

# U.S. Customs and Border Protection



## **PROPOSED MODIFICATION OF ONE RULING LETTER AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF CONTROLLABLE SHADING SYSTEM**

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

**ACTION:** Notice of proposed modification of one ruling letter and proposed revocation of treatment relating to the tariff classification of controllable shading system.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to modify one ruling letter concerning tariff classification of a controllable shading system 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 October 30, 2020.

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

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

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

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

Pursuant to 19 U.S.C. § 1625(c)(1), this notice advises interested parties that CBP is proposing to modify one ruling letter pertaining to the tariff classification of a controllable shading system. Although in this notice, CBP is specifically referring to New York Ruling Letter ("NY") N010048, dated May 3, 2007 (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 N010048, CBP classified a controllable shading system in heading 8479, HTSUS, which provides for "Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof." CBP has reviewed NY N010048 and has determined the ruling letter to be in error. It is now CBP's position that the controllable shading system is properly classified, in

heading 6303, HTSUS, which provides for “Curtains (including drapes) and interior blinds; curtain or bed valances.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to modify NY N010048 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H312768, 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

HQ H312768  
OT:RR:CTF:FTM H312768 PJG  
CATEGORY: Classification  
TARIFF NO.: 6303; 8479

MR. MICHAEL E. MURPHY  
BAKER & MCKENZIE LLP  
815 CONNECTICUT AVENUE, NW  
WASHINGTON, D.C. 20006

RE: Modification of NY N010048; tariff classification of controllable shading system

DEAR MR. MURPHY:

This is in reference to New York Ruling Letter (“NY”) N010048 that U.S. Customs and Border Protection (“CBP”) issued to you on May 3, 2007, pursuant to your request for a binding ruling on behalf of Lutron Electronics Co., Inc. The ruling pertains to the tariff classification under the Harmonized Tariff Schedule of the United States Annotated (“HTSUSA”) of a controllable shading system and a controllable drapery track system used for commercial and residential applications that were both classified in heading 8479, HTSUS. We have reviewed NY N010048 and determined it to be in error only with respect to the classification of the controllable shading system. The controllable drapery track system did not include the drapes at the time of importation and remains classified under heading 8479, HTSUS. Accordingly, NY N010048 is modified.

**FACTS:**

In NY N010048, CBP described the controllable shading system as follows:

The controllable shading ...system[] [is] used for commercial and residential applications. The system[] aid[s] in reducing glare, protecting furnishings from U/V damage and maximizing HVAC efficiency. The settings ...are electronically programmable so that window treatments can be programmed to stop at present positions. The system[] can also be equipped to receive infrared control signals and may be controlled by hand-held remotes in addition to the keypad controls...The complete controllable shading systems consist of fabric shades, hem bars, one (or more) quiet electronic drive units (“QEDs”), roller tubes, roller bulk idlers, brackets and associated hardware.

CBP classified the merchandise under heading 8479, HTSUS, and specifically in subheading 8479.89.9897, HTSUSA, which in May 2007 provided for “Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other machines and mechanical appliances: Other: Other.”<sup>1</sup>

**ISSUE:**

What is the proper tariff classification under the HTSUS for the controllable shading system?

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<sup>1</sup> Subheading 8479.89.9897, HTSUSA, does not exist in the 2020 HTSUSA.

**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 2020 HTSUS provisions under consideration are as follows:

- 8479**            Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof:
- 6303**            Curtains (including drapes) and interior blinds; curtain or bed valances:

GRI 3(a) and (b) provide as follows:

When, by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows:

- (a) 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 substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, 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.
- (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

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

The EN to GRI 3(b) states, in pertinent part:

(VI) This second method relates only to:

- (i) Mixtures.
- (ii) Composite goods consisting of different materials.
- (iii) Composite goods consisting of different components.
- (iv) Goods put up in sets for retail sales.

It applies only if Rule 3 (a) fails.

(VII) In all these cases the goods are to be classified as if they consisted of the material or component **which gives them their essential character**, insofar as this criterion is applicable.

(VIII) The factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the

nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

(IX) For the purposes of this Rule, composite goods made up of different components shall be taken to mean not only those in which the components are attached to each other to form a practically inseparable whole but also those with separable components, **provided** these components are adapted one to the other and are mutually complementary and that together they form a whole which would not normally be offered for sale in separate parts.

Examples of the latter category of goods are:

- (1) Ashtrays consisting of a stand incorporating a removable ash bowl.
- (2) Household spice racks consisting of a specially designed frame (usually of wood) and an appropriate number of empty spice jars of suitable shape and size.

As a general rule, the components of these composite goods are put up in a common packing.

\* \* \*

The subject merchandise is made up of different components, i.e., fabric shades, hem bars, one (or more) quiet electronic drive units (“QEDs”), roller tubes, roller bulk idlers, brackets and associated hardware. When by application of GRI 2, HTSUS, goods are prima facie classifiable under two or more headings, GRI 3, HTSUS, is applicable. According to EN IX for GRI 3(b), a “composite good” is a good that is “made up of different components,” which may be “adapted one to the other and [be] mutually complementary and . . . together . . . form a whole which would not normally be offered for sale in separate parts.” The subject merchandise is a composite good; therefore, GRI 3(b) requires that classification be based on the product that provides the composite good with its essential character.

The EN to GRI 3(b) (VIII) lists factors to help determine the essential character of such goods: “the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.” The U.S. Court of International Trade (“CIT”) has indicated that the factors listed in the EN to GRI 3(b) (VIII) are “instructive” but “not exhaustive” and has indicated that the goods must be “reviewed as a whole.” *The Home Depot, U.S.A., Inc. v. United States*, 30 Ct. Int’l Trade 445, 459–460 (2006) (citing *A.N. Deringer, Inc. v. United States*, 66 Cust. Ct. 378, 384 (1971) (citation omitted)). With regard to the good which imparts the essential character, the CIT has stated that it is “that which is indispensable to the structure, core or condition of the article, i.e., what it is.” *Id.* at 460 (citing *A.N. Deringer, Inc.*, 66 Cust. Ct. at 383).

In NY N010048, CBP determined that the essential character of the controllable shading system was imparted by the QEDs. However, consistent with prior rulings, we find that the function of the quiet electronic drive units (“QEDs”) is/are ancillary to the function of the shade, which protects a space from sunlight and provides privacy. See New York Ruling Letter (“NY”) N293716 (Feb. 21, 2018) (stating that the shade provided the essential character to the motorized window shade because “the lifting and lowering mechanisms of the window shade are ancillary to the protection the shade

provides”); *see also* Headquarters Ruling Letter (“HQ”) 955432 (Aug. 4, 1994) (stating that the screening material imparts the essential character to the shade and heat retention systems because it “controls the environment of the structures in which the shade and heat retention systems at issue operate”). Similarly, the function of the remaining components, specifically, the hem bars, roller tubes, roller bulk idlers, brackets and associated hardware, are also ancillary to the function of the shades. Accordingly, the shades impart the essential character to the subject merchandise. The subject merchandise, therefore, is classified under heading 6303, HTSUS, which provides for “Curtains (including drapes) and interior blinds; curtain or bed valances.” Sufficient information was not provided at the time of the ruling request to determine the proper classification of the merchandise under this heading beyond the 4-digit level. Beyond the four-digit level, the classification of the merchandise will depend on the fabric composition of the model of the controllable shading system that will be imported.

**HOLDING:**

Under the authority of GRIs 3(b) and 6 the controllable shading system are classified under heading 6303, HTSUS, which provides for “Curtains (including drapes) and interior blinds; curtain or bed valances.”

The text of the most recent HTSUS and the accompanying duty rates are provided on the internet at [www.usitc.gov/tata/hts/](http://www.usitc.gov/tata/hts/).

**EFFECT ON OTHER RULINGS:**

NY N010048, dated May 3, 2007, is 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*

N010048

May 3, 2007

CLA-2-84:RR:E:NC:1:104

CATEGORY: Classification

TARIFF NO.: 8479.89.9897

MR. MICHAEL E. MURPHY  
BAKER & MCKENZIE LLP  
815 CONNECTICUT AVENUE, NW  
WASHINGTON, DC 20006

RE: The tariff classification of controllable shading and drapery track systems from Mexico

DEAR MR. MURPHY:

In your letter dated April 19, 2007 on behalf of Lutron Electronics Co., Inc., you requested a tariff classification ruling.

The controllable shading and drapery track systems are used for commercial and residential applications. The systems aid in reducing glare, protecting furnishings from U/V damage and maximizing HVAC efficiency. The settings of both systems are electronically programmable so that window treatments can be programmed to stop at preset positions. The systems can also be equipped to receive infrared control signals and may be controlled by hand-held remotes in addition to the keypad controls. As you indicate in your letter, the track systems will be complete at time of importation from Mexico. The complete controllable shading systems consist of fabric shades, hem bars, one (or more) quiet electronic drive units ("QEDs"), roller tubes, roller bulk idlers, brackets and associated hardware. The complete drapery track systems consist of one or more QEDs, drapery tracks, brackets and associated hardware. Drapes are not included at time of importation

The applicable subheading for the complete controllable shading and drapery track systems will be 8479.89.9897, Harmonized Tariff Schedule of the United States (HTSUS), which provides for machines and mechanical appliances having individual functions, not specified or included elsewhere in chapter 84: other machines and mechanical appliances: other: other: other: other. The rate of duty will be 2.5 percent ad valorem.

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

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 Patricia O'Donnell at 646-733-3011.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director,*

*National Commodity Specialist Division*



**PROPOSED REVOCATION OF TWO RULING LETTERS,  
PROPOSED MODIFICATION OF A RULING LETTER, AND  
PROPOSED REVOCATION OF TREATMENT RELATING TO  
THE TARIFF CLASSIFICATION OF DIGITAL BLOOD  
PRESSURE MONITORS**

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

**ACTION:** Notice of proposed revocation of two ruling letters, proposed modification of a ruling letter, and proposed revocation of treatment relating to the tariff classification of digital blood pressure monitors.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke two ruling letters and modify a ruling letter concerning tariff classification of digital blood pressure monitors 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 October 30, 2020.

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

**FOR FURTHER INFORMATION CONTACT:** Anthony L. Shurn, Electronics, Machinery, Automotive, and International Nomenclature Branch, Regulations and Rulings, Office of Trade, at (202) 325–0218.

**SUPPLEMENTARY INFORMATION:**

**BACKGROUND**

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

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

Pursuant to 19 U.S.C. § 1625(c)(1), this notice advises interested parties that CBP is proposing to revoke two ruling letters and modify a ruling letter pertaining to the tariff classification of digital blood pressure monitors. Although in this notice, CBP is specifically referring to revoking HQ 952720, dated December 2, 1992 (Attachment A), and NY 884125, dated April 19, 1993 (Attachment B), as well as modifying HQ 961998, dated May 7, 1999 (Attachment C), this notice also covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the four rulings identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the comment period.

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

In HQ 952720 and NY 884125, CBP classified digital blood pressure monitors in subheading 9018.90, HTSUS, specifically in subheading 9018.90.50, HTSUS, which provides for "Instruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electro-medical apparatus and sight-testing instruments; parts and accessories thereof: Other instruments and appliances and parts and accessories thereof: Optical instruments and appliances and parts and accessories thereof". CBP has reviewed HQ 952720 and NY 884125 and has determined the ruling letters to be in error. It is now CBP's position that digital blood

pressure monitors are properly classified in subheading 9018.19, HTSUS, specifically in subheading 9018.19.95, HTSUS, which provides for “Instruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electro-medical apparatus and sight-testing instruments; parts and accessories thereof: Electro-diagnostic apparatus (including apparatus for functional exploratory examination or for checking physiological parameters); parts and accessories thereof: Other”. CBP has also reviewed HQ 961998 and has determined that it is in error with respect its analysis regarding the scope of the provision for “electro-diagnostic apparatus” of subheading 9018.19, HTSUS.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke HQ 952720 and NY 884125, proposing to modify HQ 961998, and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed HQ 304293, set forth as Attachment D to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

GREGORY CONNOR  
*for*

CRAIG T. CLARK,  
*Director*

*Commercial and Trade Facilitation Division*

Attachments

ATTACHMENT A

HQ 952720

December 2, 1992

CLA-2 CO:R:C:M 952720 RFA

CATEGORY: Classification

TARIFF NO.: 9018.90.50

DISTRICT DIRECTOR OF CUSTOMS  
555 BATTERY STREET  
P.O. BOX 2450  
SAN FRANCISCO, CA 94126

RE: IA 56/92; Digital Blood Pressure Machines; Sphygmomanometers; 9018.19.80; 9018.90.70; PC 874257, Revoked; PC 864808, Revoked; HQ 082973, Revoked

DEAR DISTRICT DIRECTOR:

This is in response to your memorandum of August 14, 1992 (CLA-2-90-SF:T2:WP), requesting internal advice (IA 56/92) on behalf of A&D Engineering, Inc.'s Medical Division, for the proper classification of digital blood pressure machines under the Harmonized Tariff Schedule of the United States (HTSUS). We have been asked to review pre-classification rulings PC 874257 (June 2, 1992) and PC 864808 (August 9, 1991), as well as HQ 082973 (October 4, 1989), which relate to the classification of digital blood pressure machines.

**FACTS:**

The merchandise in question are digital blood pressure machines, A&D Engineering Inc.'s Medical Division model numbers UA-731, UA-701, and UA-711. The machines which perform like sphygmomanometers, are electronic blood pressure measuring instruments which allow blood pressure readings to be taken without the use of a stethoscope. The machines contain a microphone which picks up the arterial pulsating sound and transforms it into an electrical impulse that controls the operation of the electronic devices in the manometer unit. All three models submitted operate on batteries.

**ISSUE:**

Are the described devices sphygmomanometers or are they other electro-medical instruments and appliances under the HTSUS?

**LAW AND ANALYSIS:**

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRI's), taken in order. GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes, and if not, by the following GRI's, taken in order.

In HQ 082973, we stated that digital blood pressure machines are classifiable under subheading 9018.90.70, HTSUS, which provides for "[i]nstruments and appliances used in medical, surgical, dental or veterinary science. . .[o]ther instruments and appliances. . .[o]ther. . .electro-medical instruments and appliances. . . [o]ther."

In PC 874257 and PC 864808, you stated that digital blood pressure machines were held to be classifiable under subheading 9018.19.80, HTSUS,

which provides for “[i]nstruments and appliances used in medical, surgical, dental or veterinary science. . . .[e]lectro-diagnostic apparatus. . .[o]ther. . .[o]ther.”

Subheading 9018.90.50, HTSUS, describes “[i]nstruments and appliances used in medical. . .[o]ther instruments and appliances and parts. . .[s]phygmomanometers. . .” Stedman’s Medical Dictionary (25th ed., Illustrated), at page 1448, defines sphygmomanometer as “an instrument for measuring arterial blood pressure consisting of an inflatable cuff, inflating bulb, and a gauge showing the blood pressure.”

The subject digital blood pressure machines contain a microphone which picks up the arterial pulsating sound and transforms it into an electrical impulse that controls the operation of the mechanical devices in the manometer unit. Although this feature is not described in the above cited definition of the sphygmomanometer, it is our position that this factor should not preclude the articles from being classified as sphygmomanometers. It is a fundamental and longstanding tariff classification principle that an *eo nomine* designation of an article, absent legislative intent or other contrary limitations, includes all forms of an article.

The purpose of the device is to measure an individual’s blood pressure and it should be classified as a sphygmomanometer. The proper classification of the devices are as sphygmomanometers under subheading 9018.90.50, HTSUS.

**HOLDING:**

The digital blood pressure machines are classified as sphygmomanometers in subheading, 9018.90.50, HTSUS. The column 1, general rate of duty is 3.4 percent ad valorem. This notice to you should be considered a revocation of HQ 082973 (October 4, 1989), PC 874257 (June 2, 1992) and PC 864808 (August 9, 1991) under section 177.9(d) of the Customs Regulations [19 CFR 177.9(d)].

Please furnish a copy of this ruling to the internal advise applicant.

**EFFECT ON OTHER RULINGS:**

HQ 082973 (October 4, 1989), PC 874257 (June 2, 1992), and PC 864808 (August 9, 1991) are revoked pursuant to section 177.9(d) of the Customs Regulations [19 CFR 177.9(d)].

*Sincerely,*

JOHN DURANT,

*Director*

*Commercial Rulings Division*

ATTACHMENT B

NY 884125

April 19, 1993

CLA-2-90:S:N:N3:119 884125

CATEGORY: Classification

TARIFF NO.: 9018.90.5040

MR. DAVID R. OSTHEIMER  
MR. MATTHEW A. GOLDSTEIN  
LAMB & LERCH  
233 BROADWAY  
NEW YORK, NY 10279

RE: The tariff classification of a Blood Pressure Machine from Japan.

Gentlemen:

In your letter dated March 18, 1993, you requested a tariff classification ruling on behalf of Colin Medical Instruments, San Antonio, Texas.

The product to be imported is an electronic blood pressure monitor which gives off readings in digital format on an LED display for systolic, diastolic and mean blood pressures as well as pulse. The product is marketed under the name "Press-Mate 8800".

You are of the opinion that the subject apparatus meets the definition of a sphygmomanometer and should be classified as such. Based on Customs Headquarters Ruling 952720 of December 2, 1992 we agree with your position.

The applicable subheading for the electronic blood pressure machine will be 9018.90.5040, Harmonized Tariff Schedule of the United States (HTS), which provides for sphygmomanometers... and parts and accessories thereof. The rate of duty will be 3.4 percent.

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

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

*Sincerely,*

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

HQ H304293  
CLA-2 OT:RR:TCM: EMAIN H304293 ALS  
CATEGORY: Classification  
TARIFF NO.: 9018.19.95

PORT DIRECTOR  
U.S. CUSTOMS AND BORDER PROTECTION  
555 BATTERY STREET  
P.O. BOX 2450  
SAN FRANCISCO, CALIFORNIA 94126

RE: Revocation of HQ 952720 (December 2, 1992); Revocation of NY 884125 (April 19, 1993); Modification of HQ 961998 (May 7, 1999); Tariff classification of Digital Blood Pressure Monitors

DEAR SIR:

This letter is to inform you that we have reconsidered the above-referenced rulings, which pertain to the tariff classification of Digital Blood Pressure Monitors (also referred to herein as the “BPMs”) or, in the case of Headquarters Ruling Letter (HQ) 961998, similar merchandise.

**FACTS:**

The facts as stated in HQ 952720 are as follows:

The merchandise in question are digital blood pressure machines, A&D Engineering Inc.’s Medical Division model numbers UA-731, UA-701, and UA-711. The machines which perform like sphygmomanometers, are electronic blood pressure measuring instruments which allow blood pressure readings to be taken without the use of a stethoscope. The machines contain a microphone which picks up the arterial pulsating sound and transforms it into an electrical impulse that controls the operation of the electronic devices in the manometer unit. All three models submitted operate on batteries.

Additionally, we note that the BPMs consist of a sleeve made of fabric and an electrical cord leading from the sleeve to a control unit of plastic housing. The sleeve is meant to fit around the user’s arm and the control unit consists of two buttons for the power and start functions, a switch for various settings, and an LCD display screen that displays the measurements in numbers. Upon initiation of the measuring function, the sleeve inflates to tighten around the user’s arm until measurements are detected, at which the electrical impulse is sent to the control unit. Once the electrical impulse is sent, the sleeve deflates to loosen enough to be removed from the arm.

The facts as stated in New York Ruling Letter (NY) 884125 are as follows:

[E]lectronic blood pressure monitor which gives off readings in digital format on an LED display for systolic, diastolic and mean blood pressures as well as pulse. The product is marketed under the name “Press-Mate 8800”.

In both rulings, CBP ruled that the digital blood pressure monitors are classified as sphygmomanometers in subheading 9018.90.50, HTSUS.

The merchandise subject to HQ 961998 (May 7, 1999) was a “Dinamap Compact Monitor”, which, in addition to measuring and monitoring a pa-

tient’s blood pressure, monitored the patient’s pulse rate, body temperature and pulse oximetry. It was correctly classified under subheading 9018.19.55, HTSUS.

**ISSUE:**

Whether the subject digital blood pressure monitors fall under the scope of the provision for “Electro-diagnostic apparatus (including apparatus for functional exploratory examination or for checking physiological parameters)”.

**LAW AND ANALYSIS:**

Classification under the HTSUS is determined in accordance with the General Rules of Interpretation (“GRI”) and, in the absence of special language or context which otherwise requires, by the Additional U.S. Rules of Interpretation (“ARI”). GRI 1 provides that the classification of goods shall be “determined according to the terms of the headings and any relative section or chapter notes.” In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, GRIs 2 through 6 may be applied in order. GRI 6 provides the following:

For legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, mutatis mutandis, to the above rules, on the understanding that only subheadings at the same level are comparable. For the purposes of this rule, the relative section, chapter and subchapter notes also apply, unless the context otherwise requires.

The following headings and subheadings of the HTSUS are under consideration in this case:

- 9018                Instruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electro-medical apparatus and sight-testing instruments; parts and accessories thereof:
  - Electro-diagnostic apparatus (including apparatus for functional exploratory examination or for checking physiological parameters); parts and accessories thereof:
- 9018.19                Other:
  - Other:
- 9018.19.95                Other...
  - \* \* \*
- 9018.90                Other instruments and appliances and parts and accessories thereof:
  - Other:
- 9018.90.50                Sphygmomanometers, tensimeters and oscillometers; all the foregoing and parts and accessories thereof...
  - \* \* \* \* \*

There is no dispute that the subject BPMs are medical instruments of heading 9018, HTSUS. The threshold question here is whether or not they are other electro-diagnostic apparatus of subheading 9018.19, HTSUS.



As described above, the BPMs measure the blood pressure of the user and converts the measurement into a digital signal, which displayed on an LCD screen. The measurement of blood pressure is necessary to diagnose and monitor hypertension. It is clear from the description of the BPMs that they utilize electrical components in the performance of this diagnosis. Given such, we conclude that the subject BPMs are in fact electrical diagnostic medical instruments of subheading 9018.19, HTSUS.

Given the foregoing, we conclude that the BPMs subject to HQ 952720 and NY 884125 are properly classified under subheading 9018.19, HTSUS. Specifically, they are classified under subheading 9018.19.95, HTSUS, as other electro-diagnostic apparatus.

Regarding HQ 961998 (May 7, 1999), CBP ruled that the “Dinamap Compact Monitor”, which measured and displayed “a patient’s blood pressure, pulse, body temperature and pulse oximetry (SpO2)”, is classified under subheading 9018.19.55, HTSUS. In doing so, CBP concluded the following:

Since the [Dinamap Compact Monitor] is used in a professional setting to monitor various vital signs, not just blood pressure, it is Customs view that the DCM is not a sphygmomanometer... [of subheading 9018.90.50].

Upon review, we find that the statement “used in a professional setting” is irrelevant to whether or not an article is classifiable under subheading 9018.19. We also find that the relative simplicity of an article, such as the subject articles, to the Dinamap Compact Monitor is irrelevant to whether or not an article is classifiable under subheading 9018.19. Therefore, we are modifying HQ 961998 to reflect the analysis of the scope of the provision for “electro-diagnostic apparatus” of subheading 9018.19 articulated herein. This conclusion does not otherwise affect our ruling in HQ 961998; the remaining analysis regarding the classification at the eight-digit subheading level (i.e. subheading 9018.19.55) and holding remain in effect.

### **HOLDING:**

By application of GRI 1 and 6, the subject digital blood pressure monitors, are properly classified under subheading 9018.19, HTSUS. Specifically, they are classified under subheading 9018.19.95, HTSUS, which provides for “Instruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electro-medical apparatus and sight-testing instruments; parts and accessories thereof: Electro-diagnostic apparatus (including apparatus for functional exploratory examination or for checking physiological parameters); parts and accessories thereof: Other: Other: Other...” The general column one rate of duty, for merchandise classified in this subheading is Free.

Pursuant to U.S. Note 20(b) to Subchapter III, Chapter 99, HTSUS, products of China classified under subheading 9018.19.95, HTSUS, unless specifically excluded, are subject to an additional 25 percent ad valorem rate of duty. At the time of importation, an importer must report the Chapter 99 subheading, i.e., 9903.88.01, in addition to subheading 9018.19.95, HTSUS, noted above, for products of China.

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.

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 on the World Wide Web at [www.usitc.gov](http://www.usitc.gov).

**EFFECT ON OTHER RULINGS:**

CBP Ruling HQ 952720 (December 2, 1992) is hereby REVOKED.

CBP Ruling NY 884125 (April 19, 1993) is hereby REVOKED.

CBP Ruling HQ 961998 (May 7, 1999) is hereby MODIFIED as discussed in the LAW AND ANALYSIS section above.

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

*Sincerely,*

CRAIG T. CLARK,

*Director*

*Commercial and Trade Facilitation Division*

## 19 CFR PART 177

### REVOCATION OF ONE RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF REVERSIBLE COMFORTERS

**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 country of origin of reversible comforters.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking one ruling letter concerning the country of origin of reversible comforters 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. 23, on June 17, 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 November 30, 2020.

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

#### SUPPLEMENTARY INFORMATION:

##### BACKGROUND

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

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

Pursuant to 19 U.S.C. §1625(c)(1), a notice was published in the *Customs Bulletin*, Vol. 54, No. 23, on June 17, 2020, proposing to revoke one ruling letter pertaining to the country of origin of reversible comforters. 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") N306605, dated October 25, 2019, the fabric comprising one side of the reversible comforters is dyed while the fabric comprising the reverse side is printed. CBP determined India to be the country of origin of the reversible comforters by application of 19 C.F.R. §102.21(e)(2)(i). CBP has reviewed NY N306605 and has determined the ruling letter to be in error. Because the fabric is either dyed or printed, not both, 19 C.F.R. §102.21(e)(2)(i) is inapplicable. Pursuant to 19 C.F.R. § 102.21(c)(2) and (e)(2)(ii), the country of origin is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric-making process. As the fabric comprising the subject comforters is manufactured in China, it is now CBP's position that the country of origin of the reversible comforters is China.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY N306605 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter ("HQ") H309368, 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*.

*For*  
CRAIG T. CLARK,  
*Director*  
*Commercial and Trade Facilitation Division*

*Attachment*

HQ H309368

July 27, 2020

OT:RR:CTF:FTM H309368 TJS

CATEGORY: Origin

MS. DOLORES HUNT  
KEECO, LLC  
30736 WIEGMAN ROAD  
HAYWARD, CA 94544

RE: Reconsideration of NY N306605; Country of Origin of Reversible Polyester Comforters.

DEAR MS. HUNT,

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), a notice was published in the Customs Bulletin, Volume 54, No. 23, on June 17, 2020, proposing to revoke NY N306605, and revoke any treatment accorded to substantially identical transactions. No comments were received in response to the notice.

**FACTS:**

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

NY N306605 described the manufacturing operations as follows:

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

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

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

- a. Batching

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

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

The subject comforters are classified in subheading 9404.90.8522 of the Harmonized Tariff Schedule of the United States Annotated (“HTSUSA”), which provides for “Mattress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered: Other: Other: Other: Quilts, eiderdowns, comforters and similar articles: With outer shell of man-made fibers (666).”

#### **ISSUE:**

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

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

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

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

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

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

HTSUS	Tariff shift and/or other requirements
9404.90	Except for goods of subheading 9404.90 provided for in paragraph (e)(2) of this section, the country of origin of a good classifiable under subheading 9404.90 is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric-making process.

Subheading 9404.90.85, HTSUS, is included in the paragraph (e)(2) exception to the above tariff shift rule. 19 C.F.R. § 102.21(e)(2)(i) provides:

- (i) The country of origin of the good is the country, territory, or insular possession in which the fabric comprising the good was both dyed and printed when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing;

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

Therefore, paragraph (e)(2)(i) applies when the fabric comprising the good is both dyed and printed. In India, the fabric comprising one side of the subject comforters is dyed while the fabric comprising the reverse side is



printed. Here, the dyeing and printing are mutually exclusive processes. Because the fabric is either dyed or printed, not both, paragraph (e)(2)(i) is inapplicable.

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

**HOLDING:**

The country of origin for marking purposes of the reversible polyester comforters is China.

**EFFECT ON OTHER RULINGS:**

NY N306605, dated October 25, 2019, is hereby **REVOKED** in accordance with the above analysis. In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after its publication in the Customs Bulletin.

*Sincerely,*

*For*

CRAIG T. CLARK,

*Director*

*Commercial and Trade Facilitation Division*

**PROPOSED REVOCATION OF TWO RULING LETTERS  
AND PROPOSED REVOCATION OF TREATMENT  
RELATING TO THE TARIFF CLASSIFICATION OF DIGITAL  
CAMERA INSPECTION SYSTEMS**

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

**ACTION:** Notice of proposed revocation of two ruling letters and proposed revocation of treatment relating to the tariff classification of digital camera inspection systems.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke two ruling letters concerning tariff classification of digital camera inspection system 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 October 30, 2020.

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

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

**SUPPLEMENTARY INFORMATION:**

**BACKGROUND**

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the public and CBP share responsibil-

ity in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether any other applicable legal requirement is met.

Pursuant to 19 U.S.C. § 1625(c)(1), this notice advises interested parties that CBP is proposing to revoke two ruling letters pertaining to the tariff classification of digital camera inspection systems. Although in this notice, CBP is specifically referring to New York Ruling Letter (“NY”) N107616, dated June 23, 2010 (Attachment A), and NY N225535, dated July 26, 2012 (Attachment B), this notice also covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the two 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 N107616, CBP classified a digital camera inspection system in heading 8528, HTSUS, specifically in subheading 8528.59.25, HTSUS, which provides for “[M]onitors and projectors, not incorporating television reception apparatus; reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus: Other monitors: Other: Color: With a flat panel screen: Other: With a video display diagonal not exceeding 34.29 cm.” In NY N255535, CBP classified a digital camera inspection system in heading 8528, HTSUS, specifically in subheading 8528.59.15, HTSUS, which provides for “[M]onitors and projectors, not incorporating television reception apparatus; reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing appa-

ratus: Other monitors: Other: Color: With a flat panel screen: Incorporating video recording or reproducing apparatus: With a video display diagonal not exceeding 34.29 cm.” CBP has reviewed NY N107616 and NY N255535 and has determined the ruling letters to be in error. It is now CBP’s position that digital camera inspection systems are properly classified in heading 8525, HTSUS, specifically in subheading 8525.80.30, HTSUS, which provides for “[T]ransmission apparatus for radio-broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras, digital cameras and video camera recorders: Television cameras, digital cameras and video camera recorders: Television cameras: Other:.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY N107616 and NY N255535 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H270703, set forth as Attachment C to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

GREGORY CONNOR  
*for*

CRAIG T. CLARK,  
*Director*

*Commercial and Trade Facilitation Division*

Attachments

ATTACHMENT A

N107616

June 23, 2010

CLA-2-85:OT:RR:NC:N1:108

CATEGORY: Classification

TARIFF NO.: 8528.59.2500

Ms. DONNA L. HILTPOLD  
STANLEY BLACK & DECKER  
480 MYRTLE ST  
NEW BRITAIN, CT 06053

RE: The tariff classification of a digital inspection system from France

DEAR Ms. HILTPOLD:

In your letter dated May 27, 2010, you requested a tariff classification ruling.

The merchandise under consideration is referred to as the “Visioval colour digital camera,” part number 2940, which is used as a plumbing tool for inspecting pipes. This merchandise is a digital inspection system that consists of a camera, a TFT monitor, cables, a power supply, a guidance ball, and a guidance sleeve. This inspection system does not have any recording capabilities.

The camera, with a 26 millimeter diameter camera head, features a light sensitivity of 0.5 lux for providing a clear picture in poor light. The seven inch color monitor can either be fixed inside its case or it can be removed from its case and held in the hand. The monitor’s brightness and contrast can be adjusted to modify the picture to suit the environment. This system also has a 30 meter semi-rigid cable with graduation markings every 10 centimeters.

In your ruling request you suggest classification of this inspection system in subheading 8521.90.0000, HTSUS, which provides for other video recording or reproducing apparatus. However, this system does not contain any video recording or reproducing apparatus. Therefore this subheading is not applicable.

The information provided indicates that, at the time of importation, all the components of this inspection system will be packaged together for retail sale. Thus, the components of this system are classifiable as a set.

As such, this merchandise is classifiable in the heading that provides for the component which imparts the essential character of the set. However, no single component can be viewed as imparting the essential character of this set. Neither the camera nor the monitor can function independently of one another to achieve the inspection function. As a result, both the camera and the monitor contribute equally to the system’s function. Therefore, classification of this set will be in accordance with Rule 3 (c) of the General Rules for the Interpretation of the Harmonized System. General Interpretative Rule 3 (c) provides that goods shall be classified in the heading which occurs last in numerical order among those (heading 8525, the camera, and heading 8528, the monitor) which equally merit consideration.

The applicable subheading for this digital inspection system will be 8528.59.2500, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Monitors and projectors, not incorporating television reception apparatus; reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing

apparatus: Other monitors: Other: Color: With a flat panel screen: Other: With a video display diagonal not exceeding 34.29 cm. The rate of duty will be Free.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Lisa Cariello at (646) 733-3014.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director*

*National Commodity Specialist Division*

ATTACHMENT B

N225535

July 26, 2012

CLA-2-85:OT:RR:NC:N1:108

CATEGORY: Classification

TARIFF NO.: 8528.59.1500

MR. ANDREW DONALDSON  
PERCEPTRON INC.  
47827 HALYARD DRIVE  
PLYMOUTH, MI 48170

RE: The tariff classification of a video inspection system from China

DEAR MR. DONALDSON:

In your letter dated July 11, 2012, you requested a tariff classification ruling.

The merchandise in question is referred to as the “Video Scope, Digital, Wireless,” part number BK8000, which is used for automotive and industrial video inspection. The BK8000 is a composite machine that consists of a battery powered handle attached to a television type camera that transmits video images using wireless 802.11 protocols to a battery powered LCD monitor, which is connected to the camera via a cable. The LCD monitor has a diagonal screen size of 4.3 inches and contains inbuilt internal recording capability.

As per Legal Note 3 to Section XVI, composite machines are classified according to their principal function. However, no single component can be viewed as performing the principal function of this composite machine. Neither the camera nor the monitor can function independently of one another to achieve the inspection function. As a result, both the camera and the monitor contribute equally to the system’s function. Therefore, classification of this machine will be in accordance with Rule 3 (c) of the General Rules for the Interpretation of the Harmonized System. General Interpretative Rule 3 (c) provides that goods shall be classified in the heading which occurs last in numerical order among those (heading 8525, the camera, and heading 8528, the monitor) which equally merit consideration.

The applicable subheading for this video inspection device will be 8528.59.1500, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Monitors and projectors, not incorporating television reception apparatus; reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus: Other monitors: Other: Color: With a flat panel screen: Incorporating video recording or reproducing apparatus: With a video display diagonal not exceeding 34.29 cm. The rate of duty will be Free.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Lisa Cariello at (646) 733-3014.

*Sincerely,*

THOMAS J. RUSSO

*Director*

*National Commodity Specialist Division*



ATTACHMENT C

HQ H270703

CLA-2 OT:RR:CTF:EMAIN H270703 SK

CATEGORY: Classification

TARIFF NO.: 8525.80.30

MS. DONNA L. HILTPOLD  
STANLEY BLACK & DECKER  
480 MYRTLE ST.  
NEW BRITAIN, CT 06053

RE: Revocation of NY N107616 and NY N225535; digital camera inspection system; inspection scope; videoscope.

DEAR MS. HILTPOLD:

This ruling is in reference to New York Ruling Letter (NY) N107616, dated June 23, 2010, issued to Stanley Black & Decker, regarding the classification of a digital camera inspection system under the Harmonized Tariff Schedule of the United States (HTSUS). In NY N107616, U.S. Customs and Border Protection (CBP) classified the subject article in heading 8528, HTSUS, specifically subheading 8528.59.25, HTSUS, which provides for “[M]onitors and projectors, not incorporating television reception apparatus; reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus: Other monitors: Other: Color: With a flat panel screen: Other: With a video display diagonal not exceeding 34.29 cm.” Since the issuance of that ruling, we have determined NY N107616 to be in error.

CBP has also reviewed NY N225535, dated July 26, 2012, which involves the classification of a substantially similar video inspection system in subheading 8528.59.15, HTSUS, which provides for “[M]onitors and projectors, not incorporating television reception apparatus; reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus: Other monitors: Other: Color: With a flat panel screen: Incorporating video recording or reproducing apparatus: With a video display diagonal not exceeding 34.29 cm.” As with NY N107616, we have determined that the tariff classification of the subject merchandise in NY N225535 is incorrect.

Pursuant to the analysis set forth below, CBP is revoking NYs N107616 and N225535.

**FACTS:**

The merchandise at issue in NY N107616 is identified as the “Visioval colour digital camera,” part number 2940. The product is described as a portable video system for inspecting difficult-to-access spaces that consists of a camera, monitor, cables, power supply, guidance ball, and guidance sleeve. In NY N107616, the subject article is described as not possessing recording capabilities. We note, however, that the manufacturer’s website contradicts this description and describes the merchandise as capable of photo and video recording. See <http://www.virax.com/index.php/en/p/34011/pipe-inspection/colour-digital-inspection-camera-visioval-vx> (site last visited April, 2020).

In NY N225535, CBP classified an article identified as the “Video Scope, Digital, Wireless,” part number BK8000, which is used for automotive and

industrial video inspection. The BK8000 consists of a battery-powered handle attached to a television type camera that transmits video images using wireless 802.11 protocols to a battery-powered LCD monitor that is connected to the camera via a cable. The LCD monitor has a diagonal screen size of 4.3 inches and contains inbuilt internal recording capability. The BK8000 is described on an industry website as a “Digital Wireless Video Scope from Snap-on [that] offers exceptional capabilities for inspecting hard-to-see places.” See <http://www.fiberoptictoolsupply.com/blog/snap-on-bk8000-digital-wireless-video-scope/> (site last visited April, 2020).

### LAW AND ANALYSIS:

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

The following HTSUS provisions are under consideration:

- |      |  |
|------|--|
| 8525 | Transmission apparatus for radio-broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras, digital cameras and video camera recorders  |
| 8528 | Monitors and projectors, not incorporating television reception apparatus; reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus |

Section XVI Note 3 provides:

3. - Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.

In NY N107616, the subject inspection system was classified as a retail set. CBP determined that as both the camera and monitor components contributed equally to the system’s overall function, and neither imparted the “essential character” to the subject article, classification pursuant to GRI 3(b) was inapplicable. Consequently, it was determined that classification was proper under heading 8528, HTSUS, pursuant to GRI 3(c).

Similarly, in NY N225535, CBP classified the subject inspection system as a composite machine of heading 8528, HTSUS, pursuant to GRI 3(c).

The subject merchandise at issue in NYs N107616 and N225535 are composite machines in that they consist of two or more machines of Section XVI, specifically cameras of heading 8525, HTSUS, and monitors of heading 8528, HTSUS, that are fitted together to form a whole. As such, pursuant to Section XVI Note 3, cited *supra*, they are to be classified as if consisting only of that component that performs the principal function.

The product literature available on the website links set forth above indicates that the subject articles are designed and marketed as camera inspection systems (or “scopes”) for difficult-to-access spaces. As such, the camera

components perform the essential function of capturing images that enable visual inspection. As the monitors merely display the captured images, and images recorded on a SD storage card may be displayed on devices other than the monitor, the monitors do not perform the principal function of the subject inspection systems and their role is subsidiary to that of the cameras. In this regard, we find that the display component of the instant inspection system functions the same as the optical viewfinder or LCD commonly found on digital video cameras of heading 8525, HTSUS. *See* Explanatory Note 85.25(B).<sup>1</sup> Accordingly, pursuant to Section XVI Note 3, the subject composite articles are to be classified under heading 8525, HTSUS, as if consisting only of the camera components.

Classification of the subject merchandise in heading 8525, HTSUS, is consistent with NY N209179, dated March 30, 2012 (well inspection camera that transmits images through a coaxial cable to a location outside the camera for viewing or remote recording); NY H81870, dated May 30, 2001, (digital still image camera with Internet access and data management/recording capability), and; N245401, dated September 12, 2013 (underwater video camera housed in a remotely operated vehicle).

We further note that the subject articles at issue in NYs N107616 and N225535 are distinguished from the industrial videoscopes with optical measuring features classified in NYs N262187, N262178, and N262184, all dated March 30, 2015, and NYs N262197 and N262176, both dated April 1, 2015, under heading 9031, HTSUS, specifically subheading 9031.49.90, HTSUS, which provides for other optical measuring or checking instruments. In addition to a camera and monitor, the articles at issue in those rulings also featured “Stereo Measurement Technology” that enables quantitative three-dimensional defect measurement via eight different measurement modes for accurate evaluation of inspection targets as well as real-time tip-to-target measurement capability.

#### **HOLDING:**

By application of GRI 1 and Section XVI Note 3, the “Visioval colour digital camera” (part number 2940) and the “Video Scope, Digital, Wireless” (part number BK8000) are classified under heading 8525, HTSUS, specifically under subheading 8525.80.30, HTSUS, which provides for “[T]ransmission apparatus for radio-broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras, digital cameras and video camera recorders: Television cameras, digital cameras and video camera recorders: Television cameras: Other:.” The applicable rate of duty is free. Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the internet at [www.usitc.gov](http://www.usitc.gov).

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<sup>1</sup> In understanding the language of the HTSUS, the Explanatory Notes of the Harmonized Commodity Description and Coding System, which constitute the official interpretation of the HTSUS at the international level, may be utilized. While not 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 (Aug. 23, 1989).

**EFFECT ON OTHER RULINGS:**

NY N107616, dated June 23, 2010, and NY N225535, dated July 26, are hereby REVOKED in accordance with the above analysis.

*Sincerely,*

CRAIG T. CLARK,

*Director*

*Commercial and Trade Facilitation Division*

**CC:** Mr. Andrew Donaldson  
Perceptron, Inc.  
47827 Halyard Drive  
Plymouth, MI 48170

**REVOCAION OF FIVE RULING LETTERS AND  
REVOCAION OF TREATMENT RELATING TO THE  
TARIFF CLASSIFICATION OF INSULATED PIZZA,  
GROCERY AND FOOD DELIVERY BAGS**

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

**ACTION:** Notice of revocation of five ruling letters and revocation of treatment relating to the tariff classification of pizza, grocery, and food delivery bags.

**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 five ruling letters concerning the tariff classification of insulated pizza, grocery, and food delivery bags 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. One comment was received in response to that notice.

**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after November 30, 2020.

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

**SUPPLEMENTARY INFORMATION:**

**BACKGROUND**

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

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

Pursuant to 19 U.S.C. § 1625(c)(1), a notice was published in the *Customs Bulletin*, Vol. 54, No. 28, on July 22, 2020, proposing to revoke five ruling letters pertaining to the tariff classification of insulated pizza, grocery and food delivery bags. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

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

In HQ 967177, dated July 22, 2004, and in NY N020627, dated December 11, 2007, CBP classified a pizza delivery bag in heading 6307.90.89, HTSUS. In NY N243289, CBP classified insulated grocery bags in subheading 3923.29.00, HTSUS. In NY N261656, CBP classified vinyl insulated food delivery bags in subheading 3923.10.90, HTSUS. CBP classified three-layered bags designed to carry prepared foods in NY N260407 in heading 6307. CBP has reviewed HQ 967177, NY N020627, NY N243289, NY N261656, and NY N260407 and has determined the ruling letters are in error.

It is now CBP's position that insulated pizza, grocery and food delivery bags are properly classified, in heading 4202 HTSUS, specifically in subheading 4202.92.08, HTSUS, which provides for "Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, **insulated food or beverage bags**, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, **of textile materials**, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper: Other: With outer surface of sheeting of plastics or of textile materials: Insulated food or beverage bags: With outer surface of textile materials: Other."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking HQ 967177, NY N020627, NY N243289, NY N261656, and NY N260407 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in HQ H304836, 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 7, 2020

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

Attachments

HQ H304836

September 7, 2020

OT:RR:CTF:CPMM H304836 KSG

CATEGORY: Classification

TARIFF NO.: 4202.92.08

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MENLO WORLDWIDE TRADE SERVICES  
6940 ENGLE ROAD  
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JENNIFER DARROW  
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OAK BROOK IL 60523

DEBBIE BRULE  
JACOBSON GLOBAL LOGISTICS INC.  
18209 80TH AVENUE SOUTH, SUITE A  
KENT WA 98032

JANE TAEGER  
SAMUEL SHAPIRO & COMPANY, INC.  
ONE CHARLES CENTER  
100 NORTH CHARLES STREET  
SUITE 1200  
BALTIMORE MD 21201

RE: Revocation of HQ 967177, NY N020627, NY N243289, NY N261656 and NY N260407; tariff classification of insulated pizza, grocery and food delivery bags

DEAR MR. SCHAU, MS. DARROW, MS. BRULE AND MS. TAEGER:

This letter is in reference to Headquarters Ruling Letter (“HQ”) 967177, dated July 22, 2004, New York Ruling Letter (NY) N020627, dated December 11, 2007, NY N243289, dated July 16, 2013, NY N261656, dated March 11, 2015, and NY N260407, dated January 21, 2015, regarding the tariff classification of insulated pizza, grocery and food delivery bags in the Harmonized Tariff Schedule of the United States (HTSUS).

In HQ 967177, U.S. Customs & Border Protection (CBP) classified three layer pizza delivery bags with an outer surface layer of man-made fiber textile material in subheading 6307.90.98, HTSUS, which provides for “Other made up articles, including dress patterns: Other: Other.”

In NY N020627, CBP classified pizza delivery bags made of woven nylon fabric with polyester fiber fill in subheading 6307.90.98, HTSUS.

In NY N243289, CBP classified insulated grocery bags in subheading 3923.29.00, HTSUS, which provides for “articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics: Sacks and bags (including cones): Of other plastics.”

In NY N261656, CBP classified vinyl insulated food delivery bags in subheading 3923.10.90, HTSUS, which provides for “articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics: Boxes, cases, crates and similar articles; Other.”



In NY N260407, CBP classified three different insulated food delivery bags: an insulated bag used to carry prepared foods; an insulated bag used to carry prepared deli trays; and an insulated bag used to carry up to two pizzas. The three bags were classified in heading 6307, HTSUS, as other made up articles.

We have reviewed HQ 967177, NY N020627, NY N243289, NY N261656, and NY N260407 and determined that the rulings are in error. Accordingly, for the reasons set forth below, CBP is revoking HQ 967177, NY N020627, NY N243289, NY N261656, and NY N260407.

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 967177, NY N020627, NY N243289, NY N261656 and NY N260407 was published on July 22, 2020, in Volume 54, Number 28 of the Customs Bulletin. One comment was received in response to this notice, which is addressed below.

#### **FACTS:**

The pizza delivery bag at issue in HQ 967177 is composed of a three layer construction, with an outer surface of a man-made fiber textile material backed with compact plastic sheeting, an approximately 0.5 inch thick middle layer of nonwoven fiber fill, and a bottom layer of man-made textile fabric. The bag has a flap on its front-side. On the interior bottom, there is a compartment designed for insertion of an induction element. The bag measures 18" x 18" x 7 1/4".

The pizza delivery bag at issue in NY N020627 is made of woven nylon fabric with polyester fiber fill. It measures 16" x 16" x 4".

The insulated grocery bag at issue in NY N243289 is described as a bag to be used for home delivery of grocery products. An insert called a "Space Bag" made of expanded polyethylene foam sandwiched between two layers of metalized polyethylene terephthalate maintains the temperature of refrigerated or frozen products. It measures 14" x 19.25" x 7.75".

NY N261656 involves both insulated food delivery bags and insulated pizza delivery bags. The food delivery bag has an outer surface of blue vinyl sheet, nylon webbing carrying handles and a zipper. It is insulated with 1" thick polyurethane foam and lined with woven polyester textile. It measures 22" x 13" x 13". The insulated pizza delivery bag has an outer surface of red vinyl sheet, insulated with 1" thick polyurethane foam and is lined with woven polyester textile. The insulated pizza delivery bag has grommets around the narrow side for ventilation. It measures 20" x 20" x 12".

In NY N260407, CBP classified three different insulated food delivery bags. The first insulated bag is used to carry prepared foods; it can carry four steam table pans. It measures 22" x 13" x 13" and is made of three layers- an outer nylon layer, a polyurethane foam insulation layer and on the inside, a polyester fabric layer. The second insulated bag carries prepared deli trays. It measures 18" x 18" x 5" and has three layers with a foam insulation layer in the middle like the first bag. The third insulated bag is used to carry up to two pizzas, measures 18" x 18" x 5" and also has three layers with foam insulation in the middle layer. The three bags were classified in heading 6307, HTSUS, as other made up textile articles.

**ISSUE:**

Whether the insulated pizza, food and grocery delivery bags are properly classified in heading 4202, HTSUS, as insulated food or beverage bags, in heading 3923, HTSUS, as articles for the conveyance or packing of goods, of plastics; or in heading 6307, HTSUS, as “Other made up articles, including dress patterns.”

**LAW AND ANALYSIS:**

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

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

The HTSUS subheadings under consideration are the following:

3923	Articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics:
3923.10	Boxes, cases, crates and similar articles:
3923.10.90	Other
4202	Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, <b>insulated food or beverage bags</b> , toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, <b>of textile materials</b> , of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper:
	Other:
4202.92	With outer surface of sheeting of plastics or of textile materials:
	Insulated food or beverage bags:
	With outer surface of textile materials:
4202.92.08	Other
6307	Other made up articles, including dress patterns:
6307.90	Other:
6307.90.98	Other

In understanding the language of the HTSUS, the Explanatory Notes (EN's) of the Harmonized Commodity Description and Coding System, constitute the official interpretation of the Harmonized System at the interna-

tional level. While neither legally binding nor dispositive, the EN's 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 EN for heading 4202 states that "the expression 'insulated food or beverage bags' covers reusable insulated bags used to maintain the temperature of foods and beverages during transport or temporary storage."

In HQ 953458, dated April 16, 1993, a soft-sided insulated cooler/picnic bag was classified in heading 4202, HTSUS, as a "travel, sports and similar bag." CBP cited to Additional U.S. Note 1, Chapter 42, HTSUS, which described travel, sports and similar bags as of a kind designed for carrying clothing, other personal effects during travel, including backpacks and shopping bags of the heading. CBP compared the soft-sided cooler bag to a backpack and determined that both were used to transport food (whether perishable or not) during travel and therefore, the cooler bag was considered a similar bag used to carry "other personal effects." HQ 954072, dated September 2, 1993, also classified a soft-sided cooler bag in heading 4202, HTSUS, as a bag used to carry personal effects<sup>1</sup>. HQ 962406, dated July 22, 1999, and HQ 962029, dated July 22, 1999, classified insulated pizza delivery bags in heading 6307, HTSUS as other made of articles. Other rulings such as HQ 965104, dated February 12, 2002, classified insulated food delivery bags in heading 3923, HTSUS.

When these rulings were written, which was prior to 2003, heading 4202 did not have language in it specifying that insulated food and beverage delivery bags were specifically included in heading 4202.

In 2003, the language of heading 4202, HTSUS, was amended by statute to specifically include insulated food or beverage bags. Since language was specifically included in 2003 to include insulated food or beverage bags, CBP rulings from 2003 on properly classify insulated food or beverage bags in heading 4202, HTSUS.

We note that as a result of the addition of the statutory language to heading 4202 in 2003, HQ 953458, HQ 954072 and any other pre-2003 rulings that classified soft-sided food and pizza delivery bags outside of heading 4202 are revoked by operation of law.

The pizza delivery bags, food delivery bags and grocery delivery bags at issue are reusable, are insulated, and are designed precisely to maintain the temperature of food and beverages during transport. Based on the addition of 2003 statutory language including insulated food or beverage bags in heading 4202, the insulated pizza delivery, food delivery and grocery bags made of textile materials in HQ 967177, NY N020627, NY N243289, NY N261656, and NY N260407 are classified in heading 4202, HTSUS, based on the *eo nomine* provision. The language from the EN for heading 4202 states that reusable insulated bags used to maintain the temperature of foods and beverages during transport or temporary storage are classified in heading 4202. In accordance with GRI 6, insulated pizza delivery bags, food delivery bags and grocery bags are classified in subheading 4202.92.08, HTSUS.

<sup>1</sup> In 1997, in *SGI Inc. v. United States*, 122 F.3d 1468 (C.C.P.A. 1997), the court held that insulated soft sided vinyl coolers were classified in heading 3924, HTSUS, rather than in heading 4202, HTSUS, based on the plastic material composition of the coolers. The court noted that heading 4202, HTSUS, did not list any containers whose purpose was to contain food and beverages.

As noted above, we received one comment in response to the notice of the proposed revocation. The commenter agrees with the conclusion but argues that CBP should use GRI 3(a) to reach a conclusion. This is incorrect. As stated above, the language within heading 4202 specifically includes insulated food delivery bags. Therefore, it is appropriate to classify these articles in accordance with GRI 1.

**HOLDING:**

Pursuant to GRIs 1 and 6, insulated pizza delivery bags, food delivery bags and grocery bags are classified in subheading 4202.92.08, HTSUS. The column one, general rate of duty is 7% ad valorem.

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

**EFFECT ON OTHER RULINGS:**

HQ 967177, NY N020627, NY N243289, NY N261656, and NY N260407 are revoked.

*Sincerely,*  
*for*

CRAIG T. CLARK,  
*Director*

*Commercial and Trade Facilitation Division*

## 19 CFR PART 177

### REVOCATION OF TWO RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF ALLOY STEEL PIPES

**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 alloy steel pipes.

**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 alloy steel pipes 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. 19, on May 20, 2020. One comment was received in response to that notice.

**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after November 30, 2020.

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

#### **SUPPLEMENTARY INFORMATION:**

##### **BACKGROUND**

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

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

Pursuant to 19 U.S.C. §1625(c)(1), a notice was published in the *Customs Bulletin*, Vol. 54, No. 19, on May 20, 2020, proposing to revoke two ruling letters pertaining to the tariff classification of alloy steel pipes. 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") N303737 and NY N303738, both dated April 26, 2019, CBP classified alloy steel pipes in heading 7304, HTSUS, specifically in subheading 7304.59.2055, 7304.59.2060, and 7304.59.2070, HTSUS, which provides for "other tubes and pipes suitable for use in boilers, superheaters, etc. broken out by wall diameter." CBP has reviewed NY N303737 and NY N303738 and has determined the ruling letters to be in error. It is now CBP's position that alloy steel pipes are properly classified, in heading 7304, HTSUS, specifically in subheading 7304.59.2030, HTSUS, which provides for "heat-resisting steel tubes and pipes suitable for use in boilers, superheaters, etc."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY N303737 and NY N303738 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter ("HQ") H305822, 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: August 31, 2020

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

*Attachment*

HQ H305822

August 31, 2020

OT:RR:CTF:CPMM:LMH

CATEGORY: Classification

TARIFF NO.: 7304.59.2030

BRANDON PECKMAN  
REAL TRADING, LLC  
2203 CLUB HOUSE CIRCLE  
JAMISON, PA 18929

RE: Revocation of NY N303737 and NY N303738; tariff classification of alloy steel pipes.

DEAR BRANDON PECKMAN,

U.S. Customs and Border Protection (CBP) issued you New York Ruling Letters (NY) N303737, dated April 26, 2019 and NY N303738, dated April 26, 2019. These rulings pertain to the tariff classification under the Harmonized Tariff Schedule of the United States, (HTSUS) of certain alloy steel pipes. We have since reviewed these rulings and find them to be in error, for the reasons set forth below.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke NY N303737, dated April 26, 2019 and NY N303738, dated April 26, 2019, was published on May 20, 2020, in Volume 54, Number 19, of the *Customs Bulletin*. One comment was received in response to this Notice.

**FACTS:**

NY N303737 states the following, in relevant part:

The product to be imported is identified as ASTM A335 (Grade P9) pipe with a size range from 141.3 mm outside diameter and 2.77 mm wall thickness through 406.4 mm outside diameter and 40.490 mm wall thickness. The pipes are said to be seamless ferritic alloy steel pipe for high-temperature service. They are hot-rolled and principally used for power, refinery, heater, oil and gas, and paper and pulp applications.

NY N303738 states the following, in relevant part:

The product to be imported is identified as ASTM A335 (Grade P91) pipe with a size range from 141.3 mm outside diameter and 2.77 mm wall thickness through 406.4 mm outside diameter and 40.490 mm wall thickness. The pipes are said to be seamless ferritic alloy steel pipe for high-temperature service. They are hot-rolled and principally used for power, refinery, heater, oil and gas, and paper and pulp applications.

**ISSUE:**

Whether these alloy steel pipes are classified as other tubes and pipes suitable for use in boilers, superheaters, etc. broken out by wall diameter under subheadings 7304.59.2055, 7304.59.2060, and 7304.59.2070 HTSUS, as heat-resisting steel tubes and pipes suitable for use in boilers, superheaters, etc. under subheading 7304.59.2030, HTSUS, or as other tubes and pipes of heat-resisting steel under subheading 7304.59.6000, HTSUS.



**LAW AND ANALYSIS:**

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

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

7304	Tubes, pipes and hollow profiles, seamless, of iron (other than cast iron) or steel:
	Other, of circular cross section, of other alloy steel:
7304.59	Other:
	Other:
7304.59.20	Suitable for use in boilers, superheaters, heat exchangers, condensers, refining furnaces and feedwater heaters:
7304.59.2030	Of heat-resisting steel
	Other:
7304.59.2055	Having an outside diameter exceeding 114.3 mm but less than 190.5 mm
7304.59.2060	Having an outside diameter of 190.5 mm or more but not exceeding 285.8 mm
7304.59.2070	Having an outside diameter exceeding 285.8 mm but not exceeding 406.4 mm
***	
	Other:
7304.59.6000	Of heat-resisting steel

Additional U.S. note 1(g) to chapter 72 states:

1. For the purposes of the tariff schedule the following expressions have the meanings hereby assigned to them:

g) Heat-resisting steel

Alloy steels containing by weight less than 0.3 percent of carbon and 4 percent or more but less than 10.5 percent of chromium

In understanding the language of the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System, which constitute the official interpretation of the HTSUS at the international level, may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS.<sup>1</sup>

The EN to heading 73.04 states, in relevant part:

<sup>1</sup> See T.D. 89-80, 54 Fed. Reg. 35127 (August 23, 1989).

The products of this heading include, in particular, line pipes of a kind used for oil or gas, casing, tubing and drill pipes of a kind used in drilling for oil or gas, tubes and pipes suitable for use in boilers, superheaters, heat exchangers, condensers, refining furnaces, feedwater heaters for power stations, galvanised or black tubes (so-called gas tubes) for high or medium pressure steam, or gas or water distribution in buildings, as well as tubes for water or gas street distribution mains. In addition tubes and pipes are used for the manufacture of parts for automobiles or for machinery, of rings for ball bearings, cylindrical, tapered or needle bearings or for other mechanical uses, for scaffolding, tubular structures or building construction.

Applying GRI 1 and thus looking to the terms of the headings, subheadings, and chapter notes, the alloy steel pipes are classified under subheading 7304.59, HTSUS, for “tubes, pipes and hollow profiles, seamless, of iron (other than cast iron) or steel: Other, of circular cross section of other alloy steel: Other.” Past that, subheading 7304.59.20 if they are “suitable for use” in boilers, superheaters, heat exchangers, condensers, refining furnaces or feedwater heaters. If they are not suitable for such use, they will be classified in the “other” category under subheading 7304.59.60. Because grade P9 and grade P91 pipe meeting ASTM A335 has by weight less than 0.3% carbon and 4% or more but less than 10.5% of chromium, the products meet the definition of “heat-resisting steel” in additional U.S. note 1(g) to chapter 72 and are classified in subheadings 7304.59.60 or 7304.59.2030. Therefore, the products are not classified in the “other” than heat-resisting steel subheadings of 7304.59.2055, 7304.59.2060, or 7304.59.2070.

Turning to the issue of whether the pipes are suitable for use in boilers, etc., the courts have provided guidance on the application of such “suitable for use” provisions. The courts have stated that the term “suitable for use,” as applied in Customs law means “actually, practically, and commercially fit” for such use.<sup>2</sup> “Such suitability does not require that the merchandise be chiefly used for the stated purpose, but it does require more than ‘evidence of a casual, incidental, exceptional, or possible use.’”<sup>3</sup> The notes to chapters 72 and 73 do not define “boiler,” “superheater,” “heat exchanger,” “condenser,” “refining furnace,” or “feedwater heater.” However, “when ... a tariff term is not defined in either the HTSUS or its legislative history, ‘the term’s correct meaning is its common meaning.’”<sup>4</sup> “The common meaning of a term used in commerce is presumed to be the same as its commercial meaning.”<sup>5</sup> “To ascertain the common meaning of a term, a court may consult ‘dictionaries, scientific authorities, and other reliable information sources’ and ‘lexicographic and other materials.’”<sup>6</sup>

In this case, Merriam-Webster defines a “boiler” as “a vessel used for boiling; the part of a steam generator in which water is converted into steam and which consists usually of metal shells and tubes; [or] a tank in which

<sup>2</sup> See *Warner-Lambert Co. v. United States*, 545 F. Supp. 2d 1345, 1353; *United States v. F. W. Myers & Co., Inc.*, 476 F.2d 1377, 1378.

<sup>3</sup> See *id.*; see also *W.R. Filbin & Co., Inc. v. United States*, 744 F. Supp. 289 (1990).

<sup>4</sup> *Rocknel Fastener, Inc. v. United States*, 267 F.3d 1354, 1356 (Fed. Cir. 2001) (quoting *Mita*, 21 F.3d at 1082).

<sup>5</sup> *Id.* (citing *Simod Am. Corp. v. United States*, 872 F.2d 1572, 1576 (Fed. Cir. 1989)).

<sup>6</sup> *Id.* (quoting *C.J. Tower & Sons of Buffalo, Inc. v. United States*, 673 F.2d 1268, 1271 (C.C.P.A. 1982); *Simod*, 872 F.2d at 1576).

water is heated or hot water is stored.”<sup>7</sup> A “heat exchanger” is defined as “a device (such as an automobile radiator) for transferring heat from one fluid to another without allowing them to mix.”<sup>8</sup> Similarly a “condenser” is defined as “an apparatus in which gas or vapor is condensed.”<sup>9</sup> All of the definitions indicate that the items listed are designed to contain high temperature liquids or vapors but otherwise can differ from each other in terms of specific design and use indicating that this provision is quite broad. ASTM A335 covers seamless ferritic alloy-steel pipe intended for high-temperature service. While the US industry may look to the ASME Boiler and Pressure Vessel (BPV) Codes for more specific boiler and pressure vessel requirements in products, there is no requirement for such certification in the tariff code. In addition, many ASTM A335 pipes also meet ASME BPV specifications, particularly ASME SA335, a common designation for boiler use.

The grade P9 and grade P91 pipes in question meet ASTM A335 and meet the definition for heat-resisting steel. The properties of the pipes indicate that the products are actually, practically, and commercially fit for use in boilers, etc., and that even if the products are not chiefly used in that way, there is more than evidence of a casual, incidental, exceptional, or possible use. This notion is confirmed by the marketing of this pipe through the websites of many distributors and producers. One such supplier contends:

**ASME SA 335 Alloy Steel P9 Seamless Pipe is also known as ASTM A335 P9 chrome moly pipe because of the chemical makeup of Molybdenum (Mo) and Chromium (Cr).** Molybdenum maintain the strength of Alloy Steel P9 Square Pipe as well as the elastic limit, resistance to wear, impact qualities, and hardenability. Moly is the most effective single additive that enhance high temperature creep strength of ASTM A335 Grade P9 Alloy Steel Seamless Pipe.<sup>10</sup> (Emphasis added).

Other suppliers specifically state that P9 pipe is used in boilers, for example: “If you are interested in purchasing high quality ASTM A335 P1, P2, P5 or P9 seamless alloy steel tubes **for boiler, superheater, and heat exchanger...**”<sup>11</sup>; “We are not only capable of meeting the demand for this P9 high pressure steel pipe, **also known as boiler steel pipe...**”<sup>12</sup>; and “Alloy Steel ASTM A335 P9 Pipe uses are many and they are used all over the world in many different kinds of industries such as electric power, chemical, petroleum, boiler, oil, and gas, etc.”<sup>13</sup> (Emphasis added). Descriptions and advertisements for grade P91 pipe use similar language indicating that these pipes are used in boilers, etc. at a more than casual, incidental, or exceptional level.

The commenter argues that either 7304.59.2030 or 7304.59.6000 could be valid classifications for grade P9 or P91 pipe. However, as described above,

<sup>7</sup> See <https://www.merriam-webster.com/dictionary/boiler>, last visited Nov. 26, 2019.

<sup>8</sup> See <https://www.merriam-webster.com/dictionary/heat%20exchanger> last visited Nov. 26, 2019.

<sup>9</sup> See <https://www.merriam-webster.com/dictionary/condenser> last visited Nov. 26, 2019.

<sup>10</sup> See <https://www.stindia.com/alloy-steel/astm-a335-asme-sa335-a335-pipe/sa335-p9-astm-a355-p9-pipe-suppliers.html> last visited Nov. 26, 2019.

<sup>11</sup> See <https://www.steelpipesfactory.com/products/pipes-tubes/seamless-pipes/astm-a335-p1-p2-p5-p9-seamless-alloy-steel-tubes/> last visited Nov. 26, 2019.

<sup>12</sup> See <https://www.usmetals.com/alloy-pipe-seamless-p9.html> last visited Nov. 26, 2019.

<sup>13</sup> See <https://www.sparksteel.com/astm-a335-p9-alloy-steel-seamless-pipes-manufacturer-supplier.html> last visited Nov. 26, 2019.

the subheadings we compare at the eight digit level are “Suitable for use in boilers, superheaters, heat exchangers, condensers, refining furnaces and feedwater heaters” or “other.” An article will only be placed in the “other” subheading if the previous subheadings are ruled out. In this case, a previous, more specific subheading describes the article at issue so the “other” category is inappropriate. In addition, the commenter added that importers cannot verify the final end-use of a product that is sold to a party post-importation. While this may be true, we categorize articles based on their attributes at the time of importation. Although an end-user may not ultimately use a particular P9 or P91 pipe in a superheater, boiler, etc., the pipes still have the qualities necessary to render them suitable for use in those applications at the time of importation and are classified accordingly.

**HOLDING:**

By application of GRI 1, the alloy steel pipes are classified in heading 7304, HTSUS. They are specifically provided for in subheading 7304.59.2030, HTSUS, which provides for, “Tubes, pipes and hollow profiles, seamless, of iron (other than cast iron) or steel: Other, of circular cross section, of other alloy steel: Other: Other: Suitable for use in boilers, superheaters, heat exchangers, condensers, refining furnaces and feedwater heaters: Of heat-resisting steel.” The 2019 column one general rate of duty is free.

On March 8, 2018, Presidential proclamations 9704 and 9705 imposed additional tariffs and quotas on a number of steel and aluminum mill products. Exemptions have been made on a temporary basis for some countries. Quantitative limitations or quotas may apply for certain exempted countries and can also be found in Chapter 99. Additional duties for steel of 25 percent and for aluminum of 10 percent are reflected in Chapter 99, subheading 9903.80.01 for steel and subheading 9903.85.01 for aluminum. Products classified under subheading 7304.59.2030, HTSUS, may be subject to additional duties or quota. At the time of importation, you must report the Chapter 99 subheading applicable to your product classification in addition to the Chapter 72, 73 or 76 subheading listed above. The Proclamations are subject to periodic amendment of the exclusions, so you should exercise reasonable care in monitoring the status of goods covered by the Proclamations and the applicable Chapter 99 subheadings.

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

**EFFECT ON OTHER RULINGS:**

NY N303737, dated April 26, 2019, and NY N303738, dated April 26, 2019 are hereby REVOKED.

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

*Sincerely,*  
*for*

CRAIG T. CLARK,  
*Director*

*Commercial and Trade Facilitation Division*

## 19 CFR PART 177

### **MODIFICATION OF ONE RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF KLUBER MICROLUBE GB 0**

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

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

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is modifying one ruling letter concerning tariff classification of Kluber Microlube GB 0 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. 23, on June 17, 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 November 30, 2020.

**FOR FURTHER INFORMATION CONTACT:** Andrew Levey, Tariff Classification and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325–325–3209.

#### **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. 23, on June 17, 2020, proposing to modify one ruling letter pertaining to the tariff classification of Kluber Microlube GB 0. 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 N237898, CBP classified Kluber Microlube GB 0 in heading 2710, HTSUS, specifically in subheading 2710.19.4000, HTSUS, which provides for "other... lubricating grease." Kluber Microlube GB 0 is properly classified, in subheading 2710.19.3500, HTSUS, which provides for "other: Lubricating oils and greases, with or without additives: Greases: Containing not over 10 percent by weight of salts or fatty acids of animal (including marine animal) or vegetable origin" because it contains no salts of fatty acids,

Pursuant to 19 U.S.C. §1625(c)(1), CBP is modifying N237898 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in HQ H289346, 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: August 24, 2020

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

*Attachment*

HQ H289346

August 24, 2020

OT:RR:CTF:CPMM H289346 ABL

CATEGORY: Classification

TARIFF NO.: 2710.19.3500

VALERIE HOLTROP

WORLDWIDE LOGISTIC SOLUTIONS LLC

18 GOLDEN WHEAT LANE

WRIGHTSTOWN, WI 54180

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

DEAR Ms. HOLTROP,

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

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 H289346 was published on June 17, 2020, in Volume 54, Number 23, of the Customs Bulletin. No comments were received in response to this Notice.

**FACTS:**

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

**ISSUE:**

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

**LAW AND ANALYSIS:**

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

The 2019 HTSUS provisions under consideration are as follows:

\* \* \* \* \*

**2710** Petroleum oils and oils obtained from bituminous minerals, other than crude; preparations not elsewhere specified or included, containing by weight 70 percent or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations; waste oils:

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

**2710.19** Other:

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

**2710.19.4000** Other:

\* \* \* \* \*

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

#### **HOLDING:**

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

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

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

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

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

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 ELEVEN RULING LETTERS, MODIFICATION OF ONE RULING LETTER AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF NONWOVEN WIPES

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

**ACTION:** Notice of revocation of eleven ruling letters and modification of one ruling letter and of revocation of treatment relating to the tariff classification of nonwoven wipes.

**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 eleven and modifying one ruling letter concerning the tariff classification of nonwoven wipes 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. 24, on June 24, 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 November 30, 2020.

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

#### SUPPLEMENTARY INFORMATION:

##### BACKGROUND

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

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

Pursuant to 19 U.S.C. § 1625(c)(1), a notice was published in the *Customs Bulletin*, Vol. 54, No. 24, on June 24, 2020, proposing to revoke eleven ruling letters and modify one ruling letter pertaining to the tariff classification of nonwoven wipes. 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 N301154, NY N300856, NY N303558, NY N290033, NY J89299, NY J87912, NY N236829, NY J87145, NY F88830, NY 810044, NY N242165; and NY N285765, CBP classified nonwoven wipes in subheadings 3401.19.00, HTSUS, in 3401.30.50, HTSUS or in heading 3402, HTSUS.

CBP classified certain nonwoven wipes in heading 3401, HTSUS, specifically in subheading 3401.19.00, HTSUS, which provides for "Soap; organic surface-active products and preparations for use as soap... whether or not containing soap; organic surface-active products and preparations for washing the skin,... nonwovens, impregnated, coated or covered with soap or detergent: Other" or in subheading 3401.30.50, HTSUS, which provides for "... Organic surface-active products and preparations for washing the skin, in the form of liquid or cream and put up for retail sale, whether or not containing soap: Other."

In NY J89299 and NY J87912, non-woven wipes were classified in heading 3402, HTSUS, which provides for organic surface-active agents (other than soap).

CBP has reviewed NY N301154, NY N300856, NY N303558, NY N290033, NY J89299, NY J87912, NY N236829, NY J87145, NY F88830, NY 810044, NY N242165; and NY N285765 and has determined the ruling letters are in error.

It is now CBP's position that nonwoven wipes impregnated with soap or detergent for cleansing persons are properly classified, in heading 3401 HTSUS, specifically in subheading 3401.11.50, HTSUS, which provides for "Soap; organic surface-active products and preparations for use as soap, in the form of bars, cakes, molded pieces or shapes, whether or not containing soap; organic surface-active products and preparations for washing the skin, in the form of liquid or cream and put up for retail sale, whether or not containing soap; paper, wadding, felt and nonwovens, impregnated, coated or covered with soap or detergent: Soap and organic surface-active products and preparations, in the form of bars, cakes, molded pieces or shapes, and paper, wadding, felt and nonwovens, impregnated, coated or covered with soap or detergent: For toilet use (including medicated products): Other."

The pet wipes provided for in NY N242165 are properly classified in subheading 3401.19.00, HTSUS, which provides for "Soap; organic surface-active products and preparations for use as soap, in the form of bars, cakes, molded pieces or shapes, whether or not containing soap; organic surface-active products and preparations for washing the skin, in the form of liquid or cream and put up for retail sale, whether or not containing soap; paper, wadding, felt and nonwovens, impregnated, coated or covered with soap or detergent: Soap and organic surface-active products and preparations, in the form of bars, cakes, molded pieces or shapes, and paper, wadding, felt and nonwovens, impregnated, coated or covered with soap or detergent: Other."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY N301154, NY N300856, NY N303558, NY N290033, NY J89299, NY J87912, NY N236829, NY J87145, NY F88830, NY 810044 and NY N242165; and modifying NY N285765, and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed HQ H303126, 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: August 20, 2020

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

*Attachment*

HQ H303126

August 20, 2020

OT:RR:CTF:CPMM H303126 KSG

CATEGORY: Classification

TARIFF NO.: 3401.11.50; 3401.19.00

NICOLE BELL

CYPRESS IMPORT BROKERAGE, LLC

4345 SOUTHPOINT BLVD.

JACKSONVILLE FL 32216

RE: Revocation of NY N301154, NY N300856, NY N303558, NY N290033, NY J89299, NY J87912, NY N236829, NY J87145, NY F88830, NY 810044 and NY N242165; modification of NY N285765; tariff classification of nonwoven wipes

DEAR Ms. BELL:

This letter is in reference to New York Ruling Letters (NY) N301154, dated October 31, 2018, NY N300856, dated October 11, 2018, NY N303558, dated April 16, 2019, NY N290033, dated October 3, 2017, NY J89299, dated October 20, 2003, NY J87912, dated September 12, 2003, NY N236829, dated January 25, 2013, NY J87145, dated September 2, 2003, NY F88830, dated August 18, 2000, NY 810044, dated June 20, 1995, NY N242165, dated June 4, 2013, and NY N285765, dated May 26, 2017, regarding the classification of nonwoven wipes in the Harmonized Tariff Schedule of the United States (HTSUS).

In NY N301154, NY N300856, NY N303558, NY N290033, NY N242165, NY N236829, NY N285765, NY J87145, NY F88830 and NY 810044, U.S. Customs & Border Protection (CBP) classified nonwoven wipes in heading 3401, HTSUS, which provides for soap in the form of bars, cakes, molded pieces or shapes.

In NY J89299 and NY J87912, CBP classified nonwoven wipes in heading 3402, HTSUS, which provides for organic surface-active agents other than soap.

We have reviewed NY N301154, NY N300856, NY N303558, NY N290033, NY J89299, NY J87912, NY N236829, NY J87145, NY F88830, NY 810044, NY N242165; and NY N285765 and determined that the rulings are in error. Accordingly, for the reasons set forth below, CBP is revoking NY N301154, NY N300856, NY N303558, NY N290033, NY J89299, NY J87912, NY N236829, NY J87145, NY F88830, NY 810044 and NY N242165, and modifying NY N285765.

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 NY N301154, NY N300856, NY N303558, NY N290033, NY J89299, NY J87912, NY N236829, NY J87145, NY F88830, NY 810044 and NY N242165, and to modify NY N285765 was published on June 24, 2020, in Volume 54, Number 24 of the Customs Bulletin. No comments were received in response to this notice.

**FACTS:**

The articles at issue in NY N300856 and NY N301154 are pre-moistened nonwoven wipes used for cleansing the skin. The wipes are sold in boxes of 50 and 100 piece and measure 7.5 inches by 12.5 inches. The primary use for

these wipes is for incontinence. The article is marketed primarily to long term care facilities, for use in home healthcare and physician's offices.

A spec sheet was submitted with the ruling request for NY N300856 which listed the following formula for the nonwoven wipes: water, glycerin, polysorbate 20, disodium cocoamphodiacetate, aloe extract, tocopheryl acetate, chamomilla extract, disodium EDTA, phenoxyethanol, DMDM hydantoin, iodopropynyl-butylcarbamate, citric acid and fragrance.

The articles at issue in NY N303558, NY N290033, NY J89299, and NY N285765 are towelettes designed to remove makeup. The towelettes are impregnated with a skin cleaning solution, which includes a surfactant that is not aromatic or modified aromatic.

The articles at issue in NY N236829, NY J87145 and NY F88830 are baby wipes for cleaning the sensitive skin of a baby. The wipe is impregnated with a cleansing solution based on plant-derived cleaning agents and contain a non-aromatic surfactant.

The articles at issue in NY J87912 and NY 810244 are described as hand and general skin wipes.

The article at issue in NY N242165 is a wipe for pets.

#### **ISSUES:**

Whether the nonwoven wipes described above are classified in heading 3401, HTSUS, as nonwovens impregnated with soap or detergent or in heading 3402, HTSUS, as a cleaning preparation other than those classified in heading 3401, HTSUS.

If the wipes are classified in heading 3401, are they for toilet use and classified in subheading 3401.11.50, HTSUS or in subheading 3401.19.00, HTSUS.

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

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

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

The HTSUS subheadings under consideration are the following:

- 3401 Soap; organic surface-active products and preparations for use as soap, in the form of bars, cakes, molded pieces or shapes, whether or not containing soap; organic surface-active products and preparations for washing the skin, in the form of liquid or cream and put up for retail sale, whether or not containing soap; paper, wadding, felt and nonwovens, impregnated, coated or covered with soap or detergent:
- Soap and organic surface-active products and preparations, in the form of bars, cakes, molded pieces or shapes, and paper, wadding, felt and nonwovens, impregnated, coated or covered with soap or detergent:
- 3401.11 For toilet use (including medicated products):
- 3401.11.50 Other
- 3401.19.00 Other
- 3401.30 Organic surface-active products and preparations for washing the skin, in the form of liquid or cream and put up for retail sale, whether or not containing soap:
- 3401.30.50 Other
- 3402 Organic surface-active agents (other than soap); surface-active preparations, washing preparations (including auxiliary washing preparations) and cleaning preparations, whether or not containing soap, other than those of heading 3401:
- Organic surface-active agents, whether or not put up for retail sale:

The legal notes to Chapter 34 state, in pertinent part, the following:

2. For the purposes of heading 3401, the expression “soap” applies only to soap soluble in water. Soap and the other products of heading 3401 may contain added substances (for example, disinfectants, abrasive powders, fillers or medicaments). Products containing abrasive powders remain classified in heading 3401 only if in the form of bars, cakes or molded pieces or shapes. In other forms they are to be classified in heading 3405 as “scouring powders and similar preparations”.
3. For the purposes of heading 3402, “organic surface-active agents” are products which when mixed with water at a concentration of 0.5 percent at 20°C and left to stand for one hour at the same temperature:
  - (a) Give a transparent or translucent liquid or stable emulsion without separation of insoluble matter; and
  - (b) Reduce the surface tension of water to  $4.5 \times 10^{-2}$  N/m (45 dyne/cm) or less.

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

EN 34.01 provides, in pertinent part, as follows:

SOAP

Soap is an alkaline salt (inorganic or organic) formed from a fatty acid or a mixture of fatty acids containing at least eight carbon atoms. In practice, part of the fatty acids may be replaced by rosin acids.

The heading covers only soap soluble in water, that is to say true soap. Soaps form a class of anionic surface-active agents, with an alkaline reaction, which lather abundantly in aqueous solutions.

(III) ORGANIC SURFACE-ACTIVE PRODUCTS AND PREPARATIONS FOR WASHING THE SKIN, IN THE FORM OF LIQUID OR CREAM AND PUT UP FOR RETAIL SALE, WHETHER OR NOT CONTAINING SOAP

This part includes preparations for washing the skin, in which the active component consists wholly or partly of synthetic organic-surface active agents (which may contain soap in any proportion), provided they are in the form of liquid or cream and put up for retail sale. Such preparations not put up for retail sale are classified in heading 34.02.

EN 34.01 does not define “organic surface-active products.” However, a description of this term is provided by the EN to heading 3402, which, prior to the creation of subheading 3401.30 in 2002, covered products now classifiable in that subheading.

EN 34.02 provides, in relevant part, as follows:

Organic surface-active agents are capable of adsorption at an interface; in this state they display a number of physico-chemical properties, particularly surface activity (e.g., reduction of surface tension, foaming, emulsifying, wetting), which is why they are usually known as “surfactants”...

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

The products at issue in this case are nonwovens impregnated with a cleansing solution. The first issue is whether the cleaning solution on the wipes are classified as a “soap or detergent” or as an organic surface-active agent (other than soap).

While the term “soap” is defined in note 2 to chapter 34, the term “detergent” is not defined. The Merriam-Webster Dictionary defines the noun “detergent”, as “a cleansing agent: such as...any of numerous synthetic water-soluble or liquid organic preparations that are chemically different from soaps but are able to emulsify oils, hold dirt in suspension, and act as wetting agents”.<sup>1</sup> This language matches that in ENs 34.01(III) and 34.02 in that it describes a synthetic liquid organic preparation that reduces surface tension and performs as a wetting agent.

The CBP Laboratory and Scientific Services confirmed that the Disodium Cocoamphodiacetate, named in NY N300856, is a synthetic surfactant produced on the basis of fatty acids derived from coconut oil. In short, it is a surface-active agent and detergent. Consequently, as nonwoven wipes containing detergent, the article in NY N300856 is described by heading 3401, HTSUS. The other wipes at issue are similar products containing a cleansing

<sup>1</sup> <https://www.merriam-webster.com/dictionary/detergent> (last visited November 27, 2019).



agent and would also be classified in heading 3401, HTSUS. Accordingly, we conclude that the non-woven wipes involved in this case would be classified in heading 3401, HTSUS, and not in heading 3402.

The EN for heading 3401 indicates that it covers “toilet and washing articles”. The word “toilet” is defined in Merriam-Webster Dictionary, as including “the act or process of dressing and grooming oneself.”<sup>2</sup> The French version of the Harmonized Tariff Schedule (HTS) uses the word “toilette” in connection with heading 3401. The word “toilette” is defined in Lexico Dictionaries, as “the process of washing oneself, dressing, and attending to one’s appearance.”<sup>3</sup> The word “oneself” included in both definitions describe the dressing, grooming, and washing of a person.

All of the wipes in this case besides the pet wipes, whether used for personal cleaning, personal grooming, cleaning a baby, or the removal of make-up, involve the grooming and washing of a person. The wipes described in NY N301154, NY N300856, NY N303558, NY N290033, NY J89299, NY J87912, NY N236829, NY J87145, NY F88830, NY 810044 and NY N285765 all contain a soap or detergent and are used for toilet/toilette use. They are classified in subheading 3401.11.50, HTSUS.

The nonwoven wipes for pets described in NY N242165 do not fall within the definition of “toilet” or “toilette” because they are not used for the cleaning or grooming of a person. Thus these articles would fall within the basket provision of subheading 3401.19.00, HTSUS, pursuant to GRI’s 1 and 6.

#### **HOLDING:**

Pursuant to GRI’s 1 and 6, the nonwoven wipes provided for in NY N301154, NY N300856, NY N303558, NY N290033, NY J89299, NY J87912, NY N236829, NY J87145, NY F88830, NY 810044, and NY N285765 are classified in subheading 3401.11.50, HTSUS. The wipes for pets described in NY N242165 are classified in subheading 3401.19.00. The column one, general rate of duty for all of the wipes is Free.

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

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

NY N301154, NY N300856, NY N303558, NY N290033, NY J89299, NY J87912, NY N236829, NY J87145, NY F88830, NY 810044 and NY N242165 are revoked in accordance with the above analysis. NY N285765 is hereby modified.

This ruling will become effective 60 days from the date of publication in the Customs Bulletin.

<sup>2</sup> <https://www.merriam-webster.com/dictionary/toilet> (last visited November 27, 2019).

<sup>3</sup> <https://www.lexico.com/en/definition/toilette> (last visited November 27, 2019).

*Sincerely,  
for*

CRAIG T. CLARK,  
*Director*

*Commercial and Trade Facilitation Division*

cc:

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**COPYRIGHT, TRADEMARK, AND TRADE NAME  
RECORDATIONS**

**(NO. 8 2020)**

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

**SUMMARY:** The following copyrights, trademarks, and trade names were recorded with U.S. Customs and Border Protection in August 2020. A total of 169 recordation applications were approved, consisting of 3 copyrights and 166 trademarks. The last notice was published in the Customs Bulletin Vol. 54, No. 32, August 19, 2020.

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

**FOR FURTHER INFORMATION CONTACT:** LaVerne Watkins, Paralegal Specialist, Intellectual Property Rights Branch, Regulations and Rulings, Office of Trade at (202) 325–0095.

ALAINA VAN HORN

*Chief,*

*Intellectual Property Rights Branch  
Regulations and Rulings, Office of Trade*

## CBP IPR RECORDATION — AUGUST 2020

Recordation No.	Effective Date	Expiration Date	Name of Cop/TmK/TmM	Owner Name	GM Restricted
TMK 00-00556	08/11/2020	08/30/2030	CG	THE CROSBY GROUP LLC	No
TMK 01-00067	08/10/2020	09/27/2030	TETRIS	TETRIS HOLDING, LLC	No
TMK 01-00591	08/18/2020	10/25/2020	STUSSY	Stussy, Inc.	No
TMK 03-00127	08/27/2020	05/17/2029	VAN CAMP'S	TRI-UNION SEAFOODS, LLC	No
TMK 04-01097	08/11/2020	09/20/2030	Cowboys Helmet Design	Dallas Cowboys Football Club, Ltd.	No
TMK 05-00441	08/25/2020	01/23/2031	MARINERS (STYLIZED)	THE BASEBALL CLUB OF SEATTLE, LLLP	No
TMK 05-01038	08/05/2020	05/01/2030	FOCUS	FORD MOTOR COMPANY	No
TMK 05-01048	08/25/2020	06/21/2030	SUPER DUTY	FORD MOTOR COMPANY	No
TMK 06-00396	08/25/2020	02/06/2031	RANGERS (Stylized)	RANGERS BASEBALL LLC	No
TMK 06-00816	08/25/2020	04/11/2030	Configuration of a Tiger Head	Cincinnati Bengals, Inc.	No
TMK 06-00846	08/25/2020	09/13/2030	JEEP	FCA US LLC	No
TMK 06-01072	08/14/2020	08/16/2030	BOB MARLEY	Fifty-Six Hope Road Music Limited	No
TMK 07-01130	08/05/2020	08/06/2030	AIMPOINT and Design	AIMPOINT AB	No
TMK 08-00265	08/07/2020	08/30/2030	HALLMARK AND CROWN DESIGN	HALLMARK LICENSING LLC	No
TMK 08-00389	08/20/2020	09/04/2030	PARLIAMENT (STYLIZED)	Philip Morris USA Inc.	No
TMK 08-00457	08/07/2020	06/21/2025	Altama and Design	ORIGINAL FOOTWEAR, LLC	No
TMK 08-00700	08/06/2020	08/30/2025	ALTAMA	ORIGINAL FOOTWEAR, LLC	No

## CBP IPR RECORDATION — AUGUST 2020

Recordation No.	Effective Date	Expiration Date	Name of Cop/TmK/TmM	Owner Name	GM Restricted
TMK 10-00001	08/25/2020	06/15/2030	RAIDERS	(REGISTRANT) Oakland Raiders LIMITED PARTNERSHIP CALIFORNIA 1220 Harbor Bay Parkway Alameda CALIFORNIA 94502(LAST LISTED OWNER) RAIDERS FOOTBALL CLUB, LLC LIMITED LIABILITY COMPANY NEVADAOakland CALIFORNIA 94502	No
TMK 10-00518	08/25/2020	11/05/2028	Configuration of Royal Oak Octagonal Bezel Figurative	Audemars Piguet Holding S.A.	No
TMK 10-00521	08/25/2020	07/17/2030	AUDEMARS PIGUET	AUDEMARS PIGUET HOLDING S.A.	No
TMK 10-00799	08/03/2020	10/13/2030	SNIFTY	The Rotuba Extruders, Inc.	No
TMK 10-00857	08/19/2020	09/27/2030	LV (Stylized)	LOUIS VUITTON MALLETIER	No
TMK 10-01068	08/25/2020	09/13/2030	M and Design	MOVADO LLC	No
TMK 10-01158	08/05/2020	07/25/2030	MARIO KART	Nintendo of America Inc.	No
TMK 10-01319	08/24/2020	01/19/2031	BOSE	Bose Corporation	No
TMK 11-00165	08/26/2020	10/04/2030	TARZAN	Edgar Rice Burroughs, Inc.	No
TMK 11-00473	08/12/2020	09/13/2030	POKÉMON	Nintendo of America Inc.	No
TMK 11-00474	08/12/2020	09/13/2030	POKÉMON	Nintendo of America Inc.	No
TMK 11-00479	08/05/2020	07/18/2030	POKÉMON	Nintendo of America Inc.	No
TMK 11-00485	08/12/2020	09/13/2030	POKÉMON	Nintendo of America Inc.	No
TMK 11-00753	08/26/2020	08/11/2030	OTTER BOX	Otter Products LLC	No

## CBP IPR RECORDATION — AUGUST 2020

Recordation No.	Effective Date	Expiration Date	Name of Cop/TmK/TmM	Owner Name	GM Restricted
TMK 11-01505	08/17/2020	02/03/2030	NARCISO RODRIGUEZ	NR CLASS 3, LLC	No
TMK 12-00037	08/19/2020	08/18/2030	GARRETT THD	Garrett Electronics, Inc.	No
TMK 12-00042	08/14/2020	11/11/2030	PACO RABANNE	PUIG FRANCE SOCIETE PAR ACTIONS	No
TMK 12-00940	08/24/2020	08/23/2030	HUGO	HUGO BOSS TRADE MARK MANAGEMENT GMBH & CO. KG	No
TMK 12-00971	08/21/2020	08/23/2030	ATE	Continental Teves AG & Co oHG	No
TMK 12-01275	08/19/2020	08/18/2030	SABAIDEE	Lien Hoa Food Corporation	No
TMK 13-00868	08/26/2020	03/05/2030	SUPRAMID	S. JACKSON, INC.	No
TMK 13-01097	08/03/2020	11/22/2030	CELGENE	CELGENE CORPORATION	No
TMK 14-00135	08/27/2020	08/30/2030	FIFA	Federation Internationale de Football Association	No
TMK 14-00191	08/24/2020	03/05/2030	H (Stylized) and Design	HYUNDAI MOTOR AMERICA	No
TMK 14-00195	08/25/2020	01/24/2029	HYUNDAI	HYUNDAI MOTOR COMPANY	No
TMK 14-00308	08/25/2020	08/13/2030	Configuration of a quadrilateral with a decorative border (BATWING)	LEVI STRAUSS & CO.	No
TMK 14-00314	08/25/2020	12/31/2030	LEVI'S	Levi Strauss & Co.	No
TMK 14-00832	08/03/2020	08/19/2029	Sun Logo	Deckers Outdoor Corporation	No
TMK 14-00833	08/05/2020	05/01/2030	Sun logo	DECKERS OUTDOOR CORPORATION	No
TMK 15-00420	08/26/2020	11/01/2030	Kirkland Signature and Design	Costco Wholesale Corporation	No
TMK 15-00985	08/12/2020	04/05/2029	RIEDEL	Grund & Mobil Verwaltungs AG	No

## CBP IPR RECORDATION — AUGUST 2020

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tm	Owner Name	GM Restricted
TMK 15-01239	08/14/2020	08/13/2027	TREK	TREK BICYCLE	No
TMK 16-00164	08/31/2020	09/22/2030	LIME CRIME	LC BRANDS LLC	No
TMK 16-00239	08/10/2020	07/06/2030	SOCHIC and Design	Sobel Westex	No
TMK 16-00557	08/20/2020	08/04/2030	BONTRAGER	Trek Bicycle Corporation	No
TMK 16-00558	08/17/2020	09/23/2029	BONTRAGER	Trek Bicycle Corporation	No
TMK 16-01178	08/26/2020	09/22/2030	RAM	FCA US LLC	No
TMK 17-00229	08/07/2020	09/02/2030	KERN'S	COMERCIALIZADORA ELORO S.A.	No
TMK 18-00324	08/18/2020	08/26/2030	L'EGGS	HBI BRANDED APPAREL ENTERPRISES, LLC	No
TMK 18-00990	08/26/2020	01/04/2021	DM'S	Dr. Martens International Trading GmbH	No
TMK 18-00995	08/26/2020	04/04/2030	DOC'S	DR. MARTENS INTERNATIONAL TRADING GMBH	No
TMK 19-00238	08/25/2020	11/30/2030	Configuration of a pair of socks	Boston Red Sox Baseball Club Limited Partnership	No
TMK 19-00314	08/25/2020	11/03/2030	Configuration of a sunburst.	Tampa Bay Rays Baseball Ltd.	No
TMK 19-01148	08/25/2020	12/02/2030	Configuration of polygon shapes with stitching	LEVI STRAUSS & CO.	No
TMK 20-00629	08/03/2020	04/13/2024	T-TECH	Tumi, Inc.	No
TMK 20-00630	08/03/2020	03/08/2026	F. FACONNABLE (STYLIZED)	FACONNABLE S.à.r.l.	No
TMK 20-00631	08/03/2020	10/07/2030	HAPPY WAHINE	Tivoli Investment LLC	No

## CBP IPR RECORDATION — AUGUST 2020

Recordation No.	Effective Date	Expiration Date	Name of Cop/TmK/TmM	Owner Name	GM Restricted
TMK 20-00632	08/05/2020	02/11/2029	LIGHTNING GLOVES	ATLANTIC SAFETY PRODUCTS, INC.	No
TMK 20-00633	08/05/2020	01/24/2028	S & Design	Silicon Laboratories Inc.	No
TMK 20-00634	08/05/2020	07/16/2029	IL IRON LABEL and Design	Sanchez-Contreras, Carlos Eduardo	No
TMK 20-00635	08/05/2020	05/05/2023	DICASTAL (Stylized)	CITIC Dicastal Co., Ltd.	No
TMK 20-00636	08/05/2020	08/19/2030	CloSYS & DESIGN	ROWPAR PHARMACEUTICALS, INC.	No
TMK 20-00637	08/05/2020	08/19/2030	CloSYS and Design	ROWPAR PHARMACEUTICALS, INC.	No
TMK 20-00638	08/05/2020	10/07/2030	SNES Controller Design (Color)	Nintendo of America Inc.	No
TMK 20-00639	08/06/2020	08/05/2030	SUPREME	Chapter 4 Corp. DBA Supreme	No
TMK 20-00640	08/07/2020	07/14/2030	Drop Design	Foamix Pharmaceuticals Ltd.	No
TMK 20-00641	08/07/2020	06/30/2030	AMZEEQ	FOAMIX PHARMACEUTICALS LTD.	No
TMK 20-00642	08/10/2020	09/15/2030	SIMPONI	JOHNSON & JOHNSON	No
TMK 20-00643	08/10/2020	10/16/2023	INVOKANA	JOHNSON & JOHNSON	No
TMK 20-00644	08/10/2020	06/26/2022	ORIGINAL S.W.A.T. & DESIGN	ORIGINAL FOOTWEAR, LLC	No
TMK 20-00645	08/10/2020	01/04/2022	ZYTIGA	JOHNSON & JOHNSON	No
TMK 20-00646	08/10/2020	06/24/2025	ORIGINAL S.W.A.T.	ORIGINAL FOOTWEAR, LLC	No
TMK 20-00647	08/11/2020	10/28/2030	CARAWAY	CARAWAY HOME, INC.	No
TMK 20-00648	08/11/2020	07/21/2030	POKÉ BALL	Nintendo of America Inc.	No
TMK 20-00649	08/11/2020	07/07/2030	Pokemon Go team logo (integrity)	NINTENDO OF AMERICA INC.	No



## CBP IPR RECORDATION — AUGUST 2020

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tm	Owner Name	GM Restricted
TMK 20-00650	08/11/2020	08/14/2023	VOGMASK	Ohlone Press, LLC	No
TMK 20-00651	08/11/2020	12/10/2029	SWAN and Design	Atlas Import and Export Inc.	No
TMK 20-00652	08/11/2020	04/12/2030	BANNED	REIS, CARLOS	No
TMK 20-00653	08/12/2020	07/07/2030	Pokemon Go Team Logo (Valor)	NINTENDO OF AMERICA INC.	No
TMK 20-00654	08/12/2020	06/23/2030	BED MADEEZ	Cadence Keen Innovations, Inc.	No
TMK 20-00655	08/14/2020	10/21/2030	BOOTYMAXX	Sonley, Willie	No
TMK 20-00656	08/14/2020	07/07/2030	Pokemon Go Team Logo (Mystic)	NINTENDO OF AMERICA INC.	No
TMK 20-00657	08/17/2020	11/08/2027	Configuration of Mini Rotary Latch	The Eastern Company DBA Eberhard Manufacturing Company	No
TMK 20-00658	08/17/2020	06/19/2023	ZEPTOLAB	ZeptoLab UK Limited AKA ZeptoLab	No
TMK 20-00659	08/17/2020	08/03/2026	PADDINGTON	Paddington and Company Limited	No
TMK 20-00660	08/19/2020	09/09/2030	SENSE YOUR SELF	Bernstein, Ricki	No
TMK 20-00661	08/19/2020	10/13/2030	BODYCOLOGY	PARFUMS DE COEUR, LTD	No
TMK 20-00662	08/19/2020	08/21/2022	BOD MAN	Parfums de Coeur, Ltd.	No
TMK 20-00663	08/19/2020	05/27/2027	ANSI Logo	American National Standards Institute, Incorporated	No
TMK 20-00664	08/19/2020	12/22/2029	Configuration of Seven Spheres and-Wavy Lines	MannKind Corporation	No
TMK 20-00665	08/19/2020	06/01/2026	CANTU	PARFUMS DE COEUR, LTD.	No
TMK 20-00666	08/19/2020	01/05/2021	AFREZZA	MannKind Corporation	No
TMK 20-00667	08/19/2020	01/07/2028	BODY FANTASIES	Parfums de Coeur, Ltd.	No

## CBP IPR RECORDATION — AUGUST 2020

Recordation No.	Effective Date	Expiration Date	Name of Cop/TmK/TmM	Owner Name	GM Restricted
TMK 20-00668	08/19/2020	07/08/2028	MANNKIND	MannKind Corporation	No
TMK 20-00669	08/19/2020	08/25/2030	MANNKIND	MannKind Corporation	No
TMK 20-00670	08/20/2020	05/01/2021	BLUHALE	MannKind Corporation	No
TMK 20-00671	08/20/2020	06/29/2026	DR TEAL'S	Parfums de Coeur, Ltd.	No
TMK 20-00672	08/20/2020	11/20/2026	BONTRAGER	TREK BICYCLE CORPORATION	No
TMK 20-00673	08/20/2020	09/28/2025	DR TEAL'S	PARFUMS DE COEUR, LTD.	No
TMK 20-00674	08/20/2020	10/28/2030	AMBULANCE USA MEDICAL TRANSPORTATION and Design	Ambulance USA, LLC	No
TMK 20-00675	08/20/2020	09/21/2026	PDC BRANDS BEAUTY & WELLNESS and Design	Parfums de Coeur, Ltd.	No
TMK 20-00676	08/20/2020	10/07/2030	DYNOTECH (Stylized)	MDY GROUP LA LLC	No
TMK 20-00677	08/20/2020	07/21/2030	TREK	Trek Bicycle Corporation	No
TMK 20-00678	08/20/2020	02/28/2026	CANTU and Design	Parfums de Coeur, Ltd.	No
TMK 20-00679	08/20/2020	09/21/2026	PDC BRANDS	Parfums de Coeur, Ltd.	No
TMK 20-00680	08/20/2020	06/10/2022	DESIGNER IMPOSTERS	PARFUMS DE COEUR, LTD.	No
TMK 20-00681	08/20/2020	01/24/2021	BOD	Parfums de Coeur, Ltd.	No
TMK 20-00682	08/21/2020	08/26/2030	SNAPDRAGON ELITE GAMING	Qualcomm Incorporated	No
TMK 20-00683	08/21/2020	05/19/2029	QUALCOMM SNAPDRAGON (Stylized)	Qualcomm Incorporated	No
TMK 20-00684	08/21/2020	04/02/2028	SNAPDRAGON WEAR	Qualcomm Incorporated	No
TMK 20-00685	08/21/2020	12/03/2029	QUALCOMM (Stylized)	Qualcomm Incorporated	No

## CBP IPR RECORDATION — AUGUST 2020

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tm	Owner Name	GM Restricted
TMK 20-00686	08/21/2020	07/14/2030	Q QUALCOMM QUICK CHARGE and Design	Qualcomm Incorporated	No
TMK 20-00687	08/21/2020	08/28/2023	EYLURE	Original Additions (Beauty Products) Ltd	No
TMK 20-00688	08/21/2020	08/19/2026	PRINCE MATCHABELLI (Stylized)	PARFUMS DE COEUR, LTD.	No
TMK 20-00689	08/24/2020	03/10/2030	SUPRA	TOYOTA JIDOSHA KABUSHIKI KAISHA TA TOYOTA MOTOR CORPORATION	No
TMK 20-00690	08/24/2020	05/26/2029	ARTMEETSCHAOS and Design	SILENT HERO, LLC	No
TMK 20-00691	08/24/2020	01/01/2030	MIA	LE Holdings LLC	No
TMK 20-00692	08/24/2020	11/24/2020	SMART WALLET	LE HOLDINGS	No
TMK 20-00693	08/24/2020	06/17/2028	SIENNA	TOYOTA JIDOSHA KABUSHIKI KAISHA TA TOYOTA MOTOR CORPORATION	No
TMK 20-00694	08/24/2020	11/01/2027	C-HR	Toyota Jidosha Kabushiki Kaisha TA Toyota Motor Corporation	No
TMK 20-00695	08/24/2020	01/17/2027	YARIS	Toyota Jidosha Kabushiki Kaisha TA Toyota Motor Corporation	No
TMK 20-00696	08/24/2020	10/07/2028	RAV4	Toyota Jidosha Kabushiki Kaisha TA Toyota Motor Corporation	No
TMK 20-00697	08/24/2020	09/26/2028	HAPPY EGG	Grant, Irina	No
TMK 20-00698	08/25/2020	09/16/2025	KID-O-BUNK	Disc-O-Bed Holdings, Limited	No

## CBP IPR RECORDATION — AUGUST 2020

Recordation No.	Effective Date	Expiration Date	Name of Cop/TmK/TmM	Owner Name	GM Restricted
TMK 20-00699	08/25/2020	12/13/2024	4RUNNER	TOYOTA JIDOSHA KABUSHIKI KAISHA TA Toyota Motor Corporation	No
TMK 20-00700	08/25/2020	12/30/2028	ARM-O-BUNK	DISC-O-BED HOLDINGS, LTD	No
TMK 20-00701	08/25/2020	09/01/2029	HIGHLANDER	Toyota Jidosha Kabushiki Kaisha TA/Toyota Motor Corporation	No
TMK 20-00702	08/25/2020	10/09/2022	LAND CRUISER	Toyota Motor Corporation	No
TMK 20-00703	08/25/2020	12/26/2027	KOSS	Koss Corporation	No
TMK 20-00704	08/25/2020	02/12/2023	TACOMA	Toyota Jidosha Kabushiki Kaisha TA Toyota Motor Corporation	No
TMK 20-00705	08/25/2020	08/29/2027	TUNDRA	Toyota Jidosha Kabushiki Kaisha Koss Corporation	No
TMK 20-00706	08/26/2020	12/26/2027	KOSS (Stylized)	Koss Corporation	No
TMK 20-00707	08/26/2020	06/21/2027	KOSS (Stylized) and Design	Koss Corporation	No
TMK 20-00708	08/26/2020	11/13/2029	Configuration of a dog with a circle around dog (Chihuahua)	Chihuahua Brewing Company, LLC	No
TMK 20-00709	08/26/2020	11/09/2026	KID-O-BUNK and Design (Logo) configuration	Disc-O-Bed Holdings, Ltd.	No
TMK 20-00710	08/26/2020	06/24/2025	DISC-O BED and Design (Logo)	Disc-O-Bed Holdings, Limited	No
TMK 20-00711	08/26/2020	03/13/2027	EXTREME SLEEP SOLUTIONS	Disc-O-Bed Holdings, Limited	No
TMK 20-00712	08/26/2020	01/07/2029	CAM-O-BUNK	DISC-O-BED HOLDINGS, LTD	No
TMK 20-00713	08/26/2020	06/24/2025	DISC-O-BED	Disc-O-Bed Holdings, Limited	No
TMK 20-00714	08/26/2020	09/23/2030	GARDEN (Stylized) and Design configuration chef head	THE GARDEN CO., LTD.	No

## CBP IPR RECORDATION — AUGUST 2020

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 20-00715	08/26/2020	05/13/2028	REALTREE EDGE	Jordan Outdoor Enterprises, Ltd.	No
TMK 20-00716	08/27/2020	11/05/2028	COMPHY C (Stylized)	The Comphy Co.	No
TMK 20-00717	08/27/2020	02/27/2029	C (Stylized)	The Comphy Co.	No
TMK 20-00718	08/27/2020	12/03/2023	OGX	CILAG GMBH INTERNATIONAL	No
TMK 20-00719	08/27/2020	08/09/2027	OGX	CILAG GMBH INTERNATIONAL	No
TMK 20-00720	08/27/2020	02/18/2025	OGX and Design	CILAG GMBH INTERNATIONAL	No
TMK 20-00721	08/27/2020	06/19/2029	REALTREE EDGE and Design configuration of antlers	Jordan Outdoor Enterprises, Ltd.	No
TMK 20-00722	08/27/2020	03/22/2026	ECOTANK	Seiko Epson Kabushiki Kaisha TA Seiko Epson Corporation	No
TMK 20-00723	08/27/2020	11/18/2030	AIRAIL	BIOSPHERE AEROSPACE LLC	No
TMK 20-00724	08/27/2020	09/18/2029	LISTERINE	Johnson & Johnson	No
TMK 20-00725	08/27/2020	11/15/2025	JOHNSON'S BABY (Stylized)	JOHNSON & JOHNSON	No
TMK 20-00726	08/28/2020	06/13/2028	O (Stylized) configuration of a stadium design	FACEBOOK TECHNOLOGIES, LLC	No
TMK 20-00727	08/31/2020	08/26/2030	CATALYST	Catalyst Lifestyle Limited	No
TMK 20-00728	08/31/2020	08/28/2029	HOW BIG IS YOUR CHIHUAHUA?	Chihuahua Brewing Company, LLC	No
TMK 20-00729	08/31/2020	07/10/2028	O (Stylized) Oculus Logo	FACEBOOK TECHNOLOGIES, LLC	No
TMK 20-00730	08/31/2020	03/11/2023	NXP (STYLIZED)	NXP B.V.	No
TMK 20-00731	08/31/2020	03/05/2028	O (Stylized) Oculus Logo	FACEBOOK TECHNOLOGIES, LLC	No
TMK 20-00732	08/31/2020	06/12/2029	HOW BIG IS YOUR CHIHUAHUA?	Chihuahua Brewing Company, LLC	No

## CBP IPR RECORDATION — AUGUST 2020

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tm	Owner Name	GM Restricted
TMK 20-00733	08/31/2020	01/08/2030	I LOVE A MAN WITH A CHIHUAHUA	Chihuahua Brewing Company, LLC	No
COP 98-00132	08/14/2020	08/14/2040	PEAR-SHAPED akari WITH RIB	The Isamu Noguchi Foundation and Garden Museum	No
COP 98-00134	08/14/2020	08/14/2040	SQUARE AKARI WITH IRREGULAR RIB (SHORT VERSION)	The Isamu Noguchi Foundation and Garden Museum	No
COP 98-00143	08/14/2020	08/14/2040	Akari LIGHT SCULPTURES	The Isamu Noguchi Foundation and Garden Museum	No

## 19 CFR Chapter I

### Transportation Security Administration

## 49 CFR Chapter XII

### NOTIFICATION OF TERMINATION OF ARRIVAL RESTRICTIONS APPLICABLE TO FLIGHTS CARRYING PERSONS WHO HAVE RECENTLY TRAVELED FROM OR WERE OTHERWISE PRESENT WITHIN CERTAIN COUNTRIES

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

**ACTION:** Notification of termination of arrival restrictions.

**SUMMARY:** This document announces the decision of the Secretary of the Department of Homeland Security (DHS) to terminate arrival restrictions applicable to certain flights. Specifically, this document terminates arrival restrictions that are applicable to flights carrying persons who had recently traveled from, or were otherwise present within, the People's Republic of China (excluding the Special Administrative Regions of Hong Kong and Macau); the Islamic Republic of Iran; the countries of the Schengen Area; the United Kingdom, excluding overseas territories outside of Europe; the Republic of Ireland; or the Federative Republic of Brazil. These arrival restrictions direct such flights to only land at a limited set of U.S. airports where the U.S. Government (USG) had focused public health resources conducting enhanced entry screening. Other measures to protect public health will remain in place.

**DATES:** The arrival restrictions described in this document are terminated as of 12:01 a.m. Eastern Daylight Time (EDT) on September 14, 2020.

**FOR FURTHER INFORMATION CONTACT:** Matthew S. Davies, Office of Field Operations, U.S. Customs and Border Protection (CBP) at 202-325-2073.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

In recent months, in response to the Coronavirus Disease 2019 (COVID-19) outbreak, DHS announced a series of arrival restrictions, as follows:

- Notification of Arrival Restrictions Applicable to Flights Carrying Persons Who Have Recently Traveled From or Were Otherwise Present Within the People’s Republic of China, 85 FR 6044 (Feb. 4, 2020);
- Notification of Arrival Restrictions Applicable to Flights Carrying Persons Who Have Recently Traveled From or Were Otherwise Present Within the People’s Republic of China, 85 FR 7214 (Feb. 7, 2020);
- Notification of Arrival Restrictions Applicable to Flights Carrying Persons Who Have Recently Traveled From or Were Otherwise Present Within the People’s Republic of China or the Islamic Republic of Iran, 85 FR 12731 (Mar. 4, 2020);
- Notification of Arrival Restrictions Applicable to Flights Carrying Persons Who Have Recently Traveled From or Were Otherwise Present Within the Countries of the Schengen Area, 85 FR 15059 (Mar. 17, 2020);
- Notification of Arrival Restrictions Applicable to Flights Carrying Persons Who Have Recently Traveled From or Were Otherwise Present Within the United Kingdom or the Republic of Ireland, 85 FR 15714 (Mar. 19, 2020);
- Notification of Arrival Restrictions Applicable to Flights Carrying Persons Who Have Recently Traveled From or Were Otherwise Present Within the Federative Republic of Brazil, 85 FR 31957 (May 28, 2020).

The Secretary announced such arrival restrictions consistent with 19 U.S.C. 1433(c), 19 CFR 122.32, 49 U.S.C. 114, and 49 CFR 1544.305 and 1546.105.

The Secretary has decided to terminate these arrival restrictions. These restrictions funnel eligible arriving air passengers to one of 15 designated airports of entry where the USG has focused public health resources in order to conduct enhanced entry screening. Terminating this effort will allow public health resources to be more effectively reprioritized for other containment and mitigation efforts and will stimulate air travel. Continuing activities will include an illness reporting system and a passenger education process carried out in tandem with other enhanced public health measures implemented within the passenger air transportation system in collaboration with industry. This notice does not affect those other public health measures, which will remain in place as long as appropriate. Appropriate traveler health education materials will continue to be made available to passengers arriving from foreign countries. Health education information will continue to be displayed at ports of entry.



### **Notification of Termination of Arrival Restrictions**

Pursuant to 19 U.S.C. 1433(c), 19 CFR 122.32, 49 U.S.C. 114, and 49 CFR 1544.305 and 1546.105, and effective as of 12:01 a.m. Eastern Daylight Time (EDT) on September 14, 2020 for all affected flights arriving at a U.S. airport, the Secretary hereby terminates the arrival restrictions announced at 85 FR 6044 (Feb. 4, 2020); 85 FR 7214 (Feb. 7, 2020); 85 FR 12731 (Mar. 4, 2020); 85 FR 15059 (Mar. 17, 2020); 85 FR 15714 (Mar. 19, 2020); and 85 FR 31957 (May 28, 2020).

### **Signature**

The Acting Secretary of DHS, Chad F. Wolf, having reviewed and approved this document, has delegated the authority to electronically sign this document to Ian J. Brekke, Deputy General Counsel, DHS Office of the General Counsel, for purposes of publication in the **Federal Register**.

IAN J. BREKKE,  
*Deputy General Counsel,*  
*U.S. Department of Homeland Security.*

[Published in the Federal Register, September 15, 2020 (85 FR 57108)]



# U.S. Court of International Trade

Slip Op. 20–132

BIOPARQUES DE OCCIDENTE, S.A. DE C.V., AGRICOLA LA PRIMAVERA, S.A. DE C.V., AND KALIROY FRESH LLC, Plaintiffs, v. UNITED STATES, Defendant, and THE FLORIDA TOMATO EXCHANGE, Defendant-Intervenor.

Before: Jennifer Choe-Groves, Judge  
Court Nos. 19–00204, 19–00210, 20–00035

[Granting Defendant’s motion to dismiss.]

Dated: September 11, 2020

*Jeffrey M. Winton, Michael Chapman, Amrietha Nellan, and Vi N. Mai*, Winton & Chapman PLLC, of Washington, D.C., for Plaintiffs Bioparques de Occidente, S.A. de C.V., Agricola La Primavera, S.A. de C.V., and Kaliroy Fresh LLC.

*Elizabeth Anne Speck*, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of Washington, D.C., for Defendant United States. On the brief were *Joseph H. Hunt*, Assistant Attorney General, *Jeanne E. Davidson*, Director, and *Franklin E. White, Jr.*, Assistant Director. Of counsel was *Emma T. Hunter*, Office of Chief Counsel for Trade Enforcement and Compliance, U.S. Department of Commerce.

*Jonathan M. Zielinski, Robert C. Cassidy, Jr., Charles S. Levy, James R. Cannon, Jr., Mary Jane Alves, and Chase J. Dunn*, Cassidy Levy Kent (USA) LLP, of Washington, D.C., for The Florida Tomato Exchange.

## OPINION AND ORDER

### **Choe-Groves, Judge:**

Plaintiffs Bioparques de Occidente, S.A. de C.V., Agricola La Primavera, S.A. de C.V., and Kaliroy Fresh LLC (“Bioparques”) filed identical complaints asserting different jurisdictional grounds in the following three actions challenging the final determination made in the antidumping duty investigation of fresh tomatoes from Mexico conducted by the U.S. Department of Commerce (“Commerce”), *Fresh Tomatoes from Mexico*, 84 Fed. Reg. 57,401 (Dep’t Commerce Oct. 25, 2019) (final determination of sales at less than fair value): (1) *Bioparques de Occidente, S.A. de C.V. v. United States*, Court No. 19–00204; (2) *Bioparques de Occidente, S.A. de C.V. v. United States*, Court No. 19–00210; and (3) *Bioparques de Occidente, S.A. de C.V. v. United States*, Court No. 20–00035.<sup>1</sup>

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<sup>1</sup> For ease of reference and because the three complaints are generally identical, except in pleading jurisdiction, the court refers to the three complaints as the “Complaint” and, unless otherwise noted, cites only to the Complaint in the first-filed case, Court No. 19–00204.

Bioparques pleads jurisdiction in Court Nos. 19–00204 and 19–00210 under 28 U.S.C. § 1581(c) through separate provisions of 19 U.S.C. § 1516a, and alternatively under this Court’s residual jurisdiction, 28 U.S.C. § 1581(i)(4). Compl. ¶ 2. Specifically, Bioparques filed Court No. 19–00204 under 19 U.S.C. § 1516a(a)(2)(A) and (B)(iv), *id.*, which specifically refers to judicial review of “any final determination resulting from a continued investigation which changes the size of the dumping margin or net countervailable subsidy calculated, or the reasoning underlying such calculations, at the time the suspension agreement was concluded.” Bioparques filed Court No. 19–00210 under the special rules applicable to appeals of final determinations involving NAFTA countries when review by a binational panel has not been requested, 19 U.S.C. § 1516a(g)(3)(A)(i), and pleaded alternatively residual jurisdiction under 28 U.S.C. § 1581(i)(4). Compl. ¶ 2, Court No. 19–00210. Bioparques filed Court No. 20–00035 under 28 U.S.C. § 1581(i) if the court found the claims presented in Court Nos. 19–00204 and 19–00210 not cognizable under 19 U.S.C. § 1516a. Compl. ¶ 2, Court No. 19–00210; Pls.’ Resp. to Def.’s Mot. to Dismiss 3, ECF No. 34 (“Opp’n Br.”).<sup>2</sup>

Before the court is the motion to dismiss filed by Defendant United States (“Defendant”) pursuant to USCIT Rule 12(b)(1) for lack of subject matter jurisdiction and USCIT Rule 12(b)(6) for failure to state a claim upon which relief can be granted. Def.’s Mot. to Dismiss Br., ECF No. 30 (“Def. Br.”). Bioparques opposed. Opp’n Br at 4–25. Defendant replied. Def.’s Am. Reply in Supp. of its Mot. to Dismiss Pls.’ Compls., ECF No. 37 (“Def. Reply”).<sup>3</sup> For the reasons that follow, the court grants Defendant’s motion to dismiss.

## I. BACKGROUND

### A. History of the Fresh Tomatoes from Mexico Antidumping Duty Proceeding

Commerce’s investigation of fresh tomatoes has a long procedural history. In April 1996, Commerce initiated an antidumping duty investigation to determine whether imports of fresh tomatoes from Mexico were being, or likely to be, sold in the United States at less

<sup>2</sup> Plaintiffs “believe that there is some ambiguity as to which of the relevant statutory provisions apply to [its] claims. . . . [And] therefore filed redundant appeals under all three statutory provisions in order to ensure that, however the provisions might be interpreted, the Court would have jurisdiction to hear all of Plaintiffs’ claims under at least one of the actions Plaintiffs filed.” Opp’n Br. at 4.

<sup>3</sup> Defendant-Intervenor The Florida Tomato Exchange “support[s] the entirety of the United States’ motion and agree[s] with the arguments presented therein.” Def.-Intervenor’s Resp. 2, ECF No. 33.

than fair value. *Fresh Tomatoes from Mexico*, 61 Fed. Reg. 18,377 (Dep't Commerce Apr. 25, 1996) (initiation of antidumping duty investigation). After a preliminary determination from the International Trade Commission ("ITC"), Commerce made a preliminary determination that imports of fresh tomatoes from Mexico were being sold in the United States at less than fair value. Compl. ¶ 6; *Fresh Tomatoes from Mexico*, 61 Fed. Reg. 56,608 (Dep't Commerce Nov. 1, 1996) (preliminary determination). That same day, Commerce and certain growers and exporters who accounted for substantially all of the imports of fresh tomatoes from Mexico into the United States published a notice in the Federal Register announcing an agreement under 19 U.S.C. § 1673c(c) to suspend the antidumping duty investigation on fresh tomatoes from Mexico. Compl. ¶ 7; *Fresh Tomatoes from Mexico*, 61 Fed. Reg. 56,618 (Dep't Commerce Nov. 1, 1996) (suspension of antidumping investigation). Commerce then instructed Customs and Border Protection ("CBP") to terminate the suspension of liquidation, release any bonds, and refund cash deposits. CBP Message No. 7327113 (Nov. 22, 1996); see *Fresh Tomatoes from Mexico*, 61 Fed. Reg. at 56,619.

After entering the suspension agreement in 1996, Commerce and the signatories<sup>4</sup> entered into a series of suspension agreements after the Mexican exporters and producers of fresh tomatoes gave notice of intent to withdraw from the operative suspension agreement in 2002, 2007, and 2013. Compl. ¶¶ 8–10; see *Fresh Tomatoes from Mexico*, 84 Fed. Reg. 20,858, 20,859–61 (Dep't Commerce May 13, 2019) (termination of suspension agreement, rescission of administrative review, and continuation of the antidumping duty investigation) ("*May 2019 Withdrawal Notice*") (explaining the history of the proceedings). Each time the signatory Mexican producers/exporters withdrew from the relevant suspension agreement in effect at that time, the parties negotiated and entered into a new suspension agreement, and, in 2002, 2008, and 2013, new suspension agreements went into effect. *Fresh Tomatoes from Mexico*, 67 Fed. Reg. 77,044 (Dep't Commerce Dec. 16, 2002) (suspension of antidumping investigation); *Fresh Tomatoes from Mexico*, 73 Fed. Reg. 4831 (Dep't Commerce Jan. 28,

<sup>4</sup> The term "signatory" or "signatories" mentioned throughout the various suspension agreements refers to "producers/exporters accounting for substantially all imports of fresh tomatoes from Mexico." *Fresh Tomatoes from Mexico*, 84 Fed. Reg. 49,987, 49,987 (Dep't Commerce Sept. 24, 2019) (suspension of antidumping duty investigation); *Fresh Tomatoes from Mexico*, 78 Fed. Reg. 14,967, 14,968 (Dep't Commerce Mar. 8, 2013) (suspension of antidumping investigation); *Fresh Tomatoes from Mexico*, 73 Fed. Reg. 4831 (Dep't Commerce Jan. 28, 2008) (suspension of antidumping investigation); *Fresh Tomatoes from Mexico*, 67 Fed. Reg. 77,044 (Dep't Commerce Dec. 16, 2002) (suspension of antidumping investigation); *Fresh Tomatoes from Mexico*, 61 Fed. Reg. at 56,619.

2008) (suspension of antidumping investigation); *Fresh Tomatoes from Mexico*, 78 Fed. Reg. 14,967 (Dep't Commerce Mar. 8, 2013) (suspension of antidumping investigation).

### **B. Commerce's Withdrawal from the 2013 Suspension Agreement, Continuation of the Underlying Investigation, and Signing of the 2019 Suspension Agreement**

Section VI.B of the 2013 Suspension Agreement allowed either party (Commerce or the Mexican signatories) to withdraw from that agreement upon giving 90 days' written notice. Commerce gave the signatory Mexican tomato growers and exporters notice of intent to withdraw from the 2013 Suspension Agreement on February 6, 2019. *May 2019 Withdrawal Notice*, 84 Fed. Reg. at 20,860; *Fresh Tomatoes from Mexico*, 84 Fed. Reg. 7872, 7874 (Dep't Commerce Mar. 5, 2019) (notice of intent to terminate suspension agreement, rescind the sunset and administrative reviews, and resume the antidumping duty investigation). Commerce then withdrew from the 2013 Suspension Agreement, effective May 7, 2019, and continued the underlying antidumping investigation. Compl. ¶¶ 11–12; *May 2019 Withdrawal Notice*, 84 Fed. Reg. at 20,858.

Commerce published a notice in the Federal Register with an effective date of September 19, 2019, announcing that “Commerce and representatives of the signatory producers/exporters accounting for substantially all imports of fresh tomatoes from Mexico signed” an agreement to suspend the antidumping duty investigation. *Fresh Tomatoes from Mexico*, 84 Fed. Reg. at 49,989; Compl. ¶ 13. No party challenged Commerce's decision to suspend the investigation. The ITC also announced the suspension of its antidumping investigation as of September 24, 2019. *Fresh Tomatoes from Mexico*, 84 Fed. Reg. 54,639 (Int'l Trade Comm'n Oct. 10, 2019) (suspension of antidumping investigation).

### **C. Commerce's Final Determination**

After signing the 2019 Suspension Agreement, Commerce received requests to continue its antidumping duty investigation under 19 U.S.C. § 1673c(g). Compl. ¶ 13; *Fresh Tomatoes from Mexico*, 84 Fed. Reg. at 57,401. On October 25, 2019, Commerce published its final determination in the continued investigation, finding that fresh tomatoes from Mexico were being, or likely to be, sold in the United States at less than fair value. Compl. ¶ 13; *Fresh Tomatoes from Mexico*, 84 Fed. Reg. at 57,402. The ITC issued an affirmative injury

determination on December 12, 2019. *Fresh Tomatoes from Mexico*, 84 Fed. Reg. 67,958 (Int'l Trade Comm'n Dec. 12, 2019) (notice of material injury determination).

#### D. The Current Litigation

Bioparques filed the Summons in Court No. 19–00204 on November 22, 2019, ECF No. 1, and in Court No. 19–00210 on December 3, 2019, ECF No. 1. Bioparques then filed the Complaint in Court No. 19–00204 on December 20, 2019, ECF No. 9, and in Court No. 19–00210 on December 23, 2019, ECF No. 9. Bioparques filed the Summons and Complaint concurrently in Court No. 20–00035, ECF Nos. 1, 4, on February 5, 2020.

Bioparques alleges that “Commerce’s final determination in [the underlying investigation] was arbitrary and capricious, unsupported by substantial evidence on the record, or otherwise not in accordance with law[.]” Compl. ¶ 14. Specifically, Bioparques challenges Commerce’s continuation of the investigation, respondent selection decision, differential pricing analysis, margin calculation methodology, and the calculation of general and administrative expenses. *Id.* As relief, Bioparques requests that the court find unlawful and vacate Commerce’s withdrawal from the 2013 Suspension Agreement and the final determination in the underlying fresh tomatoes investigation. *Id.* ¶ 15.

## II. DISCUSSION

Article III of the Constitution limits federal courts to hearing actual, ongoing controversies. *Davis v. FEC*, 554 U.S. 724, 732 (2008). An actual case or controversy must be extant at all stages of review, not merely at the time the complaint is filed. *Id.* at 732–33; see *DaimlerChrysler Corp. v. United States*, 442 F.3d 1313, 1318 (Fed. Cir. 2006) (noting that the Court is “presumed to be without jurisdiction unless the contrary appears affirmatively from the record” (internal quotation marks and citations omitted)). “Though justiciability has no precise definition or scope, doctrines of standing, mootness, ripeness, and political question are within its ambit.” *Fisher v. United States*, 402 F.3d 1167, 1176 (Fed. Cir. 2005).

The party invoking jurisdiction bears the burden of establishing it. *Hutchinson Quality Furniture, Inc. v. United States*, 827 F.3d 1355, 1359 (Fed. Cir. 2016) (internal quotation marks and citation omitted). A plaintiff must allege sufficient facts to state each claim alleged in the complaint. *DaimlerChrysler Corp.*, 442 F.3d at 1318–19 (citing,

*inter alia*, *McNutt v. Gen. Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936)). “If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.” USCIT R. 12(h)(3).

Defendant argues that Bioparques’ claims are not justiciable. Def. Br. at 13–20. Specifically, Defendant contends that Bioparques’ challenge of Commerce’s withdrawal from the 2013 Suspension Agreement and continuation of the underlying investigation is moot because Bioparques is a member of an association of Mexican exporters/producers of fresh tomatoes that signed the 2019 Suspension Agreement, and thus pays no antidumping duties. *See* Def. Br. at 14–15; Def. Reply at 8–10. Defendant also avers that Bioparques’ claims are not ripe for review because Bioparques cannot plead a cognizable injury stemming from a final determination that has no legal effect because of the extant suspension agreement, and has not identified how the court could redress the purported injury. Def. Br. at 19–20; Def. Reply at 6–8. Bioparques responds that although its complaint did not contain a specific count challenging the suspension agreement, the claims present a live controversy and that “the Court has the authority to vacate all actions by Commerce that flowed from the unlawful termination of the 2013 suspension agreement.” Opp’n Br. at 23.

There is no “case or controversy” under Article III, and a suit becomes moot, “when the issues presented are no longer ‘live’ or the parties lack a legally cognizable interest in the outcome.” *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013) (quoting *Murphy v. Hunt*, 455 U.S. 478, 481 (1982) (per curiam)). The mootness doctrine applies when “events have so transpired that the [court’s] decision will neither presently affect the parties’ rights nor have a more-than-speculative chance of affecting them in the future.” *Clarke v. United States*, 915 F.2d 699, 701 (D.C. Cir. 1990) (en banc) (citation omitted).

An action can avoid dismissal on mootness grounds if the claims asserted in the complaint are “capable of repetition, yet evading review.” *Spencer v. Kemna*, 523 U.S. 1, 17 (1998); *Torrington Co. v. United States*, 44 F.3d 1572, 1577 (Fed. Cir. 1995) (citations omitted). “[T]he capable-of-repetition doctrine applies only in exceptional situations,” when a plaintiff can show that “(1) the challenged action [is] in its duration too short to be fully litigated prior to cessation or expiration, and (2) there [is] a reasonable expectation that the same complaining party [will] be subject to the same action again.” *Spencer*, 523 U.S. at 17 (internal quotation marks and citations omitted); *see Honeywell Int’l, Inc. v. Nuclear Regulatory Comm’n*, 628 F.3d 568, 576 (D.C. Cir. 2010) (“The initial heavy burden of establishing moot-



ness lies with the party asserting a case is moot,” yet “the opposing party bears the burden of showing an exception applies[.]”. Supreme Court precedent recognizes that “inherently transitory” claims are capable of evading review. *U.S. Parole Comm’n v. Geraghty*, 445 U.S. 388, 399 (1980); e.g., *Davis*, 554 U.S. at 735 (election law challenge); *Neb. Press Ass’n v. Stuart*, 427 U.S. 539, 542 (1976) (imposing prior restraints on speech); *Gerstein v. Pugh*, 420 U.S. 103, 110 n.11 (1975) (pretrial detention conditions).

“Ripeness is a justiciability doctrine designed to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties.” *Nat’l Park Hosp. Ass’n v. Dep’t of Interior*, 538 U.S. 803, 807–08 (2003) (internal quotation marks and citations omitted); *Martin v. United States*, 894 F.3d 1356, 1362 (Fed. Cir. 2018). Two criteria guide a court in determining ripeness: “(1) the fitness of the issues for judicial decision and (2) the hardship to the parties of withholding court consideration.” *Nat’l Park Hosp. Ass’n*, 538 U.S. at 808.

Here, the court concludes that Bioparques’ claims challenging the final determination are unripe. Bioparques suffers no concrete or particularized injury from an as-yet-unpublished antidumping duty order that has no effect and may never have any effect so long as the 2019 Suspension Agreement remains in place. For the same reason, Bioparques cannot meet the hardship requirement because Bioparques pays no antidumping duties as a member of the Asociación Mexicana de Horticultura Protegida, A.C. (“AMHPAC”), an association of individual Mexican fresh tomato growers that is a signatory to the 2019 Suspension Agreement.<sup>5</sup> *Fresh Tomatoes from Mexico*, 84 Fed. Reg. at 49,994; see Compl. n.1, CAADES, Court No. 19–00203, ECF No. 14, Compl., Ex. 1, ECF No. 14–1 (identifying Bioparques de Occidente, S.A. de C.V. and Agrícola La Primavera, S.A. de C.V. as members of AMHPAC and signatories to the 2019 Suspension Agreement).<sup>6</sup>

<sup>5</sup> AMHPAC is also a party plaintiff in cases challenging Commerce’s withdrawal of the 2013 Suspension Agreement, finalization of the 2019 Suspension Agreement, and the final determination in the continued fresh tomatoes investigation in *AMHPAC v. United States*, Court No. 20–00036, and *Confederacion de Asociaciones Agricolas del Estado de Sinaloa, A.C. v. United*, Court Nos. 19–00203 and 19–00206 (“CAADES”).

<sup>6</sup> Section II.E of the 2019 Suspension Agreement identifies CAADES, AMHPAC, and three other entities as “a Mexican grower association whose members produce and/or export Fresh Tomatoes from Mexico and are also Signatories to this Agreement[.]” *Fresh Tomatoes from Mexico*, 84 Fed. Reg. at 49,990.

AMHPAC and the other associations of individual Mexican fresh tomato growers who signed the 2019 Suspension Agreement “certif[ied] that the members of their organization agree to abide by all terms of the Agreement.” *Fresh Tomatoes from Mexico*, 84 Fed. Reg. at 49,994. Thus, Bioparques’ challenge to the final determination does not present an actual case or controversy when Bioparques pays no duties as a signatory to the 2019 Suspension Agreement. *See, e.g., Usinas Siderúrgicas de Minas Gerais S/A v. United States*, 26 CIT 422, 431 (2002) (“A continued final affirmative determination [made after Commerce resumed an investigation after finalizing a suspension agreement] has no practical effect, unless and until the related suspension agreement is dissolved . . . . Thus, many of the same jurisprudential concerns that militate against piecemeal litigation also weigh against litigation of . . . a challenge which is not yet (and may never be) ripe.”) (“*Usinas*”).<sup>7</sup>

The parties dispute whether the Complaint contains a challenge to the 2019 Suspension Agreement. Def. Br. at 11; Opp’n Br. at 6–7. Even if the Complaint included a count challenging the new suspension agreement, that type of pleading deficiency is of no moment because any claims that could have been raised under 28 U.S.C. § 1581(c) contesting Commerce’s withdrawal from the 2013 Suspension Agreement, resumption of the underlying investigation, or signing of the 2019 Suspension Agreement became moot when Bioparques signed the 2019 Suspension Agreement. *See Nasatka v. Delta Sci. Corp.*, 58 F.3d 1578, 1580 (Fed. Cir. 1995) (“The test for mootness . . . is whether the relief sought would, if granted, make a difference to the legal interests of the parties[.]” (citation omitted)).<sup>8</sup> Accordingly, the court cannot condone Bioparques’ litigation strategy in reaping the benefits of the 2019 Suspension Agreement while bringing an after-the-fact challenge to the final determination that currently has no impact and demanding that the court resurrect the 2013 Suspension Agreement when the claims here are not yet (and may never be) ripe.

<sup>7</sup> Bioparques’ reliance on the Court’s decisions in *CSC Sugar LLC v. United States*, 43 CIT \_\_\_, 413 F. Supp. 3d 1318 (2019), and *CSC Sugar LLC v. United States*, 43 CIT \_\_\_, 413 F. Supp. 3d 1310 (2019) is misplaced. Unlike here, the Court in *CSC Sugar LLC* vacated amendments to extant suspension agreements. 413 F. Supp. 3d at 1326; 413 F. Supp. 3d at 1318. Further, the plaintiff in *CSC Sugar LLC*, a domestic sugar refiner, was not a signatory to the operative suspension agreement.

<sup>8</sup> The court need not address Defendant’s unanswered argument that no exception to the mootness doctrine applies here, Def. Br. at 17–19, beyond mentioning the absence of precedent or persuasive case law showing that this case is an “exceptional situation” in which the challenged actions are “capable of repetition, yet evading review.” *See Spencer*, 523 U.S. at 17; *Am. Spring Wire Corp. v. United States*, 6 CIT 122, 124 (1983) (finding exception to mootness inapplicable because “[s]uspension agreements . . . will generally be of long duration”).

The Mexican producers/exporters of fresh tomatoes may withdraw from the 2019 Suspension Agreement for any reason, or for no reason at all, and without penalty, under a similar withdrawal provision invoked three times before. In that event, Commerce would issue the antidumping duty order, but there is no logical scenario in which the superseded 2013 Suspension Agreement would be reinstated. As long as Plaintiffs remain signatories to the 2019 Suspension Agreement, the dumping margins will have no effect and will have no impact on Plaintiffs.

The court concludes that Bioparques' failure to plead an actual case or controversy compels dismissal. Because Bioparques' claims are not ripe and are otherwise moot under USCIT Rule 12(b)(1), the court need not discuss the parties' arguments as to whether Bioparques' claims are time-barred or should be dismissed for failure to state a claim under USCIT Rule 12(b)(6).

### III. CONCLUSION

For the foregoing reasons, it is

**ORDERED** that Defendant's motion to dismiss is granted and Plaintiffs' Complaints are dismissed with prejudice. Judgment will enter accordingly.

Dated: September 11, 2020

New York, New York

*/s/ Jennifer Choe-Groves*

JENNIFER CHOE-GROVES, JUDGE

## Slip Op. 20–133

JEM D INTERNATIONAL (MICHIGAN) INC. USA, JEM D MARKETING (VIRGINIA) INC., RED SUN FARMS HOLDINGS USA LLC, AND RED SUN FARMS VIRGINIA LLC, Plaintiffs, v. UNITED STATES, Defendant, and THE FLORIDA TOMATO EXCHANGE, Defendant-Intervenor.

Before: Jennifer Choe-Groves, Judge  
Court No. 19–00127

[Granting Defendant’s motion to dismiss.]

Dated: September 11, 2020

*Valerie Ellis* and *Kimberly Reynolds*, Curtis, Mallet-Prevost, Colt & Mosle LLP, of Washington, D.C., for Plaintiffs Jem D International (Michigan) Inc. USA, Jem D Marketing (Virginia) Inc., Red Sun Farms Holdings USA LLC, and Red Sun Farms Virginia LLC.

*Elizabeth Anne Speck*, Senior Trial Counsel, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of Washington, D.C., for Defendant United States. With her on the brief were *Joseph H. Hunt*, Assistant Attorney General, *Jeanne E. Davidson*, Director, and *Franklin E. White, Jr.*, Assistant Director. Of counsel on the brief was *Emma T. Hunter*, Office of the Chief Counsel for Trade Enforcement & Compliance, U.S. Department of Commerce, Washington, D.C.

*Jonathan M. Zielinski*, *Robert C. Cassidy, Jr.*, *Charles S. Levy*, *James R. Cannon, Jr.*, *Mary Jane Alves*, and *James E. Ransdell*, Cassidy Levy Kent (USA) LLP, of Washington, D.C., for Defendant-Intervenor The Florida Tomato Exchange.

## OPINION AND ORDER

### Choe-Groves, Judge:

Plaintiffs Jem D International (Michigan) Inc. USA, Jem D Marketing (Virginia) Inc., Red Sun Farms Holdings USA LLC, and Red Sun Farms Virginia LLC (“Plaintiffs”)<sup>1</sup> brought suit under this Court’s residual jurisdiction, 28 U.S.C. § 1581(i), challenging Commerce’s decision to withdraw from a previously entered suspension agreement, continue the underlying antidumping investigation, and commence negotiations upon signing a new agreement suspending Commerce’s antidumping duty investigation of fresh tomatoes from

<sup>1</sup> In a separate action challenging certain aspects of the final determination made in the underlying antidumping duty investigation that is the subject of this action, Plaintiff Red Sun Farms claims to encompass the following entities: (1) Naturbell SPR DE RL, (2) San Miguel Red Sun Farms SPR DE RL DE CV, (3) Agricola El Rosal SA DE, (4) Jem D International Michigan Inc., and (5) Red Sun Farms Virginia LLC. *Red Sun Farms v. United States*, Court No. 19–00205, Compl. ¶ 1, ECF No. 8. Red Sun Farms also alleges it is “a producer and exporter of fresh tomatoes from Mexico, an importer of fresh tomatoes from Mexico, and a domestic producer of fresh tomatoes in the United States.” *Id.*, Compl. ¶ 3.

Mexico. Suppl. Compl. ¶ 1, ECF No. 52 (“Compl.”); *Fresh Tomatoes from Mexico*, 84 Fed. Reg. 20,858 (Dep’t Commerce May 13, 2019) (termination of suspension agreement, rescission of administrative review, and continuation of the antidumping duty investigation) (“*May 2019 Withdrawal Notice*”). Plaintiffs request that the court “hold unlawful and set aside Commerce’s termination of the 2013 Suspension Agreement” and also “hold unlawful Commerce’s resumption of the antidumping duty investigation” based on using May 7, 2019 as the date of the preliminary determination. Compl. ¶ 4.<sup>2</sup>

Before the court is Defendant United States’ (“Defendant”) motion to dismiss the Complaint pursuant to USCIT Rule 12(b)(1) for lack of subject matter jurisdiction and pursuant to USCIT Rule 12(b)(6) for failure to state a claim upon which relief can be granted. Def.’s Mot. to Dismiss, ECF No. 53 (“Def. Br.”). Plaintiffs opposed. Pls.’ Resp. to Def.’s Mot. to Dismiss, ECF No. 57 (“Opp’n Br.”). Defendant replied. Def.’s Reply in Supp. of its Mot. to Dismiss, ECF No. 58 (“Def. Reply”).<sup>3</sup> For the reasons that follow, Defendant’s motion to dismiss is granted.<sup>4</sup>

## I. BACKGROUND<sup>5</sup>

### A. History of the Fresh Tomatoes from Mexico Antidumping Duty Proceeding

Commerce’s investigation of fresh tomatoes from Mexico has a long procedural history. In April 1996, Commerce initiated an antidumping duty investigation to determine whether imports of fresh tomatoes from Mexico were being, or likely to be, sold in the United States

<sup>2</sup> References to the “2013 Suspension Agreement” and “2019 Suspension Agreement” are to the agreements published in these Federal Register notices: (1) *Fresh Tomatoes from Mexico*, 78 Fed. Reg. 14,967 (Dep’t Commerce Mar. 8, 2013) (suspension of antidumping investigation) (“*2013 Suspension Agreement*”); and (2) *Fresh Tomatoes from Mexico*, 84 Fed. Reg. 49,987 (Dep’t Commerce Sept. 24, 2019) (suspension of antidumping duty investigation) (“*2019 Suspension Agreement*”).

<sup>3</sup> Defendant-Intervenor The Florida Tomato Exchange “support[s] the entirety of the United States’ motion and agree[s] with the arguments presented therein.” Def.-Intervenor’s Resp. 1, ECF No. 56.

<sup>4</sup> Plaintiffs moved for leave to file a sur-reply to address assertions made in Defendant’s reply in support of the motion to dismiss. Pls.’ Mot. for Leave to File Sur-Reply in Opp’n to Mot. to Dismiss, ECF No. 59. The court grants Plaintiffs’ motion and deems the sur-reply filed. See *Amado v. Microsoft Corp.*, 517 F.3d 1353, 1358 (Fed. Cir. 2008) (“District courts . . . are afforded broad discretion to control and manage their dockets, including the authority to decide the order in which they hear and decide issues pending before them.” (citations omitted)).

<sup>5</sup> Apart from the allegations contained in a complaint, the court may also consider documents “incorporated by reference or integral to the claim, items subject to judicial notice, [and] matters of public record.” *A & D Auto Sales, Inc. v. United States*, 748 F.3d 1142, 1147 (Fed. Cir. 2014) (internal quotation marks and citation omitted).

at less than fair value. *Fresh Tomatoes from Mexico*, 61 Fed. Reg. 18,377 (Dep't Commerce Apr. 25, 1996) (initiation of antidumping duty investigation). After a preliminary determination from the International Trade Commission ("ITC") in October 1996, Commerce made a preliminary determination that imports of fresh tomatoes from Mexico were being sold in the United States at less than fair value. Compl. ¶ 8; *Fresh Tomatoes from Mexico*, 61 Fed. Reg. 56,608 (Dep't Commerce Nov. 1, 1996) (preliminary determination) (announcing the suspension of liquidation and directing U.S. Customs and Border Protection ("CBP") to require a cash deposit or posting of a bond) ("*1996 Preliminary Determination*"). Commerce also announced that, under U.S.C. § 1673d(a)(2)(A), based upon receiving requests from five of the six mandatory respondents, Commerce postponed making its "final determination until the 135th day after the date of publication of the affirmative preliminary determination in the Federal Register[.]" which was March 16, 1997. *1996 Preliminary Determination*, 61 Fed. Reg. at 56,609.

That same day, Commerce announced that Commerce and certain producers and exporters who accounted for substantially all of the imports of fresh tomatoes from Mexico into signed an agreement to suspend the antidumping duty investigation on fresh tomatoes from Mexico (the 1996 Suspension Agreement). Compl. ¶ 9; *Fresh Tomatoes from Mexico*, 61 Fed. Reg. 56,618 (Dep't Commerce Nov. 1, 1996) (suspension of antidumping investigation).<sup>6</sup>

Over the next 23 years, Commerce and the signatories entered into a series of suspension agreements after the signatory Mexican producers and exporters of fresh tomatoes gave notice that they wanted to withdraw from the operative suspension agreement. The Mexican signatories announced their intent to withdraw from the relevant suspension agreement three times: in 2002, 2007, and 2013. Compl. ¶ 10.<sup>7</sup>

Each time the Mexican signatories announced their withdrawal from the effective suspension agreement, Commerce terminated the

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<sup>6</sup> The term "signatory" or "signatories" appearing throughout the various suspension agreements refers to the "signatory producers/exporters of fresh tomatoes from Mexico." *2019 Suspension Agreement*, 84 Fed. Reg. at 49,989; *2013 Suspension Agreement*, 78 Fed. Reg. at 14,968; *Fresh Tomatoes from Mexico*, 61 Fed. Reg. at 56,619.

<sup>7</sup> See *Fresh Tomatoes from Mexico*, 67 Fed. Reg. 50,858, 50,858–59 (Dep't Commerce Aug. 6, 2002) (termination of suspension agreement, termination of sunset review, and resumption of antidumping investigation); *Fresh Tomatoes from Mexico*, 73 Fed. Reg. 2887, 2887–88 (Dep't Commerce Jan. 16, 2008) (termination of suspension agreement, termination of sunset review, and resumption of antidumping investigation); *Fresh Tomatoes from Mexico*, 78 Fed. Reg. 14,771, 14,771 (Dep't Commerce Mar. 7, 2013) (termination of suspension agreement, termination of sunset review, and resumption of antidumping investigation).

suspension agreement, resumed the antidumping investigation, suspended liquidation, and instructed CBP to require a cash deposit or bond at the rate set forth in the *1996 Preliminary Determination*. See Compl. ¶ 11; *Fresh Tomatoes from Mexico*, 67 Fed. Reg. at 50,860; *Fresh Tomatoes from Mexico*, 73 Fed. Reg. at 2889; *Fresh Tomatoes from Mexico*, 78 Fed. Reg. at 14,772. Yet, each time the Mexican signatories withdrew, the parties negotiated and entered into a new suspension agreement, and in 2002, 2008, and 2013, new suspension agreements went into effect. Compl. ¶ 12.<sup>8</sup> In those instances, Commerce directed CBP to refund cash deposits collected during the resumption period of the antidumping duty investigation and to release any bonds that were posted. See Def. Br., Exs. 1–3 (CBP Messages). And in each instance, Commerce resumed the antidumping duty investigation in 2002, 2008, and 2013 “as if” Commerce had published the *1996 Preliminary Determination* on the effective date of termination. *Fresh Tomatoes from Mexico*, 67 Fed. Reg. at 50,859–60; *Fresh Tomatoes from Mexico*, 73 Fed. Reg. at 2889; *Fresh Tomatoes from Mexico*, 78 Fed. Reg. at 14,772.<sup>9</sup>

### **B. Commerce Withdraws from the 2013 Suspension Agreement, Continues the Underlying Investigation, and Issues the Final Determination**

Section VI.B of the 2013 Suspension Agreement allowed either party (Commerce or the Mexican signatories) to withdraw from that agreement upon giving 90 days’ written notice. Commerce gave the signatory Mexican tomato growers and exporters notice of intent to withdraw from the 2013 Suspension Agreement on February 6, 2019. Compl. ¶¶ 28–29; *May 2019 Withdrawal Notice*, 84 Fed. Reg. at 20,860 (explaining the history of the proceedings); *Fresh Tomatoes from Mexico*, 84 Fed. Reg. 7872, 7874 (Dep’t Commerce Mar. 5, 2019) (notice of intent to terminate suspension agreement, rescind the sunset and administrative reviews, and resume the antidumping duty investigation). Commerce then withdrew from the 2013 Suspension Agreement, effective May 7, 2019, and continued the underlying antidumping investigation. Compl. ¶¶ 31–32; *May 2019 Withdrawal Notice*, 84 Fed. Reg. at 20,858.

<sup>8</sup> *Fresh Tomatoes from Mexico*, 67 Fed. Reg. 77,044 (Dep’t Commerce Dec. 16, 2002) (suspension of antidumping investigation); *Fresh Tomatoes from Mexico*, 73 Fed. Reg. 4831 (Dep’t Commerce Jan. 28, 2008) (suspension of antidumping investigation); *2013 Suspension Agreement*, 78 Fed. Reg. at 14,967–68.

<sup>9</sup> Commerce indicated each time that the final determination stemming from the continued investigation would be issued within 135 days. *Fresh Tomatoes from Mexico*, 67 Fed. Reg. at 50,859–60; *Fresh Tomatoes from Mexico*, 73 Fed. Reg. at 2889; *2013 Suspension Agreement*, 78 Fed. Reg. at 14,772.

On September 24, 2019, Commerce published a notice in the Federal Register, with an effective date of September 19, 2019, announcing that “Commerce and representatives of the signatory producers/exporters accounting for substantially all imports of fresh tomatoes from Mexico signed” an agreement to suspend the underlying anti-dumping duty investigation. *2019 Suspension Agreement*, 84 Fed. Reg. at 49,989; Compl. ¶ 39. One of the Mexican signatories to the 2019 Suspension Agreement is the Asociación Mexicana de Horticultura Protegida, A.C. (“AMHPAC”). *2019 Suspension Agreement*, 84 Fed. Reg. at 49,994. AMHPAC and the other associations of individual Mexican fresh tomato growers who signed the 2019 Suspension Agreement “certif[ie]d that the members of their organization agree to abide by all terms of the Agreement.” *Id.* Three members of Plaintiff Red Sun Farms consortium of companies, Naturbell SPR DE RL, San Miguel Red Sun Farms SPR DE RL DE CV, and Agricola El Rosal DE, are members of AMHPAC. *See Confederacion de Asociaciones Agricolas del Estado de Sinaloa, A.C. v. United States*, Court No. 19–00203 (“CAADES”), Compl. n.1, ECF No. 14; *id.*, Ex. 1, ECF No. 14–1 (identifying the individual members and associations as signatories to the 2019 Suspension Agreement).<sup>10</sup> No party challenged Commerce’s decision to suspend the investigation. The ITC also announced the suspension of its antidumping investigation as of September 24, 2019. *Fresh Tomatoes from Mexico*, 84 Fed. Reg. 54,639 (Int’l Trade Comm’n Oct. 10, 2019) (suspension of anti-dumping investigation).

After signing the 2019 Suspension Agreement, Commerce received requests under 19 U.S.C. § 1673c(g) to continue the underlying anti-dumping duty investigation. *Fresh Tomatoes from Mexico*, 84 Fed. Reg. at 57,401. Commerce published its final determination in the continued investigation, finding that fresh tomatoes from Mexico were being, or likely to be, sold in the United States at less than fair value on October 25, 2019. *Fresh Tomatoes from Mexico*, 84 Fed. Reg. at 57,401. The ITC issued an affirmative injury determination on December 12, 2019. Compl. ¶ 40; *Fresh Tomatoes from Mexico*, 84 Fed. Reg. 67,958 (Int’l Trade Comm’n Dec. 12, 2019) (notice of material injury determination).

### C. The Current Litigation

The court previously granted Plaintiffs leave to file a supplemental complaint but deferred ruling on whether Plaintiffs’ claims were

<sup>10</sup> Section II.E of the 2019 Suspension Agreement identifies CAADES, AMHPAC, and three other entities as “a Mexican grower association whose members produce and/or export Fresh Tomatoes from Mexico and are also Signatories to this Agreement[.]” *2019 Suspension Agreement*, 84 Fed. Reg. at 49,990



moot. Order, ECF No. 51. Plaintiffs allege that Commerce acted beyond its legal authority when Commerce: (1) terminated the 2013 Suspension Agreement, Compl. ¶¶ 41–46 (Count 1); (2) used May 7, 2019 as the preliminary determination date in its continued investigation, *id.* ¶¶ 47–54 (Count 2); and (3) negotiated revised terms in the 2019 Suspension Agreement, *id.* ¶¶ 55–58 (Count 3). As relief, Plaintiffs request, among other things, that the court (1) “[h]old that Commerce’s unilateral expansion of its statutory authority under Section VI.B of the 2013 Suspension Agreement is unlawful[]” and (2) “[s]et aside Commerce’s withdrawal from the 2013 [Suspension] Agreement and subsequent agency actions, and reinstate the 2013 [Suspension] Agreement.” *Id.*, Prayer for Relief ¶¶ A, B.

## II. DISCUSSION

Article III of the Constitution limits federal courts to hearing actual, ongoing controversies. *Davis v. FEC*, 554 U.S. 724, 732 (2008). An actual case or controversy must be extant at all stages of review, not merely at the time the complaint is filed. *Id.* at 732–33; see *DaimlerChrysler Corp. v. United States*, 442 F.3d 1313, 1318 (Fed. Cir. 2006) (noting that the Court is “presumed to be without jurisdiction unless the contrary appears affirmatively from the record” (internal quotation marks and citations omitted)). “Though justiciability has no precise definition or scope, doctrines of standing, mootness, ripeness, and political question are within its ambit.” *Fisher v. United States*, 402 F.3d 1167, 1176 (Fed. Cir. 2005).

The party invoking jurisdiction bears the burden of establishing it. *Hutchinson Quality Furniture, Inc. v. United States*, 827 F.3d 1355, 1359 (Fed. Cir. 2016) (internal quotation marks and citation omitted). A plaintiff must allege sufficient facts to state each claim alleged in the complaint. *DaimlerChrysler Corp.*, 442 F.3d at 1318–19 (citing, *inter alia*, *McNutt v. Gen. Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936)). “If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.” USCIT R. 12(h)(3).

Defendant contends that Plaintiffs’ claims alleged in the Complaint were rendered moot when companies that comprise “Red Sun Farms,” a named plaintiff in this action, signed the 2019 Suspension Agreement as members of AMHPAC. Def. Br. at 15–17; Def. Reply at 5–6.<sup>11</sup> Defendant also argues that the court is precluded from entertaining

<sup>11</sup> Plaintiffs call Defendant’s description of the apparent relationship among the entities comprising Plaintiffs as “grossly inadequate” and assert that “[n]one of the plaintiffs in this action are signatories to the 2019 Suspension Agreement . . . [and that] Plaintiffs to this action are separately-owned, privately-held legal entities who are related in a corporate context through investment and cross ownership.” Opp’n Br. at 3. Yet, Commerce rejected

the claims because the court cannot provide the relief requested in the form of reinstating the prior 2013 Suspension Agreement. Def. Br. at 15.

Plaintiffs respond that the controversy remains live and the court can adjudicate the claims because “all three counts in [the Complaint: Commerce’s withdrawal from the 2013 Suspension Agreement, continuation of the antidumping duty investigation, and negotiation of the 2019 Suspension Agreement] raise pure questions of law on undisputed facts,” in that the claims contest “the agency discretion of Commerce’s actions.” Opp’n Br. at 1, 15.

There is no “case or controversy” under Article III, and a suit becomes moot, “when the issues presented are no longer ‘live’ or the parties lack a legally cognizable interest in the outcome.” *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013) (quoting *Murphy v. Hunt*, 455 U.S. 478, 481 (1982) (per curiam)). The mootness doctrine applies when “events have so transpired that the [court’s] decision will neither presently affect the parties’ rights nor have a more-than-speculative chance of affecting them in the future.” *Clarke v. United States*, 915 F.2d 699, 701 (D.C. Cir. 1990) (en banc) (citation omitted).

An action can avoid dismissal on mootness grounds if the claims asserted in the complaint are “capable of repetition, yet evading review.” *Spencer v. Kemna*, 523 U.S. 1, 17 (1998); *Torrington Co. v. United States*, 44 F.3d 1572, 1577 (Fed. Cir. 1995) (citations omitted). “[T]he capable-of-repetition doctrine applies only in exceptional situations,” when a plaintiff can show that “(1) the challenged action [is] in its duration too short to be fully litigated prior to cessation or expiration, and (2) there [is] a reasonable expectation that the same complaining party [will] be subject to the same action again.” *Spencer*, 523 U.S. at 17 (internal quotation marks and citations omitted); see *Honeywell Int’l, Inc. v. Nuclear Regulatory Comm’n*, 628 F.3d 568, 576 (D.C. Cir. 2010) (“The initial heavy burden of establishing mootness lies with the party asserting a case is moot,” yet “the opposing party bears the burden of showing an exception applies[.]”). Supreme Court precedent recognizes that “inherently transitory” claims are capable of evading review. *U.S. Parole Comm’n v. Geraghty*, 445 U.S. 388, 399 (1980); e.g., *Davis*, 554 U.S. at 735 (election law challenge); *Neb. Press Ass’n v. Stuart*, 427 U.S. 539, 542 (1976) (imposing prior restraints on speech); *Gerstein v. Pugh*, 420 U.S. 103, 110 n.11 (1975) (pretrial detention conditions).

Plaintiffs’ request to be treated as a single exporter (“collapsed entity”) comprised of various entities during the underlying “proceeding as an interested party standing in the shoes of an importer and domestic producer.” *Id.* at 4. Nevertheless, Plaintiffs admit that they “participated in the underlying proceeding from the position of its U.S. interests. . . . [and] with Red Sun [Farm]’s affiliated Mexican producers and their interests[.]” *Id.* at 15.

Here, Plaintiffs' response against mootness asserts that the claims raise pure questions of law and ignores the fact that the finalization of the 2019 Suspension Agreement rendered Plaintiffs' claims moot. Compl. ¶¶ 41–58; see *Confederación de Asociaciones Agrícolas del Estado de Sinaloa, A.C. v. United States*, 44 CIT \_\_\_, \_\_\_, 2020 WL 3791640, at \*6–8 (CIT July 7, 2020) (finding that the plaintiff Mexican tomato growers' claims, and relief requested, challenging Commerce's withdrawal from and termination of the 2013 Suspension Agreement, resumption of the underlying investigation, finalization of the 2019 Suspension Agreement, and the final determination, became moot when the Mexican tomato growers voluntarily signed the 2019 Suspension Agreement that superseded the 2013 Suspension Agreement). Plaintiffs contest Commerce's withdrawal from the 2013 Suspension Agreement, yet its affiliated entities and companies within Plaintiff "Red Sun Farms" are members of AMHPAC—a signatory to the 2019 Suspension Agreement. Plaintiffs admit that they represented themselves before Commerce, together with "three supplier farms," Opp'n Br. at 4, as "an integrated North American producer of fresh tomatoes in Mexico and in the United States, and as a U.S. wholesaler of domestic like product as well as an importer of Mexican tomatoes," *id.* at 13. Thus, Plaintiffs cannot ask this court to reinstate the 2013 Suspension Agreement when companies doing business as Plaintiff "Red Sun Farms" signed the 2019 Suspension Agreement, a new agreement that superseded the prior 2013 Suspension Agreement. See also *Pub. Utils. Comm'n v. FERC*, 236 F.3d 708, 714 (D.C. Cir. 2001) ("Ordinarily, it would seem readily apparent that a challenge to an expired contract is moot, because the court could provide no relief to the allegedly aggrieved parties.").

As in *CAADES*, Plaintiffs here cannot seek to reinstate the 2013 Suspension Agreement while at the same time enjoy the benefits of the 2019 Suspension Agreement that its otherwise "integrated" companies signed as members of AMHPAC. Further supporting the court's conclusion that the claims are moot is the absence of precedent showing instances when the Court has reinstated a prior suspension agreement that was either (1) superseded by a new agreement or (2) entered after Commerce or the ITC made a final determination.<sup>12</sup>

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<sup>12</sup> This case differs from this Court's decisions in *CSC Sugar LLC v. United States*, 43 CIT \_\_\_, 413 F. Supp. 3d 1318 (2019), and *CSC Sugar LLC v. United States*, 43 CIT \_\_\_, 413 F. Supp. 3d 1310 (2019). In the *CSC Sugar LLC* cases, the Court vacated amendments to extant suspension agreements, but did not restore the suspension agreement that was terminated and then superseded by a new agreement agreed to by the parties. 413 F. Supp. 3d at 1326; 413 F. Supp. 3d at 1318.

Plaintiffs' current remedy may be to walk away from the 2019 Suspension Agreement, as the signatories are free to withdraw from that agreement for any reason, or for no reason at all, and without penalty, under a similar provision invoked three times before. *2019 Suspension Agreement*, 84 Fed. Reg. at 49,994 ("An individual Signatory, or Signatories, collectively, or Commerce may withdraw from this Agreement upon 90 days' written notice to Commerce or the Signatories, respectively."). In that event, Commerce will issue an antidumping order when the 2019 Suspension Agreement is terminated, but there is no logical scenario in which the court would reinstate the now-superseded 2013 Suspension Agreement. *See Natatka v. Delta Sci. Corp.*, 58 F.3d 1578, 1580 (Fed. Cir. 1995) ("The test for mootness . . . is whether the relief sought would, if granted, make a difference to the legal interests of the parties[.]" (citation omitted)).<sup>13</sup> The court thus concludes that the claims alleged in the Complaint and relief sought from the court became moot when Plaintiffs' otherwise "integrated" companies signed the 2019 Suspension Agreement through membership in AMHPAC.<sup>14</sup>

### III. CONCLUSION

For the foregoing reasons, it is

**ORDERED** that Plaintiffs' motion to file a sur-reply is granted and Plaintiffs' Sur-Reply is deemed filed; and it is further

**ORDERED** that Defendant's motion to dismiss is granted and Plaintiffs' Complaint is dismissed with prejudice. Judgment will enter accordingly.

Dated: September 11, 2020  
New York, New York

*/s/ Jennifer Choe-Groves*  
JENNIFER CHOE-GROVES, JUDGE

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<sup>13</sup> Plaintiffs did not carry their burden in advancing arguments as to whether the claims here represent an "exceptional situation" in which the challenged actions are "capable of repetition, yet evading review." *Spencer*, 523 U.S. at 17. The court thus need not opine on the applicability of a mootness exception beyond mentioning that this Court has rejected a plaintiff's argument that the "capable of repetition, yet evading review" exception applied as to a suspension agreement. *Am. Spring Wire Corp. v. United States*, 6 CIT 122, 124 (1983) (finding exception to mootness inapplicable because "[s]uspension agreements . . . will generally be of long duration").

<sup>14</sup> Because Plaintiffs' claims are moot, the court need not discuss whether Plaintiffs' claims could have been brought under 28 U.S.C. § 1581(c) or whether Plaintiffs' claims should be dismissed for failure to state a claim under USCIT Rule 12(b)(6).

## Slip Op. 20–134

CANADIAN SOLAR INTERNATIONAL LIMITED et al., Plaintiffs and Consolidated Plaintiffs, and SHANGHAI BYD Co., LTD. et al., Plaintiff-Intervenors and Consolidated Plaintiff-Intervenors, v. UNITED STATES, Defendant, and SOLARWORLD AMERICAS, INC. et al., Defendant-Intervenor and Consolidated Defendant-Intervenors.

Before: Claire R. Kelly, Judge  
Consol. Court No. 17–00173

[Granting Plaintiffs' motion for reconsideration.]

Dated: September 14, 2020

*Craig A. Lewis, Jonathan T. Stoel, and Lindsay K. Brown*, Hogan Lovells US LLP, of Washington, DC, for Canadian Solar International Limited; Canadian Solar Manufacturing (Changshu), Inc.; Canadian Solar Manufacturing (Luoyang), Inc.; CSI Solar Power (China) Inc.; CSI-GCL Solar Manufacturing (YanCheng) Co., Ltd.; CSI Cells Co., Ltd.; Canadian Solar (USA), Inc.; and Shanghai BYD Co., Ltd.

*Adams Chi-Peng Lee*, Harris Bricken McVay Sliwoski, LLP, of Washington, DC, for Ningbo Qixin Solar Electrical Appliance Co., Ltd.

*Robert George Gosselink, Jarrod Mark Goldfeder, and Jonathan M. Freed*, Trade Pacific, PLLC, of Washington, DC, for Changzhou Trina Solar Energy Co., Ltd.; Trina Solar (Changzhou) Science & Technology Co., Ltd.; Yancheng Trina Solar Energy Technology Co., Ltd.; Changzhou Trina Solar Yabang Energy Co., Ltd.; Turpan Trina Solar Energy Co., Ltd.; Hubei Trina Solar Energy Co., Ltd.; and Trina Solar (U.S.) Inc.

*Richard L.A. Weiner, Rajib Pal, Shawn M. Higgins, and Justin R. Becker*, Sidley Austin, LLP, of Washington, DC, for Yingli Green Energy Holding, Co., Ltd.; Baoding Tianwei Yingli New Energy Resources Co., Ltd.; Tianjin Yingli New Energy Resources Co., Ltd.; Hengshui Yingli New Energy Resources Co., Ltd.; Lixian Yingli New Energy Resources Co., Ltd.; Baoding Jiasheng Photovoltaic Technology Co., Ltd.; Beijing Tianneng Yingli New Energy Resources Co., Ltd.; Hainan Yingli New Energy Resources Co., Ltd.; Shenzhen Yingli New Energy Resources Co., Ltd.; Yingli Green Energy International Trading Co., Ltd.; Yingli Green Energy Americas, Inc.; and Yingli Energy (China) Co., Ltd.

*Timothy C. Brightbill Cynthia Cristina Galvez, Laura El-Sabaawi, Maureen Elizabeth Thorson, Stephanie Manaker Bell, and Tessa Victoria Capeloto*, Wiley Rein LLP, of Washington, DC, for SolarWorld Americas, Inc.

*Joshua E. Kurland*, Trial Attorney, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of Washington, DC, for defendant. Also on the brief were *Ethan P. Davis*, Acting Assistant Attorney General, *Jeanne E. Davidson*, Director, and *Reginald T. Blades, Jr.*, Assistant Director. Of counsel on the brief was *Ian McInerney*, Office of the Chief Counsel for Trade Enforcement and Compliance, U.S. Department of Commerce, of Washington, DC.

### OPINION AND ORDER

#### Kelly, Judge:

Plaintiffs Canadian Solar International Limited; Canadian Solar (USA), Inc.; Canadian Solar Manufacturing (Changshu), Inc.; Canadian Solar Manufacturing (Luoyang), Inc.; CSI Cells Co., Ltd.; CSI-GCL Solar Manufacturing (YanCheng) Co., Ltd.; and CSI Solar Power (China) Inc. (collectively, “Plaintiffs” or “Canadian Solar”) move for

reconsideration of *Canadian Solar Int'l Ltd. v. United States*, 44 CIT \_\_\_, Slip Op. 20–83 (June 15, 2020) (“*Canadian Solar III*”) in light of the Court of Appeals for the Federal Circuit’s (“Court of Appeals”) intervening decision in *SolarWorld Americas, Inc. v. United States*, 962 F.3d 1351 (Fed. Cir. 2020) (“*SolarWorld*”). See [Pls.’] Mot. for Reconsideration & Memo. Supp. 59(e) Mot. for Reconsideration or 60(b) Mot. for Relief from Judgment, July 14, 2020, ECF No. 160 (“Pls.’ Mot.” and “Pls.’ Br.”, respectively). Defendant does not object to the motion. See Def.’s Resp. [Pls.’ Mot.] at 1, Aug. 14, 2020, ECF No. 166 (“Def.’s Resp. Br.”). For the following reasons, the court grants Canadian Solar’s motion for reconsideration.

The court presumes familiarity with the facts of this case as set out in its previous opinions ordering remand to the U.S. Department of Commerce (“Commerce”), and recounts those relevant to disposition of this motion. See *Canadian Solar Int'l Ltd. v. United States*, 43 CIT \_\_\_, \_\_\_, 378 F. Supp. 3d 1292, 1298–1300 (2019) (“*Canadian Solar I*”); see also *Canadian Solar Int'l Ltd. v. United States*, 43 CIT \_\_\_, 415 F. Supp. 3d 1326, 1329–31 (2019). On June 27, 2017, Commerce published its final determination in its third administrative review of the antidumping duty (“ADD”) order on crystalline silicon photovoltaic products, whether or not assembled into modules, from the People’s Republic of China (“China” or “the PRC”). See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People’s Republic of China*, 82 Fed. Reg. 29,033 (Dep’t Commerce June 27, 2017) (final results of [ADD] admin. review and final determination of no shipments; 2014–2015) (“*Final Results*”) and accompanying Issues and Decision Memorandum for the Final Results of the 2014–2015 [ADD] Administrative Review of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, From [the PRC], A-570–979, (June 20, 2017), ECF No. 44–5 (“Final Decision Memo”).

Plaintiffs challenged the *Final Results*, submitting, inter alia, that Commerce’s decision to use Thai import data published by the Global Trade Atlas (“Thai import data”) to value Canadian Solar’s nitrogen input was unsupported by substantial evidence because the data was aberrational and unreliable. See *Canadian Solar I*, 43 CIT at \_\_\_, 378 F. Supp. 3d at 1310. The court disagreed, sustaining Commerce’s use of the Thai import data, but remanding the *Final Results* on separate grounds. *Id.* at \_\_\_, 378 F. Supp. 3d at 1325. On June 15, 2020, the court sustained Commerce’s second remand redetermination, and judgment entered accordingly. See generally *Canadian Solar III*, 44 CIT \_\_\_, Slip Op. 20–83; Judgment, June 15, 2020 ECF No. 158.

On June 24, 2020, the Court of Appeals issued *SolarWorld*, where it held that Commerce failed to sufficiently justify its reliance on Thai import data to value Changzhou Trina Solar Energy Co., Ltd.’s (“Trina”) nitrogen input in the previous administrative review of the same ADD order, and vacated in part this Court’s judgment sustaining Commerce’s final determination. *See SolarWorld*, 962 F.3d at 1356–59. Plaintiffs’ motion for reconsideration ensued.

## JURISDICTION AND STANDARD OF REVIEW

This court has jurisdiction pursuant to Section 516 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1516a(a)(2)(B)(iii) (2012)<sup>1</sup> and 28 U.S.C. § 1581(c), which grant the court authority to review actions contesting the final determination in an administrative review of an ADD order.

Under U.S. Court of International Trade Rule 1 and Rule 59, the decision to grant a motion for reconsideration rests within the sound discretion of the court. *See Yuba Natural Res., Inc. v. United States*, 904 F.2d 1577, 1583 (Fed. Cir. 1990). Grounds for granting such a motion include “an intervening change in the controlling law, the availability of new evidence, the need to correct a clear factual or legal error, or the need to prevent manifest injustice.” *Ford Motor Co. v. United States*, 30 CIT 1587, 1588 (2006); *see also Nan Ya Plastics Corp., Am. v. U.S.*, 37 CIT, 670, 671, 916 F. Supp. 2d 1376, 1378 (2013) (“*Nan Ya Plastics*”).

## DISCUSSION

Canadian Solar submits that the Court of Appeals’ decision in *SolarWorld* constitutes binding, intervening authority that clarifies legal principles directly relevant to this court’s decision to sustain Commerce’s reliance on Thai import data to value its nitrogen inputs as supported by substantial evidence in this review. *See* Pls.’ Br. at 7–14; *see also SolarWorld*, 962 F.3d at 1356–59; *Canadian Solar I*, 43 CIT at \_\_\_, 378 F. Supp. 3d at 1310–13. Defendant does not object to Plaintiffs’ motion, *see* Def.’s Resp. Br. at 1, albeit with two qualifications. First, Defendant urges that any remand to Commerce be consistent with the Court of Appeals’ instruction that Commerce “either adequately explain why the Thai (Global Trade Atlas) data is not aberrational” or “adopt an alternative surrogate value for Trina’s nitrogen input.” Def.’s Resp. Br. at 2 (quoting *SolarWorld*, 962 F.3d at 1358–59). Second, Defendant submits that the court “should not require recalculation of rates for parties other than those challenging

<sup>1</sup> 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.

their rates in this litigation.” *Id.* (citations omitted). Canadian Solar concurs with Defendant’s requests. *See* Pls.’ Reply to [Def.’s Resp. Br.] at 2, Aug. 24, 2020, ECF No. 169.

A party may move the court “to correct a significant flaw in the original judgment’ by directing the court to review material points of law or fact previously overlooked[.]” *RHI Refractories Liaoning Co. v. United States*, 35 CIT \_\_, \_\_, 752 F. Supp. 2d 1377, 1380 (2011) (quoting *United States v. UPS Customhouse Brokerage, Inc.*, 34 CIT 745, 748, 714 F. Supp. 2d 1296, 1301 (2010)). “An intervening change in the controlling law is one of the recognized grounds upon which motions for rehearing have been granted.” *Nan Ya Plastics*, 37 CIT at 671, 916 F. Supp. 2d at 1378.

Reconsideration is necessary in this instance because *SolarWorld* constitutes an intervening change in controlling law that relates to whether Commerce’s determination was supported by substantial evidence. Although the court in *Canadian Solar I* held that Commerce reasonably explained why the Thai import data was reliable for purposes of valuing Canadian Solar’s nitrogen input, *see* 43 CIT at \_\_, 378 F. Supp. 3d at 1310–13, the Court of Appeals in *SolarWorld* held that Commerce’s reliance on Thai import data in the previous administrative review was insufficiently justified, and that it appeared to be contrary to agency practice. *See* 962 F.3d at 1357–59. The Court of Appeals’ holding implicates this court’s holding in *Canadian Solar I*, and although it may not necessarily require Canadian Solar’s success on the merits, further hearing on the matter is necessary to avoid manifest error. *See, e.g., Nan Ya Plastics*, 37 CIT at 671–73, F. Supp. 2d at 1378–80 (“In deciding to vacate the judgment . . . we do not decide that there necessarily is merit in plaintiff’s statutory claims.”). Namely, the Court of Appeals questioned Commerce’s practice of determining whether the Thai import data was aberrational, likening it to a bookend methodology that unreasonably fails to account for considerable differences in import volume between surrogate countries. *See SolarWorld*, 962 F.3d at 1357–59. Moreover, the Court of Appeals questioned Commerce’s refusal to consider the U.S. International Trade Commission’s export data relating to the same imports reported in the Global Trade Atlas data, noting significant disparities between the two sources, and holding that Commerce’s cited regulatory preference not to rely on export data does not sufficiently address the fact that both sources cannot be correct. *See id.* As such, the court reconsiders its holding that Commerce’s reliance on Thai import data is reasonable in light of the law as clarified by the



Court of Appeals and remands the determination for further explanation or reconsideration of Commerce’s selection of the Thai import data.

Regarding calculation of the separate rates, 19 U.S.C. § 1675(a)(2)(C) provides that the determination resulting from administrative review of an ADD order “shall be the basis for the assessment . . . of antidumping duties on entries of merchandise covered by the determination and for deposits of estimated duties.” Notwithstanding Defendant and Canadian Solar’s agreement that the court need not instruct Commerce to recalculate the rates of parties not subject to this litigation, Commerce shall conduct its remand redetermination in accordance with § 1675(a)(2)(C), and shall explain the lawfulness of the separate rates resulting from any changes to its methodology on remand.

### CONCLUSION

For the foregoing reasons, it is

**ORDERED** that Plaintiffs’ motion is granted; and it is further

**ORDERED** that the court’s Judgment, *see* ECF No. 158, sustaining Commerce’s second remand redetermination with respect to its third administrative review of the antidumping duty order covering crystalline silicon photovoltaic cells, whether or not assembled into modules, from the people’s republic of china, *see* 82 Fed. Reg. 29,033 (Dep’t Commerce June 27, 2017) (final results of [ADD] review and final determination of no shipments; 2014–2015) is vacated; and it is further

**ORDERED** that, consistent with the Court of Appeals’ instruction in *SolarWorld Americas, Inc. v. United States*, 962 F.3d 1351 (Fed. Cir. 2020), the case is remanded for Commerce to “either adequately explain why the Thai {Global Trade Atlas} data is not aberrational” or “adopt an alternative surrogate value for [Canadian Solar’s] nitrogen input”; and it is further

**ORDERED** that Commerce shall recalculate Canadian Solar’s dumping margin to reflect any changes to its selection of a surrogate value for Canadian Solar’s nitrogen factor of production and make any other recalculations as required by law; and it is further

**ORDERED** that Commerce shall recalculate the separate rates to the extent required by law and explain its determination; and it is further

**ORDERED** that Commerce shall file its third remand redetermination with the court within 60 days of this date; and it is further

**ORDERED** that the parties shall have 30 days thereafter to file comments; and it is further

**ORDERED** that the parties shall have 30 days thereafter to file replies to comments on the remand redetermination; and it is further

**ORDERED** that the parties shall have 14 days thereafter to file the Joint Appendix; and it is further

**ORDERED** that Commerce shall file the administrative record within 14 days of the date of filing of its remand redetermination.

Dated: September 14, 2020

New York, New York

*/s/ Claire R. Kelly*

CLAIRE R. KELLY, JUDGE

## Slip Op. 20–136

TRANSPACIFIC STEEL LLC, Plaintiff, and BORUSAN MANNESMANN BORU SANAYI TICARET A.Ş. et al., Plaintiff-Intervenors, v. UNITED STATES et al., Defendants.

Before: Claire R. Kelly, Gary S. Katzmann, and Jane A. Restani, Judges  
Court No. 19–00009

[Denying Defendants’ motion to stay enforcement of the court’s judgment. Denying Plaintiff and Plaintiff-Intervenors’ motion to enforce the court’s judgment.]

Dated: September 15, 2020

*Matthew M. Nolan, Nancy A. Noonan, Russell A. Semmel, Diana Dimitriuc-Quaia, Jason Rotstein, Leah Scarpelli, and Aman Kakar, Arent Fox LLP, of Washington, DC, for plaintiff Transpacific Steel LLC.*

*Julie C. Mendoza, Brady W. Mills, Donald B. Cameron, Edward J. Thomas, Mary S. Hodgins, and Rudi W. Planert, Morris, Manning, & Martin, LLP, of Washington, DC, for plaintiff-intervenor Borusan Mannesmann Boru Sanayi ve Ticaret A.S., et. al.*

*Lewis E. Leibowitz, The Law Office of Lewis E. Leibowitz, of Washington, DC, for plaintiff-intervenor The Jordan International Company.*

*Tara K. Hogan, Assistant Director, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of Washington, DC, and Meen Geu Oh, Trial Attorney, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of Washington, DC, for defendants. Also on the briefs were Stephen C. Tosini, Senior Trial Counsel, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of Washington, DC, Ethan P. Davis, Acting Assistant Attorney General, Jeffrey Bossert Clark, Acting Assistant Attorney General, Jeanne E. Davidson, Director, and Aimee Lee, Assistant Director.*

### MEMORANDUM AND ORDER

#### Kelly, Judge:

Defendants move for a stay of enforcement of the court’s judgment in *Transpacific Steel LLC v. United States* pending appeal to the Court of Appeals for the Federal Circuit (“Court of Appeals”). See Mot. for a Stay of Enforcement Pending Appeal, Aug. 13, 2020, ECF No. 68 (“Defs.’ Mot.”); *Transpacific Steel LLC v. United States*, 44 CIT \_\_, Slip Op. 20–98 (July 14, 2020) (“*Transpacific IP*”); Notice of Appeal, Aug. 13, 2020, ECF No. 67 (“Notice of Appeal”); see also Judgment, July 14, 2020, ECF No. 66 (“Judgment”). Plaintiff Transpacific Steel LLC (“Transpacific”), as well as Plaintiff-Intervenors Borusan Mannesmann Boru Sanayi ve Ticaret A.Ş. Borusan Mannesmann Pipe U.S. Inc. (“BMP”), and The Jordan International Company (“Jordan”) (collectively, “Plaintiffs”) oppose, and, contingent upon the court’s denial of Defendants’ motion, move for enforcement of the court’s judgment. See Pl. [Transpacific] & Pl.-Intervenors [BMB] et al.’s Resp. [Defs.’

Mot.] Aug. 19, 2020, ECF No. 71 (“Pls.’ Resp. Br.”);<sup>1</sup> [Pls.’] Mot. to Order Defs.’ to Provide Status Report & Timeline on Refund of Unlawfully Collected Section 232 Tariffs, Aug. 21, 2020, ECF No. 74 (“Pls.’ Mot. for Status Report & Timeline”). Plaintiffs specifically request that the court order Defendants to provide a status report and timeline on the refund of unlawfully collected Section 232 tariffs. *See generally* Pls.’ Mot. for Status Report & Timeline at 3. For the following reasons, the court denies Defendants’ motion to stay enforcement of the court’s judgment pending appeal of *Transpacific II* to the Court of Appeals and denies Plaintiffs’ motion to enforce judgment. However, the court *sua sponte* enjoins liquidation of all subject entries pending final and conclusive disposition of *Transpacific II*, including all appeals.

## BACKGROUND

The court presumes familiarity with the facts of this case, as set out in its recent opinion, *see Transpacific II*, 44 CIT at \_\_, Slip Op. 20–98 at 3–5, and now recounts the facts relevant to the disposition of Defendants’ motion. On January 21, 2020, Plaintiffs jointly moved for judgment on the agency record to challenge the lawfulness of Proclamation 9772, which imposed additional duties on certain steel imports from Turkey. *See* Pl. [Transpacific] & Pl.-Intervenors [BMB], et al.’s 56.1 Mot. J. Agency R., Jan. 21, 2020, ECF No. 51; *see also Proclamation 9772 of August 10, 2018*, 83 Fed. Reg. 40,429 (Aug. 15, 2018) (“*Proclamation 9772*”). On July 14, 2020, the court granted Plaintiffs’ motion, holding that, in issuing Proclamation 9772, the President exceeded his statutory authority and violated Plaintiffs’ Fifth Amendment guarantees. *See Transpacific II*, 44 CIT at \_\_, Slip Op. 20–98 at 6–22. The court thus granted Plaintiffs’ requested relief and instructed U.S. Customs and Border Protection to issue to Plaintiffs a refund of the difference between any tariffs collected on imports of steel articles pursuant Proclamation 9772 and the 25 percent ad valorem tariff that would otherwise apply. *See generally* Judgment; *see also* [Transpacific’s] Am. Compl. at Prayer for Relief, Apr. 2, 2020, ECF No. 19; [Pl.-Intervenors BMB & BMP’s] Compl. at Prayer for

<sup>1</sup> On August 20, 2020, the court granted Plaintiffs’ consent motion for errata, and deemed the following corrections made to Pls.’ Resp. Br. without physical substitution:

1. Page 12, line 9 – to replace “orders on standard pipe, oil country tubular goods, and rebar,” with “orders on standard pipe and oil country tubular goods, 4”, including the footnote therein, which reads: “As noted in BMB’s and BMP’s complaint, Section 232 duties paid in excess of 25 percent duties equal over \$15 million dollars. *See* BMB & BMP Compl. ¶ 5.”
2. Subsequent footnotes to be re-numbered accordingly.

Relief, Dec. 9, 2019, ECF No. 35–1; [Pl.-Intervenor Jordan’s] Consent Mot. Intervene, Attached Compl. at Prayer for Relief, Dec. 13, 2019, ECF No. 45.

On August 13, 2020, Defendants filed a notice of appeal of *Transpacific II* to the Court of Appeals. *See generally* Notice of Appeal. Shortly thereafter, Defendants moved to stay enforcement of the court’s judgment pending appeal. *See generally* Defs.’ Mot. On August 20, 2020, Plaintiffs submitted their response in opposition to Defendants’ motion, and the following day, filed a motion to enforce judgment, requesting that the court, upon denial of Defendants’ motion, order Defendants to provide a status report and timeline for the government’s refund of unlawfully collected additional tariffs.<sup>2</sup> *See generally* Pls.’ Resp. Br.; Pls.’ Mot. for Status Report & Timeline.

## JURISDICTION AND STANDARD OF REVIEW

The court has jurisdiction under 28 U.S.C. § 1581(i)(2) and (4). Although U.S. Court of International Trade (“USCIT”) Rule 62 recognizes this court’s discretion to stay the enforcement of a judgment pending an appeal, a stay is an “intrusion into the ordinary processes of administration and judicial review” and is therefore “not a matter of right.” *See Nken v. Holder*, 556 U.S. 418, 427 (Fed. Cir. 2009) (“*Nken*”) (citations omitted). Additionally, the court has inherent authority to enforce its own judgments. *See B.F. Goodrich Co. v. United States*, 18 CIT 35, 36, 843 F. Supp. 713, 714 (1994). This authority includes the “power to determine the effect of its judgments and issue injunctions to protect against attempts to attack or evade those judgments.” *United States v. Hanover Ins. Co.*, 82 F.3d 1052, 1054 (Fed. Cir. 1996).

## DISCUSSION

### I. Motion to Stay

When deciding whether to grant a stay, the court considers “(1) whether the stay applicant has made a strong showing that it is likely to succeed on the merits; (2) whether the applicant will be irreparably

<sup>2</sup> Specifically, Plaintiffs request the court instruct the government to:

[E]xplain the refund process in detail and refund collected Section 232 tariffs together with such costs and interest as provided by law expeditiously and provide the Court with the steps it is taking to effectuate the Court’s judgment via a status report and timeline for refunds to be filed within one week of the Court’s decision on Defendants’ motion for a stay. . . [and] to provide the Court with a status report every two weeks after the filing of the first status report along with a final status report once all unlawfully collected tariffs are refunded.

Pls.’ Mot. for Status Report & Timeline at 3.

injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.” *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987). The first two considerations “are the most critical,” and the party requesting a stay bears the burden of showing that the circumstances justify an exercise of the court’s discretion. *See Nken*, 556 U.S. at 433–35 (Fed. Cir. 2009) (citations omitted).

Defendants fail to persuade that they are likely to succeed on the merits. In order for Defendants to prevail, the Court of Appeals would have to overrule both the statutory and the constitutional holdings that the President’s imposition of additional tariffs on certain steel articles from Turkey is unlawful. Defendants claim that the Court of Appeals might disagree with the court’s reasoning, *see* Defs.’ Mot. at 20–26, but point to no intervening authority or evidence that would raise substantial questions as to the propriety of any of the court’s holdings.

Additionally, the balance of harms does not weigh in favor of granting a stay. Defendants speculate about Plaintiffs’ solvency and ability to pay back the refunded duties should the government win on appeal; yet, Defendants acknowledge that they are “unaware of any specific financial circumstances of any of the [Plaintiffs.]” *See* Defs.’ Mot. at 17. As such, Defendants’ claim that they are likely to be irreparably harmed lacks merit.<sup>3</sup> On the other hand, issuing a stay will likely injure Plaintiffs. By staying the refund of unlawfully paid duties, Plaintiffs would suffer the continued denial of access to a substantial amount of capital.

Defendants’ express a concern that the unliquidated entries may liquidate before the Court of Appeals renders its decision. *See* Defs.’ Mot. at 16 n.4 (“Without a stay . . . most, if not all, entries [may liquidate] and become final . . . [and] the recoupment of refunds would require a court order to reliquidate, issue bills, and potentially institute collection actions for unpaid bills if we were to prevail on appeal.”). However, liquidation is already suspended for many of the entries due to ongoing antidumping and countervailing duty proceedings. *See id.*; *see also* Pls.’ Resp. Br. at 11–12. Nonetheless, to alleviate Defendants’ concern that the unliquidated entries may liquidate before the Court of Appeals renders its decision, *see* Defs.’ Mot. at 16 n.4, the court will *sua sponte* order the suspension of liquidation of any unliquidated entries of subject merchandise pending final and conclusive disposition of *Transpacific II*, including all appeals.

<sup>3</sup> For the same reasons, Defendants’ appeal to the public interest is not persuasive. Moreover, Defendants’ argument that denying the stay would undermine the rationale behind the Section 232 not only ignores the court’s holding that the 50 percent tariffs are unlawful, but also that the tariffs have since been rescinded. *See* Defs.’ Mot. at 27–28.

Finally, contrary to Defendants' position, USCIT Rule 62 subsections (d) and (e) do not provide the government an automatic stay of enforcement of the judgment pending appeal. USCIT Rule 62(d) states that an appellant "may obtain a stay by supersedeas bond," and Rule 62(e) states that the court "must not require a bond, obligation, or other security, from the appellant when granting a stay on an appeal by the United States, its officers, or its agencies[.]" The former allows an appellant to obtain a stay of enforcement,<sup>4</sup> and the latter prohibits the court from imposing an obligation on the appellant when granting a stay pending appeal by the government. See USCIT Rule 62 (d), (e). The two provisions on their face do not trigger an automatic stay pending appeal where the appellant is the government, and Defendants do not cite any authority to support their position. See Defs.' Mot. at 14–15, *but see Nken*, 556 U.S. at 433–35 (explaining that a stay is an intrusion into the judicial and administrative process and is therefore not a matter of right).<sup>5</sup> Thus, Defendants' motion for a stay of enforcement of the court's judgment is denied.

## II. Motion to Enforce Judgment

In moving for enforcement of the court's judgment, Plaintiffs essentially urge that the court supervise Defendants' refund process. See Pls.' Mot. for Status Report & Timeline at 1–3. The court grants motions to enforce a judgment "when a prevailing plaintiff demonstrates that a defendant has not complied with a judgment entered against it, even if the noncompliance was due to misinterpretation of the judgment." *GPX Int'l Tire Corp. v. United States*, 39 CIT \_\_\_, \_\_\_, 70 F. Supp. 3d 1266, 1272 (2015) (quoting *Heartland Hosp. v. Thompson*, 328 F. Supp. 2d 8, 11 (D.D.C. 2004)). Plaintiffs fail to so demonstrate. Indeed, as Plaintiffs acknowledge, the court's judgment does not provide a deadline for compliance, and Plaintiffs do not provide

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<sup>4</sup> Defendants appeal to cases interpreting the former Federal Rules of Civil Procedure 62(d) are inapposite. See Defs.' Mot. at 13–15 (citations omitted). Whatever practice courts have adopted with respect to motions to stay enforcement of money judgment where the appellant posts a supersedeas bond, Defendants again cite no authority supporting the contention that the government is entitled to a stay as a matter of right by combined operation of Rules 62(d) and 62(e).

<sup>5</sup> Defendants cite dicta from *American Grape Growers Alliance for Fair Trade* as support for the proposition that the rights of Plaintiffs to the granted judgment may be adequately secured by the inherent and presumed creditworthiness of the government, see Defs.' Mot. at 14–15 (citing *American Grape Growers Alliance for Fair Trade v. United States* 9 CIT 505, 506 (1985) ("*American Grape Growers*")), but whether or not such considerations weigh in favor of granting a stay, Defendants overlook *American Grape Grower's* holding that the wording of USCIT Rule 62(d) itself affords discretion to decide whether to grant a stay. See *American Grape Growers*, 9 CIT at 506.

any reason to doubt that Defendants will promptly comply with the court's judgment should they fail to obtain a stay of enforcement from the Court of Appeals. *See generally* Judgment; *see also* Pls.' Mot. for Status Report & Timeline at 3; Defs.' Resp. to [Pls.' Mot. for Status Report & Timeline] at 2, Sept. 9, 2020, ECF No. 76 (“[S]hould the Court deny our motion, we would likely seek a stay in the appellate court[.]”) (“Defs.’ Resp. Br.”). Further, Defendants note that they have already taken steps to implement the court’s judgment, *see* Defs.’ Resp Br. at 5, and there is no indication that supervising Defendants’ compliance would expedite the refund process. Accordingly, Plaintiffs’ motion to enforce the judgment is denied.

### CONCLUSION

For the foregoing reasons, it is

**ORDERED** that Defendants’ motion is denied; and it is further

**ORDERED** that Plaintiffs’ motion is denied; and it is further

**ORDERED** that Defendant, United States, together with its delegates, officers, agents, and servants, including employees of the U.S. Customs and Border Protection and the U.S. Department of Commerce, is enjoined during the pendency of this litigation, including any appeals, from issuing instructions to liquidate or making or permitting liquidation of any of Plaintiffs’ entries subject to the unlawful 50 percent tariffs imposed on steel articles from Turkey pursuant to Proclamation No. 9772.

Dated: September 15, 2020

New York, New York

*/s/ Claire R. Kelly*

CLAIRE R. KELLY, JUDGE

*/s/ Gary S. Katzmann*

GARY S. KATZMANN, JUDGE

*/s/ Jane A. Restani*

JANE A. RESTANI, JUDGE



# Index

*Customs Bulletin and Decisions*  
*Vol. 54, No. 38, September 30, 2020*

## *U.S. Customs and Border Protection*

### *General Notices*

	<i>Page</i>
Proposed Modification of One Ruling Letter and Proposed Revocation of Treatment Relating to the Tariff Classification of Controllable Shading System . . . . .	1
Proposed Revocation of Two Ruling Letters, Proposed Modification of a Ruling Letter, and Proposed Revocation of Treatment Relating to the Tariff Classification of Digital Blood Pressure Monitors . . . . .	9
Revocation of One Ruling Letter and Revocation of Treatment Relating to the Tariff Classification of Reversible Comforters . . . . .	19
Proposed Revocation of Two Ruling Letters and Proposed Revocation of Treatment Relating to the Tariff Classification of Digital Camera Inspection Systems . . . . .	26
Revocation of Five Ruling Letters and Revocation of Treatment Relating to the Tariff Classification of Insulated Pizza, Grocery and Food Delivery Bags . . . . .	37
Revocation of Two Ruling Letters and Revocation of Treatment Relating to the Tariff Classification of Alloy Steel Pipes . . . . .	45
Modification of One Ruling Letter and Revocation of Treatment Relating to the Tariff Classification of Kluber Microlube GB 0 . . . . .	53
Revocation of Eleven Ruling Letters, Modification of One Ruling Letter and Proposed Revocation of Treatment Relating to the Tariff Classification of Nonwoven Wipes . . . . .	58
Copyright, Trademark, and Trade Name Recordations(No. 8 2020) . . . . .	67
Notification of Termination of Arrival Restrictions Applicable to Flights Carrying Persons Who Have Recently Traveled From or Were Otherwise Present Within Certain Countries . . . . .	79

## *U.S. Court of International Trade* Slip Opinions

	Slip Op. No.	Page
Bioparques de Occidente, S.A. de C.V., Agricola La Primavera, S.A. de C.V., and Kaliroy Fresh LLC, Plaintiffs, v. United States, Defendant, and The Florida Tomato Exchange, Defendant-Intervenor. . . . .	20-132	85
Jem D International (Michigan) Inc. USA, Jem D Marketing (Virginia) Inc., Red Sun Farms Holdings USA LLC, and Red Sun Farms Virginia LLC, Plaintiffs, v. United States, Defendant, and The Florida Tomato Exchange, Defendant-Intervenor. . . . .	20-133	94
Canadian Solar International Limited et al., Plaintiffs and Consolidated Plaintiffs, and Shanghai BYD Co., Ltd. et al., Plaintiff-Intervenors and Consolidated Plaintiff-Intervenors, v. United States, Defendant, and Solarworld Americas, Inc. et al., Defendant-Intervenor and Consolidated Defendant-Intervenors. . . . .	20-134	103
Transpacific Steel LLC, Plaintiff, and Borusan Mannesmann Boru Sanayi Ticaret A.Ş. et al., Plaintiff-Intervenors, v. United States et al., Defendants. . . . .	20-136	109