it to be in error. For the reasons set forth below, we are revoking NY N287603.

Pursuant to 19 U.S.C. § 1625(c)(1), a notice was published in the *Customs Bulletin*, Volume 54, No. 28, on July 22, 2020, proposing to modify NY N287603, and any treatment accorded to substantially similar transactions. No comments were received in response to this notice.

FACTS:

In NY N287603, the Ceramin Mineral Board was described as follows:

From the information you provided, the Ceramin Mineral Board measures approximately 1.28 meters long by 1.3 meters wide by 3 to 5 millimeters [sic] (.3 to .5 centimeters) thick. You state that it is designed for residential and commercial flooring and wall paneling, and is comprised of natural talc mixed with thermoplastic, plus minor amounts of ink and laquer [sic].

Laboratory analysis has determined that the Ceramin Mineral Board is comprised of a mixture of talc and chlinochlore [sic] uniformly agglomerated in a polymer matrix.

Our office forwarded the sample you provided with your initial ruling request to CBP Laboratories and Scientific Services Division (“LSSD”) for analysis of the subject merchandise. In laboratory report number NY20171005, issued on September 25, 2017, LSSD determined that the

Ceramin Mineral Board “contains approximately 56% inorganic material uniformly [sic] agglomerated in a polymer matrix. The material is comprised mostly of talc and clinocllore.”

In your first submission requesting reconsideration of NY N287603, dated May 17, 2018, you initially argued that the Ceramin Mineral Board should be classified in subheading 6810.19.1200, HTSUSA, as “Articles of cement, of concrete or of artificial stone, whether or not reinforced: . . . Floor and wall tiles: Of stone agglomerated with binders other than cement.” However, upon discovery of NY N294747, dated February 22, 2018, which classified talc and polypropylene pellets in subheading 6815.99.2000, HTSUSA, you submitted a supplemental reconsideration request, dated December 27, 2019. In your second letter, you argue that because the composition of the articles in NY N294747 is nearly identical to the composition of the Ceramin Mineral Board, that ruling compels classification in heading 6815, HTSUS, whereby the talc component of the Ceramin Mineral Board imparts the essential character under GRI 3(b). You further assert in the alternative that if CBP continues to believe that the subject merchandise should be classified in heading 6810, HTSUS, then it should be classified under subheading 6810.19.1200, HTSUSA, for the reasons set forth in your May 17, 2018 submission.

You submitted a third letter on February 5, 2020, in response to our questions about the source of the talc use to produce the Ceramin Mineral Board, which included further argumentation as to why the merchandise should be classified in heading 6815, HTSUS. In this submission, you provided documentation from your talc supplier that the talc magnesite rock used to produce the Ceramin Mineral Board is composed of 50-mostly talc, along with magnesite and/or dolomite, clinocllore, and other trace minerals. You also explained that your talc suppliers obtain the natural talc mineral from a mine in the Pyrenees Mountains in France. In documentation from the suppliers that was included in this submission, the suppliers repeatedly refer to the supplied talc as a “mineral.”

ISSUE:

Whether a Ceramin Mineral Board is classified in heading 6810, HTSUS, as “Articles of cement, of concrete or of artificial stone, whether or not reinforced” or in heading 6815, HTSUS, as “Articles of stone or of other mineral substances (including carbon fibers, articles of carbon fibers and articles of peat), not elsewhere specified or included.”

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States (“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 HTSUS provisions under consideration are as follows:

6810	Articles of cement, of concrete or of artificial stone, whether or not reinforced:
	Tiles, flagstones, bricks and similar articles:
6810.19	Other:
	Floors and wall tiles:
6810.19.1200	Of stone agglomerated with binders other than cement...
6810.19.1400	Other...
6815	Articles of stone or of other mineral substances (including carbon fibers, articles of carbon fibers and articles of peat), not elsewhere specified or included:
	Other articles:
6815.99	Other:
6815.99.2000	Talc, steatite and soapstone, cut or sawed, or in blanks, crayons, cubes, disks or other forms...
6815.99.40	Other...
6815.99.4070	Other...

* * *

In understanding the language of the HTSUS, the Explanatory Notes (“ENs”) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. *See* T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

The EN to 68.10 states the following, in relevant part:

Artificial stone is an imitation of natural stone obtained by agglomerating pieces of natural stone or crushed or powdered natural stone (limestone, marble, granite, porphyry, serpentine, etc.) with lime or cement or other binders (e.g., plastics). Articles of artificial stone include those of “terrazzo”, “granito”, etc.

The EN to 68.15 states the following, in relevant part:

This heading covers articles of stone or of other mineral substances, **not covered** by the earlier headings of this Chapter and **not included** elsewhere in the Nomenclature. . .

* * *

Heading 6810, HTSUS, provides for “articles of cement, of concrete or of artificial stone,” where artificial stone is defined in the EN to 68.10 as “an imitation of natural stone obtained by agglomerating pieces of natural stone or crushed or powdered natural stone. . .with lime or cement or other binders (e.g., plastics).” It has long been CBP’s position that artificial stone of heading 6810, HTSUS, must be comprised of natural rock uniformly agglomerated with a binder. Minerals uniformly agglomerated with a binder are not classifiable as artificial stone of heading 6810, HTSUS. While not binding, the CBP Informed Compliance Publication (“ICP”) on Agglomerated Stone confirms CBP’s position, stating that “[a] product consisting of agglomerated material can be classified as artificial stone in heading 6810 only if this

material is natural stone. If the agglomerated material is a synthetic chemical or a mineral other than stone, heading 6810 would not apply.”¹

According to the LSSD’s laboratory report, the Ceramin Mineral Board contains approximately 56% talc and clinochlore agglomerated in a polymer matrix. When imported on its own, talc may be classified in heading 2526, HTSUS, which is for “Natural steatite, whether or not roughly trimmed or merely cut, by sawing or otherwise, into blocks or slabs of a rectangular (Including square) shape; talc.” The ENs to 25.26 describe talc as a mineral substance rich in hydrous magnesium silicate. In addition, clinochlore is a type of chlorite mineral, which is the name of a group of common sheet silicate minerals.² Thus, all of the inorganic material that comprises 56% of the Ceramin Mineral Board consists of mineral material that is agglomerated with a polymer binder. Because the polymer binder is agglomerated with mineral rather than stone, the Ceramin Mineral Board cannot be classified in heading 6810, HTSUS.

The ICP on Agglomerated Stone explains that “[a] mineral material (other than stone) combined with plastics would be classified . . . as articles of other mineral substances in heading 6815 if the mineral material imparted the essential character to the product.” This guidance is consistent with our past rulings involving mineral material agglomerated with a binder where the mineral material imparted the essential character to the product. For example, NY N294274, dated February 22, 2018, involved the classification of talc-filled polypropylene pellets that were comprised of 70 percent by weight of natural talc mixed with 30 percent by weight of polypropylene resin. Under GRI 3(b), we classified the talc-filled polypropylene pellets in subheading 6815.99.2000, HTSUSA, based on their essential character, which was imparted by the talc component. In NY N299428, dated August 10, 2018, we classified similar talc and polypropylene pellets comprised of between 65 and 75 percent natural talc by weight, 25 and 35 percent polypropylene resin by weight, and between zero and 2 percent of additives by weight. The pellets in NY N299428 were also classified under GRI 3(b) in subheading 6815.99.2000, HTSUSA, using the same analysis. *See also*, NY K88151, dated October 13, 2004 (classifying decorative unfired clay figurines composed of various minerals, clay and calcium carbonate agglomerated with an epoxy resin binder in heading 6815, HTSUS); HQ 960863, dated October 28, 1998 (classifying flooring felt “composed principally of the minerals talc and calcite, with cellulose and styrene-butadiene rubber as binders” in heading 6815, HTSUS, where talc imparted the essential character under GRI 3(b)); and HQ 957093, dated May 22, 1995 (classifying floor backing made of up 13.5% cellulose fibers, 10.5% binder, 70% talc and kaolin, 4% glass fibers, and 2% process agents in subheading 6815, HTSUS, where the essential character was imparted by the talc under GRI 3(b)).

The Ceramin Mineral Board is a composite good consisting of 56% mineral material (talc and clinochlore) agglomerated in a polymer matrix. As with the mineral components in NY N294274, NY N299428, NY K88151, HQ 960863, and HQ 960863, the essential character of the Ceramin Mineral Board is

¹ CBP Informed Compliance Publication (“ICP”): *What Every Member of the Trade Community Should Know About: Agglomerated Stone* (March 2010), https://www.cbp.gov/sites/default/files/documents/icp88_3.pdf.

² “Chlorite.” *Geology.com* <https://geology.com/minerals/chlorite.shtml> (last visited April 21, 2020).

imparted by the mineral component, which predominates by weight. Therefore, under GRI 3(b), the Ceramin Mineral Board is classified in heading 6815, HTSUS, and specifically in subheading 6815.99.4070, HTSUSA (Annotated), which provides for “Articles of stone or of other mineral substances (including carbon fibers, articles of carbon fibers and articles of peat), not elsewhere specified or included: Other articles: Other: Other: Other.”

HOLDING:

By application of GRI 3(b), the subject Ceramin Mineral Board is classified under heading 6815, HTSUS, specifically under subheading 6815.99.4070, HTSUSA, which provides for “Articles of stone or of other mineral substances (including carbon fibers, articles of carbon fibers and articles of peat), not elsewhere specified or included: Other articles: Other: Other: Other.” The column one, general rate of duty is Free.

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

EFFECT ON OTHER RULINGS:

NY N287603, dated October 12, 2017, 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,
for

CRAIG T. CLARK,
Director

Commercial and Trade Facilitation Division

HQ H304297
OT:RR:CTF:FTM H304297 JER
CATEGORY: Classification
TARIFF NO.: 3926.90.75

MR. ERIC HANSEL
REGULATORY COMPLIANCE MANAGER
C.H. POWELL COMPANY
478 WANDO PARK BLVD.
MT. PLEASANT, SC 29464

RE: Revocation of NY N270096; classification of floating pool loungers

DEAR MR. HANSEL:

This is in response to your request, dated June 12, 2019, for reconsideration of New York Ruling Letter (“NY”) N270096, issued on November 24, 2014, to your client, Aqua Leisure Industries, concerning the classification of certain floating pool lounge merchandise under the Harmonized Tariff Schedule of the United States (“HTSUS”). In NY N270096, U.S. Customs and Border Protection (“CBP”) classified the imported floating pool lounge under heading 6307, HTSUS, in particular, under subheading 6307.90.9889, HTSUSA, as, “Other made up articles, including dresses: Other: Other, Other.”

In reaching our decision we have taken into consideration the decision in *Swimways Corp. v. United States*, 329 F. Supp. 3d 1313 (2018 Ct. Intl. Trade LEXIS 101), involving the classification of substantially similar floatation merchandise designed for use in swimming pools. For the reasons set forth in this ruling, we hereby revoke NY N270096.

FACTS:

NY 270096 described the floating pool lounge as follows:

The 44-inch Monterey Pool Lounge is a “composite good” consisting of both PVC (which is a form of plastic) and polyester mesh textile fabric. According to figures you provided, the PVC represents 30% by weight and 16% by value while the polyester mesh makes up 70% by weight and 84% by value of the lounge. While the mesh fabric constitutes the most weight and value and provides the full body support of the user giving the user the ability to sit or recline, we also have to consider that the PVC air chambers give the pool lounge the ability to float.

In your June 12, 2019 request for reconsideration, you described the merchandise as the 44-inch Monterey Pool Lounge, which consists of two [inflatable] PVC air bladder chambers at each end with a polyester mesh textile fabric insert. You also provided a sample of the Monterey Pool Lounge which we have reviewed.

ISSUE:

Whether the subject merchandise is classifiable under heading 3926, HTSUS, as an article of plastic, or under heading 6307, HTSUS, as other made-up textile articles.

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 2020 HTSUS provisions under consideration are as follows:

3926	Other articles of plastics and articles of other materials of headings 3901 to 3914: * * *
3926.90	Other: * * *
3926.90.7500	Pneumatic mattresses and other inflatable articles, not elsewhere specified or included
6307	Other made up articles, including dress patterns: * * *
6307.90	Other: Other...
6307.90.98	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 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.

* * *

At issue is the classification of a pool lounge described as the Monterey pool lounge, which is designed for floatation in a swimming pool, lakes and other water ways. The Monterey pool lounge consists of two inflatable PVC air bladder chambers that keep the pool lounge afloat in the water and a polyester mesh textile fabric insert, which provides support for the user. The PVC bladders are best described by the terms of heading 3926, HTSUS, while the mesh textile insert is described by the terms of heading 6307, HTSUS. Inasmuch as the pool lounge presents with significant components made of separate materials described by two or more headings, both of which having different functions which contribute to the whole, the merchandise is considered a composite good. Hence, we must determine which if the two competing headings best describe the merchandise as a whole.

In NY N270096, CBP classified the Monterey pool lounge under heading 6307, HTSUS, finding that neither the PVC air bladders (3926, HTSUS) nor the textile mesh (6307, HTSUS) imparted the essential character of article in its entirety. Specifically, the decision in NY N270096 stated that: “While the mesh fabric constitutes the most weight and value and provides the full body support of the user giving the user the ability to sit or recline, we also have to consider that the PVC air chambers give the pool lounge the ability to float.” Likewise, CBP also noted that, “Without the inflatable PVC chambers,

the lounge is not able to perform its main function as a pool or lake float.” See NY N270096. Accordingly, the decision in NY N270096 classified the Monterey pool lounge under the heading which occurred last in numerical order, heading 6307, HTSUS, in accordance with GRI 3(c).

You contend that the Monterey pool lounge should be classified under heading 3926, HTSUS, because, as you argue, it is the two plastic PVC air bladder components which impart the essential character of the overall pool lounge. You base your argument on the decision in *Swimways Corp. v. United States*; wherein the Court of International Trade (“CIT”) classified various models of “Spring Floats” and “Baby Spring Floats” designed for the flotation of users in swimming pools, lakes and similar bodies of water in heading 3926, HTSUS, as an article of plastic. You argue that the subject merchandise is substantially similar to the “Spring Floats” in the *Swimways Corp.* decision and that in light of the decision and legal analysis set forth by the CIT, CBP should reconsider its decision in NY N270096.

In *Swimways Corp.*, the “Spring Floats” consisted of an inflatable, polyvinyl chloride (“PVC”) bladder that when inflated with air, provided the flotation capacity for the article. The center of the “Spring Float” was a woven elastomer textile mesh which supported the user during flotation. *Swimways Corp.*, at 1317. In *Swimways Corp.* the CIT explained that although the merchandise consisted of component materials that were both significant, neither heading adequately described the article as a whole *Swimways Corp.*, at 1321–1322. Accordingly, the CIT resolved to determine which component or material imparted the essential character of the “Spring Float” in accordance with GRI 3(b). *Id.*, at 1322. The CIT noted that both the textile mesh and the PVC bladder contributed different significant functions; with the textile mesh providing support to its user and the PVC bladder providing the flotation characteristic. *Id.* Yet, the CIT concluded that the PVC bladder imparted the essential character of the article as a whole because the flotation function of the PVC bladder was essential to the functioning of the finished article. *Id.*, at 1324. The CIT explained that because the PVC bladder enabled the article to float in water, it was the component material that allowed the “Spring Float” to perform its primary function, fundamental to its commercial identity as a “float.” *Id.* As such, the CIT determined that the “Spring Float” was classified in heading 3926, HTSUS, because it was the plastic component materials which imparted the essential character of the product.

Under our facts in this case, the textile mesh component provides support to the user; allowing them to sit and recline while afloat in the water and makes up 70% by weight and 84% by value of the pool lounge. The two PVC air bladders, once inflated with air, allow the pool lounge to perform its primary function, which is to float. In both instances, the headings which best describe the respective component material, each describe only a part of the component materials which together form the pool lounge as a whole. Because no single heading describes the subject pool lounge, this article cannot be classified in accordance with GRI 1. Instead, it is a composite good consisting of component materials which are classifiable under two separate headings which merit consideration. We note that when two or more competing headings are regarded as equally specific, classification is effected according to GRI 3(b).

Much like the “Spring Float” in *Swimways Corp.*, it is the plastic PVC air bladders that contribute predominantly to the fundamental function and

commercial identity of the subject Monterey pool lounge. While the textile mesh component allows the user to sit and recline while afloat, it is the floatation characteristic of the product which distinguishes this product from a chair or recliner. Absent the performance of the plastic PVC air bladders, the pool lounge could not perform its fundamental function, which is to float. Accordingly, we find that the plastic PVC air bladders impart the essential character of the product as a whole. Thus, the Monterey pool lounges are classified according to the plastic component material of which the PVC air bladders are made.

Additionally, pursuant to the decision in *Swimways Corp.* we are revoking previous CBP rulings involving the classification of similar inflatable pool floatation merchandise designed for use in swimming pools, lakes and other water ways, based upon the analysis herein. The rulings listed below incorrectly concluded that either the textile component imparted the essential character of the product or that the merchandise should be classified under the heading that occurred last in numerical order, in accordance with GRI 3(c). In keeping with the decision in *Swimways Corp.*, it is now CBP's position that plastic floatation component imparts the essential character of such products and therefore reliance on GRI 3(c) or classification of these products as a made up textile article, is incorrect. Moreover, we note that the underlying ruling of *Swimways Corp.*, HQ 965956, dated January 22, 2003, is revoked by operation law. Similarly, a subsequent case involving similar inflatable pool floats also imported by *Swimways*, in HQ H145739, dated November 16, 2012, is also revoked by operation of law.

HOLDING:

By application of GRI 3(b), we find that the pool lounge is provided for in heading 3926, HTSUS, specifically, under subheading 3926.90.75, HTSUS, which provides for: "Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Pneumatic mattresses and other inflatable articles, not elsewhere specified or included." The 2020 column one, general rate of duty is 4.2% *ad valorem*.

EFFECT ON OTHER RULINGS:

NY N270096, dated November 25, 2015, is hereby Revoked.

Pursuant to the decision in *Swimways Corp.*, and the analysis herein, the following rulings are hereby Revoked: HQ H145739, dated November 16, 2012, HQ 966929, dated March 23, 2004, HQ 965956, dated January 22, 2003, NY N179233, dated August 26, 2011, NY N042676, dated November 11, 2008, and NY M80804, dated February 6, 2006.

Additionally, NY N069035, dated July 30, 2009, is hereby modified with respect to item number SA-3362.

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

N270096

November 25, 2015

CLA-2-63:OT:RR:NC:N3:351

CATEGORY: Classification

TARIFF NO.: 6307.90.9889

MS. PAULA M. CONNELLY, ESQ.
LAW OFFICES OF PAULA M. CONNELLY
67 SOUTH BEDFORD STREET, SUITE 400 WEST
BURLINGTON, MA 01803

RE: The tariff classification of a pool lounge from China

DEAR MS. CONNELLY:

In your letter dated October 19, 2015, you requested a tariff classification ruling on behalf of your client, Aqua Leisure Industries.

You have submitted a sample of the 44-inch Monterey Pool Lounge. The pool lounge consists of two Polyvinyl Chloride (PVC) air bladder chambers at each end and a polyester mesh textile fabric insert. When the air bladders are inflated, and the user is resting on the mesh center section, the user is able to float on water. This item is intended to be used in a pool, but also can be used in a lake.

In your letter, you suggest that the 44-inch Monterey Pool Lounge be classified under subheading 3926.90.7500, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Pneumatic mattresses and other inflatable articles, not elsewhere specified or included." We disagree with your proposed classification.

It is the opinion of this office that the 44-inch Monterey Pool Lounge is a "composite good" consisting of both PVC (which is a form of plastic) and polyester mesh textile fabric. According to figures you provided, the PVC represents 30% by weight and 16% by value while the polyester mesh makes up 70% by weight and 84% by value of the lounge. While the mesh fabric constitutes the most weight and value and provides the full body support of the user giving the user the ability to sit or recline, we also have to consider that the PVC air chambers give the pool lounge the ability to float. Without the inflatable PVC chambers, the lounge is not able to perform its main function as a pool or lake float. We thus find that the essential character of the overall product cannot clearly be ascribed to either single material. General Rule of Interpretation GRI 3(c), HTSUS, directs that in such circumstances the classification will be the heading that appears last in numerical order among those which equally merit consideration. The competing headings here are 3926 (other articles of plastics) and 6307 (other made up textile articles), HTSUS. Heading 6307 appears last in the tariff.

The applicable subheading for the 44-inch Monterey Pool Lounge will be 6307.90.9889, HTSUS, which provides for other made up textile articles, other. The rate of duty will be 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 on World Wide Web at <http://www.usitc.gov/tata/hts/>.

The sample will be returned.

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 Adleasia Lonesome at adleasia.a.lonesome@cbp.dhs.gov.

Sincerely,

GWENN KLEIN KIRSCHNER

Director

National Commodity Specialist Division

AGENCY INFORMATION COLLECTION ACTIVITIES:
e-Allegations Submission

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 October 30, 2020) to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

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** (85 FR 39206) on June 30, 2020, 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: e-Allegations Submission.

OMB Number: 1651-0131.

Form Number: None.

Current Actions: CBP proposes to extend the expiration date of this information collection. The time burden hours have been adjusted to account for the addition of the EAPA Allegations that have been added to this collection.

Type of Review: Extension (with change).

Affected Public: Businesses, Individuals.

Abstract: U.S. Customs and Border Protection (CBP) established the e-Allegations program in June 2008 to create a central location for the public to report allegations of trade law violations. The information provided by the public enables CBP, in collaboration with our partners, to protect our economy from the effects of unfair trade practices and guard against the entry of products that could pose a threat to health and safety. The information collected through the portal includes the name individual filing the allegation (this individual may remain anonymous), their contact information, and information pertinent to the allegation of a trade law violation.

This collection of this information is authorized by the Tariff Act of 1930, as amended (19 U.S.C.1202 *et seq.*), the Homeland Security Act of 2002 (Title 6, U.S.C. 101), and the Security and Accountability for Every Port Act of 2006 ["SAFE Port Act"] (Pub. L. 109-347, Oct. 13, 2006). The e-Allegations website is accessible at <https://www.cbp.gov/trade/e-allegations/>.

Congress passed the Enforce and Protect Act ("EAPA"), in February 2016, as a part of the Trade Facilitation and Trade Enforcement Act ("TFTEA") of 2015 (Pub. L. 114-125, Feb. 24, 2016). The EAPA leg-

isolation specifically was intended to improve trade law enforcement and duty collection for antidumping and countervailing duty orders, thus helping to create a level-playing field for U.S. businesses. To that end, CBP designed an investigative process that provides for a multi-party, transparent, on-the-record administrative proceeding, where parties can both participate in and learn the outcome of the investigation.

The information collected through the EAPA allegation submissions portal includes the following: Filer category, name of individual filing the allegation and their contact information, the name and address of the company they represent, and their interested party designation; information related to the alleged evasion scheme, including products, type of scheme and AD/CVD Order information; the name and address of the company engaging in the alleged evasion scheme; and various certifications regarding the truthfulness of the allegation and how notifications about how the information will be used during the investigation.

The EAPA Allegation form has been modified from the original version to provide clarifying information which validates that the allegation qualifies as an EAPA allegation. Additions to the form include alleged and violating importer email and phone number, optional representing attorney contact information, and selecting the type of violation and the corresponding details. The updated form also requires users to upload at least one document to the allegation submission and select a document category in addition the existing classification for confidentiality status. Users will have the option to select additional categories including document date and if a document has been served after upload. Harmonized Tariff Schedule product categories and questions that would make an allegation non-qualifying for an EAPA allegation have been removed and replaced by system validations or additional instructions.

Collection of information for an EAPA investigation is authorized by the Tariff Act of 1930, as amended (19, U.S.C. 1517), Section 421 of the TFTEA (Pub. L. 114–125, Feb. 24, 2016), and 19 CFR 165. The EAPA portal is accessed through the e-Allegations website at <https://eallegations.cbp.gov/Home/Index2>.

e-Allegations

Estimated Number of Respondents: 1,088.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 1,088.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 272.

EAPA Allegations

Estimated Number of Respondents: 67.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 67.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 17.

Dated: September 25, 2020.

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

[Published in the Federal Register, September 30, 2020 (85 FR 61763)]

AGENCY INFORMATION COLLECTION ACTIVITIES:

Importation Bond Structure

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 October 30, 2020) to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

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** (Volume 85 FR Page 40307) on July 6, 2020, 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: Importation Bond Structure.

OMB Number: 1651-0050.

Form Number: CBP Forms 301 and 5297.

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

Type of Review: Extension (without change).

Affected Public: Businesses.

Abstract: Bonds are used to ensure that duties, taxes, charges, penalties, and reimbursable expenses owed to the Government are paid; to facilitate the movement of cargo and conveyances through CBP processing; and to provide legal recourse for the Government for noncompliance with laws and regulations. Bonds are required pursuant to 19 U.S.C. 1608, and 1623; 22 U.S.C. 463; 19 CFR part 113.

Each person who is required by law or regulation to post a bond in order to secure a Customs transaction must submit the bond on CBP Form 301 which is available at: <https://www.cbp.gov/newsroom/publications/forms?title=301&=Apply>.

Surety bonds are usually executed by an agent of the surety. The surety company grants authority to the agent via a Corporate Surety Power of Attorney, CBP Form 5297. This power is vested with CBP so that when a bond is filed, the validity of the authority of the agent executing the bond and the name of the surety can be verified to the surety's grant. CBP Form 5297 is available at: <https://www.cbp.gov/document/forms/form-5297-corporate-surety-power-attorney>.

Form 301, Customs Bond

Estimated Number of Annual Respondents: 750,000.

Total Number of Estimated Annual Responses: 750,000.

Estimated time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 187,500.

Form 5297, Corporate Surety Power of Attorney

Estimated Number of Respondents: 500.

Total Number of Estimated Annual Responses: 500.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 125.

Dated: September 25, 2020.

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

[Published in the Federal Register, September 30, 2020 (85 FR 61762)]

AGENCY INFORMATION COLLECTION ACTIVITIES:**Commercial Invoice**

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: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security 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 October 30, 2020 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

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, 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** (85 FR 37467) on June 22, 2020, 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 perfor-

mance 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: Commercial Invoice.

OMB Number: 1651-0090.

Form Number: None.

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

Type of Review: Extension (without change).

Affected Public: Businesses.

Abstract: The collection of the commercial invoice is necessary for conducting adequate examination of merchandise and determination of the duties due on imported merchandise as required by 19 U.S.C. 1481 and 1484 and by 19 CFR 141.81, 141.82, 141.83, 141.84, 141.85, 141.86, 141.87, 141.88, 141.89, 141.90, 141.91, and 141.92. A commercial invoice is presented to CBP by the importer for each shipment of merchandise at the time the entry summary is filed, subject to the conditions set forth in the CBP regulations. The information is used to ascertain the proper tariff classification and valuation of imported merchandise, as required by the Tariff Act of 1930. To facilitate trade, CBP did not develop a specific form for this information collection. Importers are allowed to use their existing invoices to comply with these regulations.

Estimated Number of Respondents: 38,500.

Estimated Number of Annual Responses per Respondent: 1,208.

Estimated Number of Total Annual Responses: 46,500,000.

Estimated time per Response: 1 minute.

Estimated Total Annual Burden Hours: 744,000.

Dated: September 25, 2020.

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

[Published in the Federal Register, September 30, 2020 (85 FR 61761)]

U.S. Court of International Trade

Slip Op. 20–138

TAIZHOU UNITED IMP. & EXP. CO. LTD., Plaintiff, and GUANGZHOU JANGHO CURTAIN WALL SYSTEM ENGINEERING CO., LTD., JANGHO GROUP CO., LTD., BEIJING JIANGHEYUAN HOLDING CO., LTD., BEIJING JANGHO CURTAIN WALL SYSTEM ENGINEERING CO., LTD., JANGHO CURTAIN WALL HONG KONG LTD., SHANGHAI JANGHO CURTAIN WALL SYSTEM ENGINEERING CO., LTD., Consolidated Plaintiffs, v. UNITED STATES, Defendant, and ALUMINUM EXTRUSIONS FAIR TRADE COMMITTEE, Defendant-Intervenor.

Before: Leo M. Gordon, Judge
Consol. Court No. 16–00009

[*Final Results* sustained in part and remanded in part.]

Dated: September 25, 2020

Douglas J. Heffner and *Richard P. Ferrin*, Drinker Biddle & Reath LLP of Washington, DC, for Plaintiff Taizhou United Imp. & Exp. Co. Ltd.

James Kevin Horgan, *Alexandra H. Salzman*, *Gregory Stephen Menegaz*, and *John Joseph Kenkel*, deKieffer & Horgan, PLLC of Washington, DC, for Consolidated Plaintiffs Guangzhou Jangho Curtain Wall System Engineering Co., Ltd., Jangho Group Co., Ltd., Beijing Jiangheyuan Holding Co., Ltd., Beijing Jangho Curtain Wall System Engineering Co., Ltd., Jangho Curtain Wall Hong Kong Ltd. and Shanghai Jangho Curtain Wall System Engineering Co., Ltd.

Douglas G. Edelschick, Senior Trial Counsel, Commercial Litigation Branch, Civil Division, U.S. Department of Justice of Washington, DC, for Defendant United States. With him on the brief were *Jeffrey Bossert Clarke*, Assistant Attorney General, *Jeanne E. Davidson*, Director, and *Reginald T. Blades Jr.*, Assistant Director. Of counsel on the brief was *Kirrin Hough*, Attorney, U.S. Department of Commerce, Office of the Chief Counsel for Trade Enforcement and Compliance of Washington, DC.

Alan H. Price, *Robert E. DeFrancesco, III*, and *Elizabeth S. Lee*, Wiley Rein LLP of Washington, DC, for Defendant-Intervenors Aluminum Extrusions Fair Trade Committee.

OPINION and ORDER

Gordon, Judge:

This action involves the final results of the 2013 administrative review conducted by the U.S. Department of Commerce (“Commerce”) of the countervailing duty (“CVD”) order on aluminum extrusions from the People’s Republic of China (“PRC”). *See Aluminum Extrusions From the People’s Republic of China*, 80 Fed. Reg. 77,325 (Dep’t of Commerce Dec. 14, 2015) (final results admin. rev.) (“*Final Results*”); *see also* accompanying Issues and Decision Memorandum, C-570–968 (Dep’t of Commerce Dec. 7, 2015), available at <https://>

enforcement.trade.gov/frn/summary/prc/2015-31425-1.pdf (“*Decision Memorandum*”); *Aluminum Extrusions from the People’s Republic of China*, 76 Fed. Reg. 30,653 (Dep’t of Commerce May 26, 2011) (“*CVD Order*”).

Before the court are the USCIT Rule 56.2 motions for judgment on the agency record filed by Plaintiff Taizhou United Imp. & Exp. Co. Ltd. (“Taizhou”) and Consolidated Plaintiffs Guangzhou Jangho Curtain Wall System Engineering Co., Ltd., Jangho Group Co., Ltd., Beijing Jiangheyuan Holding Co., Ltd., Beijing Jangho Curtain Wall System Engineering Co., Ltd., and Shanghai Jangho Curtain Wall System Engineering Co., Ltd. (collectively, “Jangho”). See Pl.’s Mem. in Supp. of its 56.2 Mot. for J. on the Agency R., ECF No. 80; Consolidated Pl.’s Mem. In Supp. of its Mot. For J. on the Agency R., ECF No. 82-1 (“Jangho Br.”); see also Def.’s Resp. in Opp’n to Pl.’s Mot. for J. on the Agency R., ECF No. 88 (“Def.’s Resp.”); Def.-Intervenors’ Resp. in Opp’n to Pl.’s Mot. for J. on the Agency R., ECF No. 89; Pl. Taizhou’s Reply Br., ECF No. 92; Consolidated Pls.’ Reply Br., ECF No. 93 (“Jangho Reply”).¹ The court has jurisdiction pursuant to Section 516A(a)(2)(B)(iii) of the Tariff Act of 1930, as amended, 19 U.S.C. § 1516a(a)(2)(B)(iii)², and 28 U.S.C. § 1581(c) (2012). For the reasons set forth below, the court grants Plaintiffs’ motions as to Commerce’s determinations to countervail subsidized purchases of glass and aluminum extrusions, and remands the *Final Results* to Commerce; however, the court sustains the *Final Results* as to all other issues raised by Plaintiffs.

I. Background

Initially, Plaintiffs’ claims included challenges to whether their products fell within the scope of the *CVD Order*. See Mem. In Supp. of Jangho’s Mot. for J. on the Agency R. at 11-24, ECF No. 47. To promote judicial efficiency, the court stayed briefing in this action pending the resolution of *Guangzhou Jangho Wall Sys. Eng’g Co. v. United States*, Court Nos. 15-00023 & 15-00024, which involved identical challenges to the scope of Commerce’s antidumping (“AD”) and CVD Orders arising out of the second administrative review. See Order Granting Stay, ECF No. 63.

Under 19 C.F.R. § 351.225, an interested party may apply for a ruling from Commerce as to whether a particular product is within

¹ In July 2020, approximately three months after the conclusion of briefing the USCIT Rule 56.2 motion for judgment on the agency record, Jangho replaced their former counsel at Sandler, Travis & Rosenberg, PA with their current counsel. See ECF No. 96 (Form 12 Substitution of Attorney filed by J. Kevin Horgan to appear in place of Kristen S. Smith).

² Further citations to the Tariff Act of 1930, as amended, are to the relevant provisions of Title 19 of the U.S. Code, 2012 edition.

the scope of a CVD order. *See* 19 C.F.R. § 351.225. Yuanda USA Corporation and Shenyang Yuanda Aluminum Industry Engineering Co., Ltd. (collectively “Yuanda”) requested a scope inquiry for its curtain wall units produced in the PRC, and Commerce issued a formal scope ruling that Yuanda’s curtain wall units fell within the scope of the order. *See Aluminum Extrusions from the PRC*, A-570–967 & C-570–968 (Dep’t of Commerce Mar. 27, 2014) (final scope ruling on curtain wall units produced and imported pursuant to contract to supply curtain wall), *available at* <https://enforcement.trade.gov/download/prc-ae/scope/38-curtain-wall-units-7apr14.pdf> (“Yuanda Scope Ruling”).

Yuanda, and other foreign producers/exporters and importers of substantially identical curtain wall units (including Jangho), challenged the Yuanda Scope Ruling before this Court and the U.S. Court of Appeals for the Federal Circuit. *See Shenyang Yuanda Aluminum Eng’g Co. v. United States*, 41 CIT ___, 279 F. Supp. 3d 1209 (2017), *aff’d*, 918 F.3d 1355 (Fed. Cir. 2019). In sustaining the Yuanda Scope Ruling, the Federal Circuit held that “curtain wall units . . . imported under a contract for an entire curtain wall” are within the scope of the AD and CVD orders covering aluminum extrusions from the PRC. *See Shenyang Yuanda*, 918 F.3d at 1358, 1368. Following the Federal Circuit’s decision in *Shenyang Yuanda*, Plaintiffs sought and obtained voluntary dismissals of their complaints in Court Nos. 15–00023 & 15–00024. *See* Order of Dismissal under USCIT R. 41(a)(1)(A)(ii), Court No. 15–00023, ECF No. 85; Order of Dismissal under USCIT R. 41(a)(1)(A)(ii), Court No. 15–00024, ECF No. 83. In this action, Plaintiffs withdrew their arguments related to scope, filed amended complaints, and the instant USCIT Rule 56.2 motions for judgment on the agency record. *See* Joint Status Report & Proposed Briefing Schedule at 2, ECF No. 72.

Plaintiffs challenge various aspects of Commerce’s determinations in the *Final Results*. First, Plaintiffs contend that Commerce unlawfully suspended Plaintiffs’ entries of subject merchandise prior to Commerce’s initiation of a formal scope inquiry. *See* Jangho Br. at 9. Plaintiffs also contend that Commerce unreasonably found that they benefitted from countervailable subsidies in the form of various preferential loans, tax policies, and tax offsets. *Id.* at 16–20. Plaintiffs further argue that Commerce unreasonably determined that glass and aluminum extrusions purchased for less than adequate remuneration (“LTAR”) may be countervailed as inputs to the subject merchandise. *Id.* at 20–28. Alternatively, Plaintiffs maintain that even if Commerce may lawfully countervail glass and aluminum extrusion inputs to the subject merchandise, “the administrative re-

cord provides no support for Commerce’s arbitrary finding that suppliers are ‘government entities,’ that a benefit was indeed provided or that any alleged benefit was specific in nature, as required by the CVD statute.” *Id.* at 28–38.

II. Standard of Review

The court sustains Commerce’s “determinations, findings, or conclusions” unless they are “unsupported by substantial evidence on the record, or otherwise not in accordance with law.” 19 U.S.C. § 1516a(b)(1)(B)(i). More specifically, when reviewing agency determinations, findings or conclusions for substantial evidence, the court assesses whether the agency action is reasonable given the record as a whole. *Nippon Steel Corp. v. United States*, 458 F.3d 1345, 1350–51 (Fed. Cir. 2006). Substantial evidence has been described as “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *DuPont Teijin Films USA v. United States*, 407 F.3d 1211, 1215 (Fed. Cir. 2005) (quoting *Consol. Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938)). Substantial evidence has also been described as “something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency’s finding from being supported by substantial evidence.” *Consolo v. Fed. Mar. Comm’n*, 383 U.S. 607, 620 (1966).

Fundamentally, though, “substantial evidence” is best understood as a word formula connoting reasonableness review. 3 Charles H. Koch, Jr. *Administrative Law and Practice* § 9.24[1] (3d ed. 2020). Therefore, when addressing a substantial evidence issue raised by a party, the court analyzes whether the challenged agency action “was reasonable given the circumstances presented by the whole record.” 8A West’s Fed. Forms, National Courts § 3.6 (5th ed. 2020).

III. Discussion

A. Countervailing Duty of Aluminum Extrusions and Glass “Inputs” in Subject Merchandise

Plaintiffs argue that Commerce lacks the authority to countervail subsidies to glass and aluminum extrusions as “inputs” to the subject merchandise. *See* Jangho Br. at 20–28. With respect to Commerce’s decision to countervail glass subsidies, Plaintiffs argue that glass is outside of the scope of the *CVD Order*. *Id.* at 22. Plaintiffs highlight that the language of the *CVD Order* expressly excludes from the scope of the order “the non-aluminum extrusion components of subassemblies or subject kits.” *Id.* at 24 (quoting *CVD Order*, 76 Fed. Reg. at 30,653–54). Plaintiffs also contend Commerce lacked the authority to

countervail aluminum extrusions. *Id.* at 27. Plaintiffs argue that aluminum extrusions may not be countervailed because aluminum extrusions are the subject merchandise, not an input used in the manufacture of subject merchandise. *Id.* Plaintiffs note that although Commerce found that curtain wall units are subject to the scope of the order in Yuanda Scope Ruling, only the aluminum extrusions contained in curtain wall units constitute subject merchandise. *Id.* at 28.

Commerce found that parts of curtain walls, including curtain wall units, are included within the scope of the order. *See Decision Memorandum* at 96. Commerce does not dispute that it generally does not countervail subsidies tied to non-subject merchandise. *Id.* at 97. However, Commerce rejected Plaintiffs' arguments that glass is outside of the scope of the *CVD Order*, explaining:

curtain wall units such as those produced by the Jangho Companies are considered subject merchandise. In other words, subject curtain wall units containing glass is a single commercial product. Glass is therefore an input used in the manufacture of subject merchandise, i.e., curtain wall units.

Id. at 97–98. Commerce thus found that it could countervail subsidies to glass inputs of curtain wall units, as the benefits derived from the purchase of glass for LTAR are tied to subject merchandise. *Id.*

Curtain wall units are subassemblies of curtain walls. *See Shenyang Yuanda Aluminum Eng'g Co. v. United States*, 918 F.3d 1355, 1367 (Fed. Cir. 2019) (“The only remaining issue for the curtain wall unit entries at issue here is whether they are excluded when viewed (correctly) as subassemblies. We see no error in Commerce’s conclusion that they are not so excluded.”); *see also Shenyang Yuanda Aluminum Eng'g Co. v. United States*, 776 F.3d 1351, 1358 (Fed. Cir. 2015) (“curtain wall units are undeniably components that are fastened together to form a completed curtain wall. Thus, they are ‘parts for,’ and ‘subassemblies’ for, completed curtain walls. A part or sub-assembly, here a curtain wall unit, cannot be a finished product.” (internal citation and quotation omitted)).

As subassemblies, curtain wall units are subject to the exclusion of their non-aluminum extrusion components from the order: “The scope does not include the non-aluminum extrusion components of subassemblies.” *CVD Order*, 76 Fed. Reg. at 30,654. Commerce’s conclusion that “a curtain wall unit is subject merchandise, inclusive of aluminum extrusions, glass, and all other components” unreasonably contravenes the plain language of the order. *See Decision Memorandum* at 100. The scope of the order covers aluminum extrusions, not glass,

and the *CVD Order* expressly excludes the non-aluminum extrusion components of subassemblies like curtain wall units. It is therefore arbitrary to conclude the glass is subject merchandise. By the scope's definition, it is not. This is not arguable or subject to interpretation. The scope is clear. Commerce must abide by the clear scope language. The court will therefore remand this issue for Commerce to correct its analysis of the non-aluminum extrusion components of the curtain wall units. Those are not subject merchandise.

The more interesting question is Commerce's treatment of the aluminum extrusions component of the curtain wall units. Commerce countervailed the aluminum extrusion component as an input of the curtain wall unit. *Id.* That has a facial appeal if one erroneously concludes the subject merchandise is the curtain wall unit. The subject merchandise, however, is the aluminum extrusion component of the curtain wall units. To be clear, the subject merchandise is a curtain wall unit, which is a subassembly of a curtain wall, and does not include the non-aluminum extrusion components, which leaves, unsurprisingly, aluminum extrusions. It does ring pretty hollow to conclude that aluminum extrusions are inputs for aluminum extrusions. The court cannot sustain that as reasonable. Commerce therefore needs to rethink its treatment of the aluminum extrusions in the curtain wall units, and how best to fully capture their subsidization. The court does understand that it is possible to subsidize the aluminum extrusions as an input for the curtain wall unit, and separately subsidize the curtain wall units. It is also possible in that scenario to double count the aluminum extrusion subsidies and overcompensate on the trade remedy. The hope is that on remand, Commerce can sort this out and determine the appropriate countervailable measures for the subject merchandise, aluminum extrusions.

B. Statutory Requirements for Countervailing Subsidies for Aluminum Extrusions and Glass

Because the court remands Commerce's determination that it may countervail glass and aluminum extrusions as inputs to the subject merchandise, *see* Section A *supra*, the court does not reach Plaintiffs' alternative arguments as to whether Commerce reasonably found that the statutory requirements of § 1677(5) were met with respect to Plaintiffs' aluminum extrusion and glass purchases. *See* Jangho Br. at 28–38.

C. Suspension of Plaintiffs' Entries and Application of 19 C.F.R. § 351.225

19 C.F.R. § 351.225 “contains rules regarding scope rulings, requests for scope rulings, procedures for scope inquiries, and standards used in determining whether a product is within the scope of an order or suspended investigation.” *See* 19 C.F.R. § 351.225(a). Plaintiffs contend that the suspension of liquidation of their entries in this matter violated § 351.225(l)(3), which provides:

If the Secretary issues a final scope ruling, under either paragraph (d) or (f)(4) of this section, to the effect that the product in question is included within the scope of the order, any suspension of liquidation under paragraph (l)(1) or (l)(2) of this section will continue. Where there has been no suspension of liquidation, the Secretary will instruct the Customs Service to suspend liquidation and to require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the product entered, or withdrawn from warehouse, for consumption on or after the date of initiation of the scope inquiry. If the Secretary's final scope ruling is to the effect that the product in question is not included within the scope of the order, the Secretary will order any suspension of liquidation on the subject product ended and will instruct the Customs Service to refund any cash deposits or release any bonds relating to this product.

19 C.F.R. § 351.225(l)(3).

Plaintiff argues that “[b]ecause Commerce did not suspend liquidation of ‘curtain wall units that are produced and imported pursuant to a contract to supply a curtain wall’ prior to the initiation of the formal scope inquiry, entries of those products cannot be suspended retroactively before that date” pursuant to this regulation. *See Jangho Br.* at 9–15. Plaintiffs note that Commerce's liquidation instructions in the Yuanda Scope Ruling specifically directed U.S. Customs and Border Protection (“Customs” or “CBP”) to “suspend liquidation of entries of curtain wall units that are produced and imported pursuant to a contract to supply a curtain wall effective 5/10/2013, which is the date of the initiation of the scope inquiry”. *Id.* at 10. Plaintiffs maintain that based on these instructions, entries of curtain wall units prior to May 10, 2013 should be excluded from suspension in the underlying administrative review. *Id.*

Commerce found the regulation was not applicable to the subject merchandise and rejected Plaintiffs' argument. *See Decision Memorandum* at 78–80. Specifically, Commerce noted that Plaintiffs' recitation of § 351.225(l)(3) omitted the key words “[w]here there has

been no suspension of liquidation.” *Id.* at 79. Commerce explained that “[t]he Jangho Companies’ relevant entries were suspended prior to the date of initiation of the curtain wall units scope ruling,” and the agency thus concluded that “[n]othing in 19 CFR 351.225(l)(3) prohibits CBP from suspending liquidation of these entries prior to the initiation of a scope inquiry.” *Id.* Commerce thus concluded that, contrary to Plaintiffs’ arguments, “the Department has not retroactively ordered the suspension of liquidation of any entries of the Jangho Companies’ merchandise, although such merchandise may already have been properly suspended by CBP. ... [T]he in-scope status of the Jangho Companies’ curtain wall units and other curtain wall components and products subject to this review has been confirmed by the Department’s scope ruling, by the CIT, and by the Federal Circuit in *Shenyang Yuanda v. United States.*” *Id.* at 79–80. Accordingly, Commerce determined that the continued suspension of liquidation of the subject merchandise was proper. *Id.*

Plaintiffs argue that Commerce’s interpretation of § 351.225(l)(3) is too simplistic, and that the existence of a pre-existing administrative review “does not free Commerce from adhering to the Yuanda Scope Ruling.” *Id.* at 13. Plaintiffs contend that § 351.225(l)(3) limits when Commerce can suspend liquidation of entries that were subject to a final scope ruling. *Id.* at 13–14.

Commerce explained that “suspension of entries of curtain wall parts began at the date of the preliminary determination in the countervailing duty investigation and properly continued through the completion of the relevant scope inquiry on curtain wall units pursuant to 19 C.F.R. § 351.225(l)(1) and (3).” *See Decision Memorandum* at 80. Commerce disagreed with Plaintiffs’ contention that the agency “retroactively assessed duties on Jangho’s entries,” and explained that “curtain wall parts are, and always have been, subject to the CVD order.” *Id.* (citing *Aluminum Extrusions from the People’s Republic of China*, 75 Fed. Reg. 54,302, 54,303 (Dep’t of Commerce Sept. 7, 2010) (prelim. determ. CVD investigation) (“*Preliminary Determination*”). Commerce emphasized the limiting language, “[w]here there has been no suspension of liquidation,” in § 351.225(l)(3), and determined that the regulation did not limit Commerce’s authority to suspend liquidation of Plaintiffs’ entries. *Id.*

The court agrees with Commerce that the agency’s suspension of liquidation of Plaintiffs’ entries did not violate § 351.225(l)(3) for the reasons provided in the *Decision Memorandum*. Plaintiffs’ arguments focusing on the language of Commerce’s liquidation instructions and highlighting precedent where Commerce was not permitted to retro-

actively suspend liquidation of entries, *see* *Jangho Br.* at 11–12, ignore the crucial distinguishing fact in this matter that Plaintiffs’ entries were lawfully suspended pursuant to the *Preliminary Determination* prior to the May 2013 Yuanda Scope Ruling. *See Decision Memorandum* at 79–80. The court agrees that because Plaintiffs’ entries were already lawfully suspended at the time of the Yuanda Scope Ruling, § 351.225(1)(3) did not limit the Government’s authority to continue suspending those entries. Accordingly, the court rejects Plaintiffs’ arguments that the suspension of liquidation of entries of subject merchandise prior to the issuance of the Yuanda Scope Ruling violated § 351.225(1)(3).

D. Application of 19 U.S.C. § 1677(5)(B) to PRC Banks

Under 19 U.S.C. § 1677(5) there are four requirements that Commerce must find in order to determine that a foreign program constitutes a countervailable subsidy. Specifically, in order to find a “subsidy” Commerce must find that an “authority” provided a “financial contribution” in which a “benefit” is conferred. *See* 19 U.S.C. § 1677(5). Each of these terms is defined in the statute. *See* 19 U.S.C. § 1677(5)(B)(iii) (defining “authority”); 19 U.S.C. § 1677(5)(D) (defining “financial contribution”); 19 U.S.C. § 1677(5)(E) (defining when a “benefit” is “conferred”). Additionally, in order for a subsidy to be countervailable under the statute, Commerce must find that the subsidy is “specific” under the criteria set forth in § 1677(5A).

Plaintiffs contend that Commerce erroneously found that PRC banks constitute “authorities” as defined in § 1677(5)(B)(iii). *Jangho Br.* at 16–19. Plaintiffs maintain that “the underlying administrative record demonstrates that banks made lending decisions based upon sound commercial considerations, not government policy goals.” *Id.* at 16. *Jangho* argues that Chinese banks operate based on rules and regulations that require them to make decisions based on commercial considerations. *Id.* (referencing the *Interim Measures for the Administration of Working Capital Loans* (“*Interim Measures*”). *Jangho* highlights the Government of China’s (“GOC”) questionnaire response that states that it is an “explicit requirement of Interim Measures that the issuance of working capital loans shall be prudently decided by banks based on a reasonable estimation of the borrower’s working capital demand and fair consideration of cash flow, liabilities, repayment ability, guarantee status and other factors of the borrower.” *Id.* at 16–17.

Commerce continued to find, “as it has in prior segments of this proceeding, that the GOC had a policy in place to encourage the

development of the production of aluminum extrusions through policy lending, and that Chinese [state-owned commercial banks (“SOCBs”)] are authorities under the countervailing duty law.” See *Decision Memorandum* at 83. Commerce explained that “[i]n the *Aluminum Extrusions from the PRC Investigation*, *Aluminum Extrusions from the PRC First Review*, and *Aluminum Extrusions from the PRC Second Review*, we determined that the GOC had a policy in place to encourage the development of the production of aluminum extrusions through policy lending. In the instant administrative review, the GOC’s discussions of the lending practices of financial institutions echoed the discussion in previous administrative reviews.” *Id.* at 43. Commerce also relied on its finding in *Coated Free Sheets Paper from the People’s Republic of China* (“*CFS from the PRC*”): “that the PRC’s banking sector does not operate on a commercial basis and is subject to significant distortions, primarily arising out of the continued dominant role of the government in the financial system and the government’s use of banks to effectuate policy objectives.” *Id.* (quoting *CFS from the PRC*, 72 Fed. Reg. 60,645 (Dep’t of Commerce Oct. 25, 2007) (final affirmative CVD determ.)). Commerce explained that it found Chinese SOCBs to be “authorities” within the meaning of § 1677(5)(B)(iii), and further noted that this finding was not based on “government ownership alone.” *Id.* at 84 (quoting from *CFS from the PRC* that “information on the record indicates that the PRC’s banking system remains under State control and continues to suffer from the legacies associated with the longstanding pursuit of government policy objectives. These factors undermine the SOCBs ability to act on a commercial basis and allow for continued government control resulting in the allocation of credit in accordance with government policies. Therefore, treatment of SOCBs in China as commercial banks is not warranted in this case.”). Commerce explained that “[i]n order to revisit the determination in *CFS from the PRC*, there must be evidence warranting reconsideration,” and found that “there is no such evidence on the record of this administrative review.” *Id.*

Commerce rejected Plaintiffs’ arguments based on the *Interim Measures*, noting that it had previously considered the impact of these measures with respect to similar arguments made in “*Aluminum Extrusions from the PRC First Review* and determined that there is no basis to conclude that the GOC’s policy lending activities ceased with the issuance of the *Interim Measures*.” *Id.* at 44. Specifically, Commerce highlighted that “Article 34 of the [*Law of the People’s Republic of China on Commercial Banks* (“*Banking Law*”)] states that banks should carry out their loan business ‘under the guidance of the state industrial policies.’” *Id.* Commerce explained its determination

that “[i]n the instant review, because the *Interim Measures* are ‘fully consistent’ with the *Banking Law*, we determine, consistent with prior determinations, that they do not constitute evidence that the GOC ceased policy lending to the aluminum extrusions industry, despite any changes to lending practices asserted by the GOC.” *Id.* Commerce therefore concluded that “loans to aluminum extrusion producers from SOCBs and policy banks in the PRC were made pursuant to government directives and, thus, constitute a direct financial contribution from ‘authorities,’” pursuant to § 1677(5A)(D)(i). *Id.*

While Plaintiffs would prefer that Commerce consider the language of the *Interim Measures* in isolation and draw an inference that Chinese SOCBs operate according to commercial principles without regard to state policy, Plaintiffs have failed to demonstrate that their position is the one and only reasonable conclusion that Commerce could reach on the record. See *Tianjin Wanhua Co. v. United States*, 40 CIT ___, ___, 179 F. Supp. 3d 1062, 1071 (2016); *Globe Metallurgical, Inc. v. United States*, 36 CIT ___, ___, 865 F. Supp. 2d 1269, 1276 (2012) (substantial evidence review “contemplates [that] more than one reasonable outcome is possible on a given administrative record”). Accordingly, the court sustains Commerce’s determination that Plaintiffs’ received countervailable policy loans.

E. Specificity of Tax Policies for High or New Technology Enterprises and Tax Offsets for Research and Development Under 19 U.S.C. § 1677(5A)

A subsidy is specific as a matter of law “[w]here the authority providing the subsidy, or the legislation pursuant to which the authority operates, expressly limits access to the subsidy to an enterprise or industry.” 19 U.S.C. § 1677(5A)(D)(i). Commerce determined that Preferential Tax Policies for High or New Technology Enterprises (“HTNEs”), as well as the Tax Offsets for Research and Development (“R&D”) Program, are specific as a matter of law under 19 U.S.C. § 1677(5A)(D)(i). See *Decision Memorandum* at 88–93. Plaintiffs challenge Commerce’s findings of de jure specificity with respect to both programs. See *Jangho Br.* at 19–20.

Plaintiffs contend that the HTNE policies apply to a number of different industries such that Commerce could not reasonably conclude that “the authority providing the subsidy, or the legislation pursuant to which the authority operates, expressly limits access to the subsidy to an enterprise or industry.” *Id.* at 19 (citing 19 U.S.C. § 1677(5A)(D)(i)). In support of their argument, Plaintiffs point to the annex of the *Measures of Recognition of HTNEs*, a list comprised of eight high and new technology areas that qualify for support under

Article 28.2 of the PRC's *Regulations on Implementation of the Enterprise Income Tax Law*. *Id.* Plaintiffs argue that because each category is further broken down into 39 sub-areas, and more than 200 specific areas, the HTNE tax policies apply to various different industries and therefore are not specific under § 1677(5A)(D)(i). *Id.*

Commerce disagreed and determined that the HTNE tax program is de jure specific in accordance with 19 U.S.C. § 1677(5)(D)(i) because the qualifying industries are limited to eight specified industries. *See Decision Memorandum* at 89. Commerce relied on its finding in a previous proceeding evaluating the same HTNE tax program that “the reduction afforded by this program is limited as a matter of law to certain new and high technology companies selected by the government pursuant to legal guidelines specified in Measures on Recognition of HNTEs, and, hence, is specific under section 771(5A)(D)(i) of the Act.” *Id.* (referencing *Citric Acid and Certain Citrate Salts From the People's Republic of China*, 76 Fed. Reg. 77,206 (Dep't of Commerce Dec. 12, 2011) (CVD review final results) (“*Citric Acid and Certain Citrate Salts From the PRC*”). Commerce further found that “[b]oth the number of targeted industries (eight) and the narrowness of the identified project areas under those industries support a finding that the legislation expressly limits access to the program to a specific group of enterprises or industries.” *Id.* Commerce found no new information on the record of this proceeding that called into question its prior finding of specificity as to the HTNE tax program. *Id.* Commerce noted that in its initial questionnaire, Commerce provided the opportunity for the GOC to report any changes to programs that Commerce had previously evaluated. *Id.* at 90. GOC responded that there were no changes during the POR to the HTNE tax program. *Id.*

Commerce's conclusion that the HTNE tax program was “specific” under § 1677(5A)(D)(i) was reasonable. Commerce relied on undisputed evidence in the record, as well as its past findings analyzing the same programs in prior segments of this proceeding and other proceedings, to determine that the HTNE tax program was expressly limited by legislation to be available to only to eight specified industries. The fact that those industries can be further subdivided into various sub-categories does not establish that Commerce's specificity finding under § 1677(5A)(D)(i) was unreasonable.

With respect to Commerce's finding of de jure specificity under § 1677(5A)(D)(i) as to the tax offset for R&D, Plaintiffs similarly contend that this finding was unreasonable. *See Jangho Br.* at 20. Specifically, Plaintiffs provide a three-sentence argument that “Commerce points to no evidence on the administrative record that such a

policy exists for the POR. It does not. As explained by the GOC, there is no policy targeting the aluminum extrusions industry for development and assistance.” *Id.* Plaintiffs provide no additional argument on this issue in their reply brief. *See generally* Jangho Reply.

Contrary to Plaintiffs’ contentions, Commerce explained why its finding of specificity with respect to the R&D tax offset program was supported by the evidence in the record. *See Decision Memorandum* at 50 (noting that “The Program is administered pursuant to the ‘Trial Administrative Measures for the Pre-Tax Deduction of Enterprises R&D Expenses’ (‘R&D Measures’), and that “Article 5 of the R&D Measures states that eligible R&D projects shall be in line with national and Guangdong provincial technological policies and industrial policies.”). Commerce further explained that it had found that “the GOC has targeted the aluminum extrusions industry for development and assistance in a manner that is specific under [§ 1677(5A)(D)(i)], as illustrated in the government plans and directives, to encourage and support the growth and development of the aluminum extrusions industry.” *Id.* at 51. “Given this finding and in light of the language in Article 5 of the R&D Measures,” Commerce “determined that tax reduction under this program are *de jure* specific within the meaning of [§ 1677(5A)(D)(i)].” *Id.* Moreover, Commerce noted that it had provided the GOC the opportunity to provide additional information with respect to the R&D tax offset program, and that the “GOC responded: ‘There were no changes during the POR to this program.’” *Id.* at 93.

In light of Commerce’s findings and explanation, the court cannot see how it can conclude that Commerce’s determination of specificity as to the R&D tax offset program was unreasonable, especially given Plaintiffs’ barebones challenge. Accordingly, the court sustains Commerce’s determinations that the HTNE and R&D tax programs were specific as a matter of law under § 1677(5A)(D)(i).

IV. Conclusion

For the foregoing reasons, it is hereby

ORDERED that this matter is remanded for Commerce to give effect to the *CVD Order*’s language excluding “non-aluminum extrusion components of subassemblies” from the scope of the order; it is further

ORDERED that on remand Commerce shall reconsider and further explain its countervailing of aluminum extrusion “inputs” to the subject merchandise; it is further

ORDERED that all other challenged aspects of Commerce’s *Final Results* are sustained; it is further

ORDERED that Commerce shall file its remand results on or before November 24, 2020; and it is further

ORDERED that, if applicable, the parties shall file a proposed scheduling order with page limits for comments on the remand results no later than seven days after Commerce files its remand results with the court.

Dated: September 25, 2020
New York, New York

/s/ Leo M. Gordon
JUDGE LEO M. GORDON

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