

U.S. Customs and Border Protection



DEPARTMENT OF THE TREASURY

19 CFR PART 12

CBP DEC. 21-09

IMPORT RESTRICTIONS IMPOSED ON CATEGORIES OF ARCHAEOLOGICAL AND ETHNOLOGICAL MATERIAL OF TURKEY

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

ACTION: Final rule.

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

DATES: Effective on June 16, 2021.

FOR FURTHER INFORMATION CONTACT: For legal aspects, Lisa L. Burley, Chief, Cargo Security, Carriers and Restricted Merchandise Branch, Regulations and Rulings, Office of Trade, (202) 325-0300, *ot-otrrculturalproperty@cbp.dhs.gov*. For operational aspects, Pinky Khan, Branch Chief, Commercial Targeting and Analysis Center, Trade Policy and Programs, Office of Trade, (202) 325-3839, *CTAC@cbp.dhs.gov*.

SUPPLEMENTARY INFORMATION:

Background

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

Determinations

Under 19 U.S.C. 2602(a)(1), the United States must make certain determinations before entering into an agreement to impose import restrictions under 19 U.S.C. 2602(a)(2). On March 27, 2020, the Assistant Secretary for Educational and Cultural Affairs, United States Department of State, after consultation with and recommendation by the Cultural Property Advisory Committee, made the determinations required under the statute with respect to certain archaeological and ethnological material originating in Turkey that is described in the Designated List set forth below in this document.

These determinations include the following: (1) That the cultural patrimony of Turkey is in jeopardy from the pillage of archaeological material representing Turkey’s cultural heritage dating from approximately 1.2 million years ago to A.D. 1770, and ethnological material dating from approximately the 1st century A.D. to A.D. 1923; (2) that the Turkish government has taken measures consistent with the Convention to protect its cultural patrimony (19 U.S.C. 2602(a)(1)(B)); (3) that import restrictions imposed by the United States would be of substantial benefit in deterring a serious situation of pillage and remedies less drastic are not available (19 U.S.C. 2602(a)(1)(C)); and (4) that the application of import restrictions as set forth in this final rule is consistent with the general interests of the international community in the interchange of cultural property among nations for scientific, cultural, and educational purposes (19 U.S.C. 2602(a)(1)(D)). The Assistant Secretary also found that the

material described in the determinations meets the statutory definition of “archaeological or ethnological material of the State Party” (19 U.S.C. 2601(2)).

The Agreement

On January 19, 2021, the United States and Turkey signed a bilateral agreement, “Memorandum of Understanding between the Government of the United States of America and the Government of the Republic of Turkey Concerning the Imposition of Import Restrictions on Categories of Archaeological and Ethnological Material of Turkey” (“the Agreement”), pursuant to the provisions of 19 U.S.C. 2602(a)(2). The Agreement entered into force on March 24, 2021, upon the exchange of diplomatic notes, and enables the promulgation of import restrictions on categories of archaeological material, ranging in date from approximately 1.2 million years ago to A.D. 1770, and ethnological material, ranging in date from the 1st century A.D. to A.D. 1923, representing Turkey’s cultural heritage. A list of the categories of archaeological and ethnological material subject to the import restrictions is set forth later in this document.

Restriction and Amendment to the Regulations

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

Import restrictions listed as 19 CFR 12.104g(a) are effective for no more than five years beginning on the date on which the Agreement enters into force with respect to the United States. This period may be extended for additional periods of not more than five years if it is determined that the factors which justified the Agreement still pertain and no cause for suspension of the Agreement exists. The import restrictions will expire on March 24, 2026, unless extended.

Designated List of Archaeological and Ethnological Material of Turkey

The Agreement between the United States and Turkey includes, but is not limited to, the categories of objects described in the Designated List set forth below. Importation of material on this list is

restricted unless the material is accompanied by documentation certifying that the material left Turkey legally and not in violation of the export laws of Turkey.

The Designated List includes archaeological material from Turkey ranging in date from approximately 1.2 million years ago to A.D. 1770, and ethnological material from Turkey from the 1st century A.D. to the end of the Ottoman Empire with the foundation of the Republic of Turkey in A.D. 1923.

Categories of Archaeological and Ethnological Material

I. Archaeological Material

- A. Stone
- B. Metal
- C. Ceramic, Terracotta, and Faience
- D. Bone, Ivory, and Other Organic Material
- E. Wood
- F. Glass
- G. Plaster and Stucco
- H. Textile
- I. Leather, Parchment, and Paper
- J. Rock Art, Paintings, and Drawings
- K. Mosaics

II. Ethnological Material

- A. Architectural Elements
- B. Funerary Objects
- C. Ritual and Ceremonial Objects
- D. Paintings
- E. Written Records
- F. Military Material

I. Archaeological Material

Archaeological material covered by the Agreement includes material from Turkey ranging in date from approximately 1,200,000 B.C. to A.D. 1770. Examples of archaeological material covered by the agreement include, but are not limited to, the following objects:

Simplified Chronology

Paleolithic: c. 1,200,000–10,000 B.C.

Neolithic: c. 10,000–5500 B.C.

Chalcolithic: c. 5500–3200 B.C.

Bronze Age: 3200–1200 B.C.

Hattis: 2500–2000 B.C.

Assyrian Trade Colonies: 2000–1750 B.C.

Hittites: 1800–1200 B.C.

Mycenaean: 1600–1200 B.C.

Iron Age: 1200–750 B.C.

Protogeometric and Geometric Periods: 1100–700 B.C.

Phrygians: 1200–680 B.C.

Neo-Hittite City States: 1200–700 B.C.

Urartians: 900–580 B.C.

Orientalizing Period: 750–600 B.C.

Lydians: 700–540 B.C.

Karians and Lykians: 700–300 B.C.

Archaic Period: 650–474 B.C.

Classical Period: 480–330 B.C.

Persian Period: 546–331 B.C.

Macedonian Empire and Hellenistic Period: 334–30 B.C.

Roman Period: 130 B.C.–A.D. 395

Byzantine (Eastern Roman) Period: A.D. 395–1453

Seljukian Period: A.D. 1071–1308

Anatolian Beyliks Period: A.D. 1256–1522

Islamic / Ottoman Period: A.D. 1299–1923

A. Stone

1. Sculpture

a. Architectural Elements—Primarily in basalt, limestone, and marble; including blocks from walls, floors, and ceilings; acroterion, antefix, architrave, columns, capitals, bases, lintels, jambs, friezes, pediments, tympanum, metopes, and pilasters; doors, door frames, and window fittings; caryatids, columns, altars, prayer niches, mihrab, screens, wellheads, fountains, mosaics, and tiles. This category also includes relief and inlay sculpture that may have been part of a building, such as friezes of sculpted stone figures set into inlaid stone or bitumen backgrounds. May be plain, molded, carved, or inscribed. Decorative motifs may be incised or in high relief. Approximate date: 10th millennium B.C. to the 18th century A.D.

b. Monuments and Stelae—Types include triumphal arches and columns, obelisk, herms, and stone blocks. This category also includes votive and funerary stelae with or without relief sculpture and/or inscriptions, usually in limestone, basalt, and marble. Common subject matter also includes human and animal figures, floral motifs, and geometric designs. Approximate date: 10th millennium B.C. to the 18th century A.D.

c. Sarcophagi and Ossuaries—In marble and limestone. The sides and lids of sarcophagi and ossuaries (*osthoteks*) may have relief sculptures of human and animal figures, inscriptions, monograms, and floral and geometric decoration. Approximate date: 10th millennium B.C. to the 18th century A.D.

d. Large Statuary—Primarily in basalt and marble, some examples in limestone, steatite (soapstone), and other types of stone. Subject matter includes human, animal, and mythological figures, icons, busts, models, molds, and groups of figures in the round, as well as parts of figures commonly used for adoration such as hands, arms, and phallus. Approximate date: 10th millennium B.C. to the 18th century A.D.

e. Small Statuary—This type includes humans, deities (idols), mythological creatures, animals, and groups of figures in the round, as well as parts of figures. Some early examples of human idols are stylized, such as “violin-shaped” figures. Approximate date: 10th millennium B.C. to the 18th century A.D.

f. Small Scale Inlay Sculpture—Small-scale examples include flat, cut-out figures in light-colored stones set against dark stone or bitumen backgrounds. These may decorate boxes or furniture. Subject matter includes narrative scenes such as warfare and banquet scenes. Approximate date: 10th millennium B.C. to the 18th century A.D.

g. Furniture—In limestone, basalt, and marble. Types include tables (*trapezas*), one-legged tables (*monopodias*), thrones, *fulcras*, and beds. Approximate date: 10th millennium B.C. to the 18th century A.D.

2. Vessels—In marble, steatite, rock crystal, and other stone. These may belong to conventional shapes such as bowls, cups, jars, jugs, and lamps, or may occur in the shape of a human or animal, or part of human or animal. Approximate date: 10th millennium B.C. to the 18th century A.D.

3. Tools and Weapons—In flint, quartz, obsidian, silex, limestone, and other hard stones. Types of stone tools include large and small blades, borers, scrapers, sickles, awls, harpoons, cores, and arrow heads. Ground stone types include grinders (*e.g.*, mortars, pestles, millstones, whetstones), choppers, axes, hammers, molds, and mace heads. Approximate date: 1.2 million years ago to the 18th century A.D.

4. Seals and Stamps—These are small devices with at least one side engraved with a design for stamping or sealing, often in marble, limestone, and various semiprecious stones including rock crystal, amethyst, jasper, agate, steatite, and carnelian. This category in-

cludes seals, scarabs and scaraboids, and gems engraved with a design, scene, pattern, or inscription. Shapes can include cylinders, buttons, and prismatic. Approximate date: 10th millennium B.C. to the 18th century A.D.

5. Jewelry and Beads—Jewelry of or decorated with colored and semi-precious stones, including beads, necklaces, pendants, cameos, crowns, earrings, finger rings, bracelets, anklets, belts, girdles, pins, hair ornaments, and arm bands. May be incised or cut as gems or cameos. Approximate date: 1.2 million years ago to the 18th century A.D.

B. Metal

1. Sculpture

a. Large Statuary and Portraits—Primarily in bronze, in a variety of styles. Subject matter includes human, animal, and mythological figures, icons, busts, and groups of figures in the round, as well as parts of figures commonly used for adoration such as hands, arms, and phallus. Sarcophagi lids, including kline lids with recumbent figures, are also included. Approximate date: 5th millennium B.C. to the 18th century A.D.

b. Small Statuary—In bronze, copper, gold, silver, electrum, iron, and lead. Subject matter includes human, animal, and mythological figures. In early examples, idols representing deities for religious purposes may be very stylized, such as twin idols, or semi-circular idols. Approximate date: 5th millennium B.C. to the 18th century A.D.

c. Reliefs—In bronze, copper, gold, silver, electrum, iron, and lead. Types include plaques, appliqués, burial masks, and leaves. Approximate date: 5th millennium B.C. to the 18th century A.D.

d. Inscribed and Decorated Metal Sheets and Plates—In bronze, copper, gold, silver, electrum, iron, and lead. Thin metal sheets with engraved or impressed designs, often used as attachments to furniture. Approximate date: 5th millennium B.C. to the 18th century A.D.

2. Vessels—In bronze, copper, gold, silver, electrum, iron, and lead. This type includes conventional forms such as pitchers, bowls, cauldrons, jugs, globular flasks (*aryballos*), goblets, phials, ladles, lamps, and candelabra. Objects may be in conventional shapes or may be in human or animal shapes. Approximate date: 5th millennium B.C. to the 18th century A.D.

3. Jewelry and Personal Adornment—In bronze, copper, gold, silver, electrum, iron, and lead. This type includes earrings, ear caps, finger rings, beads, bracelets, cuffs, necklaces, pendants, straight and safety

pins (*fibulae*), crowns, wreaths, diadems, fibulas, pectoral decorated sheets, belts, buckles, and textile decorations. Approximate date: 5th millennium B.C. to the 18th century A.D.

4. Tools—This category includes hammers, saws, hooks, axes, chisels, scissors, scrapers (*strigils*), weights, bells, trowels, mirrors, forks, spoons, nails, scales, curling rods (*calamistrum*), locks, keys, ingots, medical tools such as forceps, probes, and cautery tools, and door knockers which may be in the form of human or animal figures. Approximate date: 5th millennium B.C. to the 18th century A.D.

5. Weapons and Armor—In bronze, copper, gold, silver, electrum, iron, and lead. This category includes common weapon types, such as daggers, arrows, swords, spears, harpoons, javelins, axes, rapiers, and maces. Body armor is also included, such as helmets, shields, cuirasses, horse armor, and chariot decoration. Some may have inscriptions or be otherwise decorated. Approximate date: 5th millennium B.C. to the 18th century A.D.

6. Seals and Stamps—These are small devices with at least one side engraved with a design for sealing or stamping, often in bronze, copper, gold, silver, electrum, iron, or lead. Types include rings, amulets, stamps, and seals with shank. Approximate date: 5th millennium B.C. to the 18th century A.D.

7. Ceremonial Objects—Ritual and ceremonial objects pertaining to Turkey's religious communities, in bronze, copper, gold, silver, electrum, iron, and lead. This type includes libation vessels, ritual cauldrons and pitchers, rhytons, masks, chalices, plates, censers, candelabras, crosses, pendants, bells, reliquaries, liturgical spoons, Kiddush cups, book covers and boxes, decorated book spines, Torah pointers, finials, and ampoules. Approximate date: 5th millennium B.C. to the 18th century A.D.

8. Musical Instruments—Trumpets, clappers, sistrums, castanets, cymbalon, aulos, plagiaulos, cornu, lituus, buccina, tuba, hydraulis, lyre, xylophone, and metal parts of other instruments otherwise primarily in wood or bone. Approximate date: 5th millennium B.C. to the 18th century A.D.

9. Coins

a. Greek coins—Archaic coins, dated to 640–480 B.C., in electrum, silver and billon, that circulated primarily in Turkey; Classical coins, dated to 479–332 B.C., in electrum, silver, gold, and bronze, that circulated primarily in Turkey; and Hellenistic coins, dated to 332–31 B.C., in gold, silver, bronze and other base metals, that circulated primarily in Turkey. Greek coins were minted by many authorities for trading and payment and often circulated all over the ancient world, including in Turkey. All categories are based on find information

provided in Thompson, M., Mørkholm, O., Kraay, C., *Inventory of Greek Coin Hoards*, 1973 (available online at <http://coinhoards.org/>) and the updates in Coin Hoards I–X as well as other hoard and single find publications. Mints located in Turkey and surrounding areas are found in Head, B. V., *Historia Numorum, A Manual of Greek Numismatics*, 1911 (available online at <http://snible.org/coins/hn/>).

b. Roman provincial coins—Roman provincial coins, dated from the end of 2nd century B.C. to the early 6th century A.D., in gold, silver, and bronze and copper that circulated primarily in Turkey.

c. Byzantine period coins—Byzantine period coins, in gold, silver, bronze, copper coins, and sometimes electrum, dating from the early 6th century to the 15th century A.D., that circulated primarily in Turkey, (e.g., coins produced at mints in Nicaea and Magnesia under the Empire of Nicaea).

d. Medieval and Islamic coins—Medieval and Islamic coins, in gold, silver, bronze, and copper coins from approximately A.D. 1077–1770, that circulated primarily in Turkey.

C. Ceramic, Terracotta, and Faience

1. Sculpture

a. Architectural Elements—Baked clay (terracotta) elements used to decorate buildings. Elements include tiles, roof coverings, antefixes, plates, and decorative elements such as reliefs, votive tablets (*pinakes*), friezes and acroters, and wall decorations such as cones, glazed bricks, and decorated knobs. Approximate date: 2nd millennium B.C. to the 18th century A.D.

b. Sarcophagi and Ossuaries—Sarcophagi and coffins, with separate lids, either in the form of a large rectangular box, or human-shaped and carved with modeled human features. Sarcophagi may be painted, inlaid, and/ or decorated with incised or sculpted relief of floral or geometric motifs and inscriptions. Ossuaries are rectangular or in the shape of stylized animals and may be decorated. Approximate date: 2nd millennium B.C. to the 18th century A.D.

c. Large Statuary—Subject matter includes human and animal figures, icons, models, molds, and groups of figures in the round. Common types are large-scale, free-standing statuary approximately 1–2.5 m. in height and life-size busts (head and shoulders of an individual). Approximate date: 5th millennium B.C. to the 18th century A.D.

d. Small Statuary—Subject matter is varied and includes humans, deities (idols), mythological creatures, animals, and groups of figures in the round, as well as parts of figures. These range in height: Approximately 10 cm.–1 m. Approximate date: 5th millennium B.C. to the 18th century A.D.

e. Terracotta Plaques—These are produced by carving or using molds; may have a variety of subject matter. Type also includes molds and models used in production. Approximate date: 5th millennium B.C. to the 18th century A.D.

f. Models—These are small-scale objects in terracotta, including chariots, boats, buildings, and furniture such as chairs and beds. Approximate date: 11th millennium B.C. to the 18th century A.D.

2. Vessels—Ceramic types, forms, and decoration vary among archaeological styles over time. Forms may be handmade or produced with ceramic lathe, plain or decorated, and may be glazed, unglazed, varnished, painted, engraved, and/or incised. They may be produced in Turkey or imported into Turkey at or near the time of production. Some of the most well-known types are highlighted below:

a. Neolithic and Chalcolithic Period—This type includes bowls, cups, jars, pots, urns, and ritual vessels in the shape of a woman or animal. Some examples are painted with yellow, brown, or red; patterns include concentric circles, horizontal lines, and geometric motifs over cream or red slip.

b. Early Bronze Age—This type includes two-handled goblets (*depas amphikypellon*), beak-spouted pitchers, anthropomorphic jars, pedestal bowls, amphorae, vases, double-/triple-/quadruple vessels (two or more cups or bowls attached at a central point to form a single vessel), mugs, boxes, and small pots with lids (*pyxis*).

c. Middle and Late Bronze Age—This type includes Assyrian Trade Colonial, Hittite, and early Mycenaean pottery. In this period, ceramic lathe and glaze techniques became common and forms became thinner. Type includes ceremonial vessels in the shape of animals (*rythons*), plates, double-handled drinking vessels (*kantharos*), bathing bowls, and vases.

d. Geometric, Orientalizing, Archaic, and Classical Periods—This type includes vessels used for holding oil or perfume (*alabastron*, *lekythos*, *aryballos*, *lydion*), jars used for storage (*amphorae*, *pelike*, *pithoi*, *hydria*), pitchers and jugs (*oinochoe*, *olpe*), boxes for holding cosmetics or jewelry (*pyxis*), drinking cups (*kylix*, *kantharoi*, *skyphoi*), tankards, other vessels (*krater*, *askos*), ceremonial vases (*lebes gamikos*), plates, and lamps. Black-figure technique was common in Greek city-states in Western Anatolia, starting in 7th century B.C. Vessels in this technique are decorated with black painted figures on a clear clay ground. Vessels with red-figure technique (decorative elements in reserve with background fired black) are also common in Western Anatolia. Most black- and red-figure vessels are decorated with scenes of daily life or mythology.

e. Hellenistic and Roman Periods—This type includes vessel forms noted in previous time periods, as well as small bottles (*unguentarium*) and wine jars (*lagynos*). There is less decorative painting in this period; instead, types display simple motifs and/or reliefs. Fine red Roman tableware (*terra sigillata*) is also common.

f. Byzantine Period—Vessel types include amphorae, bowls, plates, chalices, beakers, and special shapes such as pilgrim flasks. Types include red slipwares, as well as glazed and unglazed vessels. Unglazed wares are usually undecorated; other examples may be decorated with various techniques and motifs such as human figures, animals, florals, and other symbolic motifs.

g. Islamic Period—Early examples include green and turquoise vessels that may be in the vessel shapes mentioned above. In addition, this type includes inkstands, chalices, lamps, rose water flasks, censers, incense cases, kitchenware, and tableware. Sizes and shapes are varied; colors include blue-white, red, blue, yellow, purple, and green and may include floral or other painted or inscribed decorations.

3. Objects of Daily Use—This type includes objects of daily use including toys, weights, and lamps. Approximate date: 5th millennium B.C. to the 18th century A.D.

4. Seals, Stamps, and Tablets—This type includes cuneiform tablets from Anatolia during the Assyrian Colonial Period and Hittite Period; some tablets may be encased with a clay envelope. This type also includes seals used to mark ceramics, textiles, leather, other organic materials, and live animals. Approximate date: 5th millennium B.C. to the 18th century A.D.

5. Islamic Period Tiles—Tiles were used mainly for adorning walls, roofs, and floors of buildings such as mosques, masjids, mausoleums, and palaces. During the Seljuk Period, common motifs included star and cross, mythological creatures, human and animal figures, natural and floral motifs, geometric motifs, and inscriptions. During the Ottoman Period, most tiles are decorated with floral motifs, including the *saz* style with composite flowers and *saz* leaves. Glazed bricks used in this period are also included. Approximate date: 11th century to the 18th century A.D.

D. Bone, Ivory, and Other Organic Material

1. Small Statuary and Figurines—This type includes human, animal, and other figures in the round. Size may range between 5 cm.–1 m. in height. Approximate date: c. 20,000 B.C. to the 18th century A.D.

2. Objects of Daily Use—This type includes materials in bone, ivory, mother of pearl, seashell, and tortoise shell that may be used as

decoration or inlay for architectural elements, furniture, or relief plaques. Type also includes amulets and pendants, other jewelry and beads, buckles, combs, pins, *pyxis*, boxes, needles, dice, mirror backs, handles, carved diptychs, writing and painting equipment, and musical instruments. Approximate date: 350,000 B.C. to the 18th century A.D.

3. Seals and Stamps—These are small objects with at least one side with engraved designs for stamping or sealing. They may be cuboid, conoid, or in the shape of animals or mythological creatures. Approximate date: 7th millennium B.C. to the 18th century A.D.

4. Weapons and Tools—Bone, ivory, and horn were also used to produce and decorate weapons and tools. In addition to conventional types, such as needles, awls, chisels, picks, knives, spearheads, and blades, these materials were also used for *zighir* (thumb ring used to draw a bow) and wrist shields. Found as early as 1.2 million years ago.

5. Human and Animal Remains—Skeletal remains from human and animal bodies, preserved in burials or other contexts. Some examples may be plastered or painted with ochre. Found as early as 1.2 million years ago.

E. Wood

1. Architectural Elements—This type includes walls, ceilings, floors, panels, balconies, doors, altars, parts of vaults, minbar, mihrab, muqarnas, decorative elements, ladders, or pieces of any of these objects. May be engraved, painted, inlaid, or otherwise decorated. Approximate date: 9th millennium B.C. to the 18th century A.D.

2. Objects of Daily Use—This type includes furniture such as chairs, stools, beds, tables, chests, and desks; kitchen and tableware, book cases, book holders, lecterns, prayer panels, carved diptychs, writing and painting equipment, games, game boxes, combs, clasps, needles, beads, and musical instruments. May be engraved, painted, inlaid, or otherwise decorated. Approximate date: 9th millennium B.C. to the 18th century A.D.

3. Tools and Weapons—This includes bows, arrows, knives, axe and adze handles, bow drills, and spears. Approximate date: 9th millennium B.C. to the 18th century A.D.

4. Ships and Other Vehicles—This includes whole or pieces used in composing a ship, chariot, or any other vehicle. Approximate date: 7th millennium B.C. to the 18th century A.D.

F. Glass

1. Architectural Elements—This includes glass inlay and tesserae pieces from floor and wall mosaics, mirrors, and windows. Approximate date: 4th millennium B.C. to the 18th century A.D.

2. Vessels—This type includes containers for holding perfume or oil (*alabastron, unguanteria, aryballos*), wine jugs (*oinochoe*), other drinking, storage, and serving vessels of various shapes and sizes, and lighting objects such as lamps. Approximate date: 2nd millennium B.C. to the 18th century A.D.

3. Beads and Jewelry—Jewelry such as bracelets and rings (often twisted with colored glass), pendants, and beads in various shapes (*e.g.*, circular, globular), may be decorated with symbolic and/or floral motifs. This category also includes beads in various shapes including animal figures. Approximate date: 2nd millennium B.C. to the 18th century A.D.

G. Plaster and Stucco—This category includes various types of objects including containers from the pre-pottery Neolithic onward, column capitals, pedestals, wall murals or paintings and other architectural elements, and vessels and containers. These may be plain or painted and/or gilded. Approximate date: 9th millennium B.C. to the 18th century A.D.

H. Textile—These include linen, wool, cotton, and silk. This category includes clothing or clothing fragments, carpets, *sanjaks* (flags or banners), flag bags, wall hangings, blankets, and textiles used during religious practice. Approximate date: 9th millennium B.C. to the 18th century A.D.

I. Leather, Parchment, and Paper

1. Leather—This category includes bags, furniture parts, masks, shields, cases and containers for a variety of uses, sandals, clothing, and manuscript covers. There are also examples of religious and/or rare books written on leather pages.

2. Papyrus—Documents made from papyrus and written upon in ink. These are often rolled and/or fragmentary. Approximate date: 5th millennium B.C. to the 12th century A.D.

3. Parchment—Writing material made of animal skin and used to produce manuscripts including religious, liturgical, and scientific works. These may be single leaves or bound as books or scrolls. These may also have illustrations or illuminated paintings with gold and other colors. Approximate date: 3rd millennium B.C. to the 18th century A.D.

4. Paper—This includes manuscripts and individual pages thereof, written on paper and bound as books or scrolls. These may also have illustrations. Approximate date: 8th century to the 18th century A.D.

J. Rock Art, Painting, and Drawing

1. **Rock Art**—This type includes human-made markings on stone, cave walls, or rocks in open air. This type includes petroglyphs (carved into the rock surface); pictographs (painted); and earth figures (formed on the ground). Subject matter may include human and animal figures, deities, geometric designs, and religious signs and markings. Approximate date: 10th millennium B.C. to the 18th century A.D.

2. **Wall Paintings**—This category includes paintings from buildings and tombs. Several methods were used, such as wet-fresco and dry-fresco, and the paintings may be applied to plaster, wood, or stone. Types include simple applied color, bands and borders, landscapes, scenes of people and/or animals in natural or built settings, and religious themes. Approximate date: 7th millennium B.C. to the 18th century A.D.

3. **Panel Paintings (Icons)**—An icon is a work of art for religious devotion, normally depicting saints, angels, or other religious figures. These are painted on a wooden panel, often for inclusion in a wooden screen (iconostasis), or else painted onto ceramic panels. May be partially covered with gold or silver, sometimes encrusted with precious or semi-precious stone. Approximate date: 4th century A.D. to the 18th century A.D.

K. Mosaics—May be a combination of small three-dimensional pieces of colored stone or glass (tesserae) to create motifs such as geometric shapes, mythological scenes, floral or animal designs, natural motifs such as landscapes, and daily chores. The *opus sectile* technique is also used. These were generally applied to walls, ceilings, or floors. Approximate date: 7th century B.C. to the 18th century A.D.

II. Ethnological Material

Ethnological material covered by the agreement includes architectural elements, funerary objects, ritual and ceremonial objects, paintings, written records, and military material that contribute to the knowledge of the origins, development, and history of the Turkish people. This includes objects from the 1st c. A.D. starting in the Roman Empire, through the Byzantine, Seljuk, Beyliks, and Ottoman periods, and ending in A.D. 1923, with the foundation of the Republic of Turkey.

A. Architectural Elements—This category includes architectural elements and decoration from religious and public buildings in all materials. These buildings have distinctive characteristics described

below. Examples of architectural elements covered in the Agreement include, but are not limited to, the following objects:

1. **Structural and Decorative Architectural Elements**—This category includes material from religious or public buildings in stone, ceramic, plaster, wood, and other organic elements, which includes blocks; columns, capitals, bases, lintels, jambs, friezes, and pilasters; panels, doors, door frames, and window fittings; altars, prayer niches (mihrab), screens, iconostasis, fountains, ceilings, tent poles, and carved and molded brick. Metal elements are primarily in copper, brass, lead, and alloys, and may include doors, door fixtures, lathes, finials, chandeliers, screens, and sheets to protect domes. Glass may be incorporated into either structural or decorative elements. This category also includes relief and inlay sculpture, including appliques and plaques that may have been part of a building. May be plain, molded, carved, or inscribed. Decorative motifs may be incised or in high relief.

2. **Tiles**—Ceramic tiles were often used for adorning walls, roofs, and floors of mosques, masjids, mausoleums, shrines, and palaces. During the Seljuk Period, subject matter included star- and cross-shaped tiles with creatures such as harpies, sphinxes, and double-headed eagles. Human and animal figures were also common, as well as natural motifs such as the tree of life, scrolling branches with pomegranates, floral and geometric patterns, and inscriptions. During the Ottoman Period, subject matter included mainly floral motifs; the *saz* style motif with composite flowers, smaller rosettes, and *saz* leaves was also common. This type also includes glazed bricks.

3. **Mosaics**—May be a combination of small three-dimensional pieces of colored stone or glass (tesserae) to create motifs such as geometric shapes, floral or animal designs, natural motifs such as landscapes, and scenes of religious or historical events. These were generally applied to walls, ceilings, or floors.

B. **Funerary Objects**—This category includes objects related to funerary rites and burials in all materials. Examples of funerary objects covered in the Agreement include, but are not limited to, the following objects:

1. **Sepulchers**—Sepulchers are repositories for remains of the dead, in stone (usually marble or limestone), metal, and wood. Types of burial containers include sarcophagi, caskets, coffins, and urns. These may also have associated sculpture in relief or in the round. May be plain or have figural, geometric, or floral motifs either painted or carved in relief. May also contain human or animal remains.

2. **Inscriptions, Memorial Stones, Epitaphs, and Tombstones**—This category includes inscribed funerary objects, primarily slabs in

marble and ceramic; most frequently engraved with Ottoman Turkish, Turkish, Arabic, Greek, Armenian, or Hebrew. These may also have associated sculpture in relief or in the round.

3. Funerary Offerings—This category includes objects in all materials; shrouds and body adornment such as clothing, jewelry, and accessories; idols, figurines, vessels, beads, weapons, or other ritual or ceremonial offerings; and writing implements, books, and manuscripts.

C. *Ritual and Ceremonial Objects*—This category includes objects for use in religious services (Christian, Islamic, Jewish, and others) or for imperial use by the state (Byzantine Empire, Seljuk Empire, Anatolian Beyliks, and Ottoman Empire). Examples of ritual and ceremonial objects covered in the Agreement include, but are not limited to, the following objects:

1. Religious Objects—This category includes objects in all materials such as lamps, libation vessels, pitchers, chalices, plates, censers, candelabra, crosses and cross pendants, pilgrim flasks, tabernacles, boxes and chests, carved diptychs, liturgical spoons, Kiddush cups, bells, ampoules, Torah pointers and finials, prayer beads, icons, amulets, and Bektashi surrender stones. This type also includes reliquaries and reliquary containers, which may or may not include human remains. Often engraved or otherwise decorated.

2. Imperial—This category includes objects in all materials, such as ceremonial garments, clothing emblematic of imperial position, and other accessories thereof such as shoes, headdresses and hats, belts, and jewelry; objects of imperial office such as scepters, staffs, insignia, relics, and monumental boxes, trays, and containers; flags, flagstaves, and *alem* (finials); stamps, seals, and writing implements for official use by the state; tapestries, or other representations of the imperial court; musical instruments; and boats, chariots, and other forms of official transportation, and parts thereof.

3. Furniture—This category includes objects primarily in stone or wood, including altars, tables, platforms, pulpits, fonts, screens, thrones, minbar, lecterns, desks, and other types of furniture used for religious or official imperial purpose.

4. Textiles—Generally in linen, silk, and wool. This category includes textiles and fragments from religious contexts including garments such as tapestries, hangings, prayer rugs and carpets, shrine covers, altar cloths; clothing and accessories such as robes, vestments, kaftans, turbans, hats, and talismanic shirts. Commonly decorated with embroidered designs including religious, floral, and geometric motifs. This category also includes imperial objects such as

clothing including vestments and robes; flags and flag bags (*sanjaks*); and carpets and tapestries.

5. Musical Instruments—This category includes instruments important for religious or imperial ceremonies such as a *baglama* or *saz*, *tambur*, *rebab*, and *ud* (string instruments); harps; *ney* (reed flute); pipes; whistles; *kudum* (small double drum); *kos* (drum); *kanun* (zither); trumpets and bugles; and cymbals.

D. *Paintings*—This category includes works of paint on plaster, wood, or ceramic from religious or public contexts. Paintings from these periods provide information on social and religious history of the people of Turkey that may be absent from written records. Examples of paintings include, but are not limited to:

1. Wall Paintings—This category includes paintings on various types of plaster, which generally portray religious images and/or scenes of Biblical events. Types may also include simple applied color, bands and borders, animal, floral, and geometric motifs.

2. Panel Paintings (Icons)—Icons are smaller versions of the scenes on wall paintings, and may be partially covered with gold or silver, sometimes encrusted with semi-precious or precious stones and are usually painted on a wooden panel, often for inclusion in a wooden screen. May also be painted on ceramic.

3. Works on Paper—Paintings may be on papyrus, parchment, and paper. Images depicted may include religious scenes, representations of imperial court life, simple applied color, bands and borders, animal, floral, and geometric motifs.

E. *Written Records*—This category includes written records of religious, political, or scientific importance, including, but not limited to, the following. Works may be on papyrus, parchment, paper, or leather. Papyrus documents are often rolled and/or fragmentary. Parchment and paper documents may be single leaves or bound as scrolls or books. They may have illustrations or illuminated paintings with gold or other colors. There are also examples of Qurans and other religious and/or rare books written on leather pages. This category includes boxes for books or scrolls made of wood or other organic materials, and book or manuscript covers made of leather, textile, or metal.

F. *Military Material*—This category includes imperial military objects from the Byzantine, Seljuk, Beyliks, and Ottoman periods, in all materials.

1. Uniforms—Uniform clothing either meant to be worn under armor or without, is usually made of textile or leather. This includes clothing emblematic of military position, and other accessories thereof such as shoes, headdresses and hats, belts, and jewelry.

2. Weapons and Armor—These are often in iron, steel, or other metal. This category includes arrows, daggers, swords, saifs, scimitars, other blades with or without sheaths, spears, and pre-industrial firearms and cannon; may be for use in combat or ceremonial. May be inlaid with gemstones, embellished with silver or gold, or engraved with floral or geometric motifs. Grips or hilts may be made of metal, wood, or semi-precious stones such as agate, or bound with leather. Armor may consist of small metal scales, originally sewn to a backing of textile or leather. This type also includes helmets, body armor, shields, and horse armor. Other objects may be made of leather, including archer's bags, shields, and masks. This category also includes: Auxiliary objects such as powder horns and belts; military standards; and boats, chariots, or other means of imperial military transportation.

3. Musical Instruments—These instruments were used to encourage and direct military operations. This category includes pipes and other wind instruments, trumpets and bugles, and drums and other percussion instruments such as the *cevgan* (a long-handled rattle with bells and chimes).

Inapplicability of Notice and Delayed Effective Date

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

Regulatory Flexibility Act

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

Executive Order 12866

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

Signing Authority

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

List of Subjects in 19 CFR Part 12

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

Amendment to the CBP Regulations

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

PART 12—SPECIAL CLASSES OF MERCHANDISE

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

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

* * * * *

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

* * * * *

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

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

(a) * * *

State party	Cultural property	Decision No.
*	*	*
Turkey.....	Archaeological material representing Turkey's cultural heritage ranging from approximately 1,200,000 B.C. to A.D. 1770, and ethnological material ranging from the 1st century A.D. to A.D. 1923.	CBP Dec. 21–09.

* * * * *

Troy A. Miller, the Senior Official Performing the Duties of the Commissioner, having reviewed and approved this document, is delegating the authority to electronically sign this notice document to Robert F. Altneu, who is the Director of the Regulations and Disclosure Law Division for CBP, for purposes of publication in the **Federal Register**.

Dated: June 11, 2021.

ROBERT F. ALTNEU,
Director,
Regulations & Disclosure Law Division,
Regulations & Rulings, Office of Trade,
U.S. Customs and Border Protection.

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

[Published in the Federal Register, June 16, 2021 (85 FR 31910)]



CREWMAN'S LANDING PERMIT (CBP FORM I-95)

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

ACTION: 60-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than August 10, 2021) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651-0114 in the subject line and the agency name. Please use the following method to submit comments:

Email. Submit comments to: *CBP_PRA@cbp.dhs.gov*.

Due to COVID-19-related restrictions, CBP has temporarily suspended its ability to receive public comments by mail.

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

at 877-227-5511, (TTY) 1-800-877-8339, or CBP website at <https://www.cbp.gov/>.

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

Overview of This Information Collection

Title: Crewman's Landing Permit.

OMB Number: 1651-0114.

Form Number: CBP Form I-95.

Current Actions: Extension.

Type of Review: Extension (with change).

Affected Public: Businesses.

Abstract: CBP Form I-95, *Crewman's Landing Permit*, is prepared and presented to CBP by the master or agent of vessels and aircraft arriving in the United States for non-immigrant crewmembers applying for landing privileges. This form is provided for by 8 CFR 251.1(c) which states that, with certain exceptions, the master, captain, or agent shall present this form to CBP for each non-immigrant crewmember on board. In addition, pursuant to 8 CFR 252.1(e), CBP Form I-95 serves as the physical evidence that a non-immigrant crewmember has been granted a conditional permit to land temporarily, and it is also a prescribed registration form under 8 CFR 264.1 for crewmembers arriving by vessel or air. CBP Form I-95 is authorized by Section 252 of the Immigration and Nationality Act

(8 U.S.C. 1282) and is accessible at: <https://www.cbp.gov/sites/default/files/assets/documents/2018-Nov/CBP%20Form%20I-95.pdf>.

Type of Information Collection: CBP Form I-95.

Estimated Number of Respondents: 433,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 433,000.

Estimated Time per Response: 0.067 Hours.

Estimated Total Annual Burden Hours: 29,011.

Dated: June 8, 2021.

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

[Published in the Federal Register, June 11, 2021 (85 FR 31331)]

**NOTICE OF ISSUANCE OF FINAL DETERMINATION
CONCERNING CERTAIN FIXED AND PORTABLE PATIENT
CEILING LIFT SYSTEMS**

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

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection (CBP) has issued a final determination concerning the country of origin of certain fixed and portable patient ceiling lift systems that will be installed at a patient's residence or healthcare setting. Based upon the facts presented, CBP has concluded in the final determination that the patient ceiling lift systems would not be products of a foreign country or instrumentality designated pursuant to 19 U.S.C. 2511(b) for purposes of U.S. Government procurement.

DATES: The final determination was issued on June 4, 2021. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination no later than July 14, 2021.

FOR FURTHER INFORMATION CONTACT: Albena Peters, Valuation and Special Programs Branch, Regulations and Rulings, Office of Trade, at (202) 325-0321.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on June 4, 2021, CBP issued a final determination concerning

the country of origin of fixed and portable patient ceiling lift systems for purposes of Title III of the Trade Agreements Act of 1979. This final determination, HQ H309124, was issued at the request of the party-at-interest, under procedures set forth at 19 CFR part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18). In the final determination, CBP has concluded that, based upon the facts presented, the fixed and portable patient ceiling lift systems would not be products of a foreign country or instrumentality designated pursuant to 19 U.S.C. 2511(b) for purposes of U.S. Government procurement. Section 177.29, CBP Regulations (19 CFR 177.29), provides that a notice of final determination shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 CFR 177.30), provides that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register**.

Dated: June 4, 2021.

JOANNE R. STUMP,
Acting Executive Director,
Regulations and Rulings, Office of Trade.

HQ H309124

June 4, 2021

OT:RR:CTF:VS H309124 AP

CATEGORY: Origin

LUIS F. ARANDIA, JR.
POLSINELLI PC
2950 N HARWOOD ST., STE. 2100
DALLAS, TX 75201

RE: U.S. Government Procurement; Title III, Trade Agreements Act of 1979 (19 U.S.C. 2511); Subpart B, Part 177, CBP Regulations; Country of Origin of Fixed and Portable Patient Ceiling Lift Systems

DEAR MR. ARANDIA:

This is in response to your February 4, 2020 request,¹ on behalf of Handicare USA, for a final determination concerning the country of origin of patient ceiling lift systems. This request is being sought because your client wants to confirm eligibility of the merchandise for U.S. government procurement purposes under Title III of the Trade Agreements Act of 1979 (“TAA”), as amended (19 U.S.C. 2511 *et seq.*). Handicare USA is a party-at-interest within the meaning of 19 CFR 177.22(d)(1) and 177.23(a).

FACTS

Handicare USA is the U.S. subsidiary of the Handicare Group AB based in Stockholm, Sweden, which manufactures patient ceiling lift systems.² Handicare USA’s North American headquarters and manufacturing facility is in St. Louis, Missouri with local offices across the U.S. and Canada. These offices are full-service centers that include inventory, customer service, technical support, sales, and a showroom.

You describe the subject patient ceiling lift systems as consisting of a ceiling lift unit mounted on a XY rail system. Each ceiling lift system is assembled and installed at a patient’s residence or healthcare setting. The ceiling systems can be fixed (model C–625) or portable (model P–440). The fixed lift remains on the same track system and cannot be moved to another room. For the portable system, the lift is designed to be taken down from the track system and moved to a different track system in another room.

The major components of the fixed and portable ceiling lift systems are the regular and super tracks, charging station subassembly, gantry subassembly, ceiling lift motor subassembly, and patient carry bar subassembly. The regular and super tracks³ of Canadian or Mexican origin are sub-components of the entire system and are imported with no additional assembly. The charging station of U.S. origin consists of a charging battery, housing, and cables. The gantry of U.S. origin consists of trolley wheels, track brackets, fasteners, washers, and spacers, and may include a charger block. The carry bar of Chinese or Canadian origin is fitted with bull horn or spring latch connectors, and narrow or wide bars. You describe the ceiling lift motor subassembly as “the heart” of the entire lift system and as U.S.-originating. It consists of the

¹ You submitted a supplemental letter on February 26, 2020.

² See Handicare, Ceiling Lifts, <https://www.handicareusa.com/product-category/homecare/ceiling-lifts/> (last visited May 17, 2021).

³ The regular track is the standard rail for most applications while the super track is a heavier rail for longer free spans between attachment points.

ceiling lift motor, circuit board, and housing. The portable ceiling lift motor subassembly (model P-440) has a U.S. originating motor and circuit board. The fixed ceiling lift motor subassembly (model C-625) has a U.K.-originating motor and U.S.-originating board.

The hardware components are the above-ceiling attachments that comprise the mounting for the patient lift system and include the perpendicular brace strut channel (U.S. or Taiwanese origin), bracket (Canadian or Mexican origin), end pin (Chinese origin), end cap (Canadian or Mexican origin), strut channel (U.S. or Taiwanese origin), and bolt, lock washer, threaded rod, hex nut, fitting, lock washer, channel nut, coupler nut, seismic wedge anchor, and square washer (originating from various countries including China).

The charging station, gantry, and ceiling lift motor subassemblies occurs in Handicare USA's manufacturing facility in St. Louis. At the customer installation site, Handicare USA modifies the tracks and assembles them with the charging station, gantry, ceiling lift motor, and carry bar subassemblies into the patient ceiling lift system. The installation process involves measuring and laying out where the tracks and the attachment points to concrete deck and ceiling brackets should go; installing the structure and the parallel tracks; installing the traversing track, trolley and lift; and testing and verification. The installation includes machine processes such as cutting struts using a band saw, cutting a threaded rod, and drilling into a ceiling.

ISSUE

What is the country of origin of the subject patient lift systems for purposes of U.S. Government procurement?

LAW AND ANALYSIS

U.S. Customs and Border Protection ("CBP") issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain "Buy American" restrictions in U.S. law or practice for products offered for sale to the U.S. Government, pursuant to subpart B of Part 177, 19 CFR 177.21-177.31, which implements Title III of the TAA, as amended (19 U.S.C. 2511-2518).

CBP's authority to issue advisory rulings and final determinations is set forth in 19 U.S.C. 2515(b)(1), which states:

For the purposes of this subchapter, the Secretary of the Treasury shall provide for the prompt issuance of advisory rulings and final determinations on whether, under section 2518(4)(B) of this title, an article is or would be a product of a foreign country or instrumentality designated pursuant to section 2511(b) of this title.

The rule of origin set forth under 19 U.S.C. 2518(4)(B) states:

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

In rendering advisory rulings and final determinations for purposes of U.S. Government procurement, CBP applies the provisions of subpart B of Part

177 consistent with the Federal Procurement Regulations. *See* 19 CFR 177.21. In this regard, CBP recognizes that the Federal Acquisition Regulations restrict the U.S. Government's purchase of products to U.S.-made or designated country end products for acquisitions subject to the TAA. *See* 48 CFR 25.403(c)(1).

The Federal Acquisition Regulations, 48 CFR 25.003, define "U.S.-made end product" as:

. . . an article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

Section 25.003 defines "designated country end product" as:

a WTO GPA [World Trade Organization Government Procurement Agreement] country end product, an FTA [Free Trade Agreement] country end product, a least developed country end product, or a Caribbean Basin country end product. Section 25.003 defines "WTO GPA country end product" as an article that:

(1) Is wholly the growth, product, or manufacture of a WTO GPA country;
or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

Canada and the U.K. are WTO GPA countries. China and Mexico are not.

You advise that the lift motor, charging station, and gantry are of U.S. origin and are sub-assembled in the U.S. The key components of the lift motor, which is the most important subassembly characterized as "the heart" of the patient lift systems, are the motor and circuit board. The motor is of U.S. (portable lift) or U.K. origin (fixed lift), and the board is of U.S. origin (both fixed and portable lifts). The final assembly in the U.S. fully integrates the subassemblies, the tracks, and the above-ceiling attachments. The U.S. installation involves cutting struts using a band saw and cutting a threaded rod. The U.S. operations as described are complex and meaningful requiring significant skill, technical expertise, and quality control. As a result of the U.S. operations, the subassemblies are substantially transformed to produce the fully functional and operational fixed and portable patient lift systems.

Accordingly, the instant fixed and portable patient lift systems would not be products of a foreign country or instrumentality designated pursuant to 19 U.S.C. 2511(b)(1). As to whether they qualify as "U.S.-made end product," we encourage you to review the court decision in *Acetris Health, LLC v. United States*, 949 F.3d 719 (Fed. Cir. 2020), and to consult with the relevant government procuring agency.

HOLDING

The subject fixed and portable patient lift systems would not be products of a foreign country or instrumentality designated pursuant to 19 U.S.C.

2511(b)(1). You should consult with the relevant government procuring agency to determine whether the lifts qualify as “U.S.-made end product” for purposes of the Federal Acquisition Regulations implementing the TAA.

Notice of this final determination will be given in the **Federal Register**, as required by 19 CFR 177.29. Any party-at-interest other than the party which requested this final determination may request pursuant to 19 CFR 177.31 that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 CFR 177.30, any party-at-interest may, within 30 days of publication of the **Federal Register** Notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

JOANNE R. STUMP,
*Acting Executive Director,
Regulations and Rulings, Office of Trade*

[Published in the Federal Register, June 14, 2021 (85 FR 31510)]

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

(No. 04 2021)

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 April 2021. A total of 185 recordation applications were approved, consisting of 12 copyrights and 173 trademarks. The last notice was published in the Customs Bulletin Vol. 55 No. 17

Corrections or updates may be sent to: Intellectual Property Enforcement 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.

FOR FURTHER INFORMATION CONTACT: Christopher Hawkins, Paralegal Specialist, Intellectual Property Enforcement Branch, Regulations and Rulings, Office of Trade at (202) 325–0295.

ALAINA VAN HORN
*Chief,
Intellectual Property Enforcement Branch
Regulations and Rulings, Office of Trade*

CBP IPR RECORDATION — APRIL 2021

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
COP 02-00049	04/07/2021	04/07/2041	GAME BOY BOOT CODE	NINTENDO OF AMERICA INC.	No
COP 21-00024	04/05/2021	04/02/2041	Willow tree nativity figurines	Susan Lordi Marker	No
COP 21-00025	04/12/2021	04/08/2041	Willow tree summer 2000 collection	Susan Lordi Marker Revocable Trust U/T/A Dated 10/10/2001;	No
COP 21-00026	04/12/2021	04/08/2041	WILLOW TREE SUMMER 2003 COL-LECTION	Susan Lordi Marker Revocable Trust U/T/A Dated 10/10/2001	No
COP 21-00027	04/12/2021	04/08/2041	Willow Tree January 2004 Collection	Susan Lordi Marker	No
COP 21-00028	04/12/2021	04/08/2041	Willow Tree Summer 2004 Collection	Susan Lordi Marker Revocable Trust U/T/A Dated 10/10/2001	No
COP 21-00029	04/12/2021	04/08/2041	Willow Tree January 2007 Collection	Susan Lordi Marker	No
COP 21-00030	04/12/2021	04/08/2041	Willow Tree January 2012 Collection	Susan Lordi Marker	No
COP 21-00031	04/12/2021	04/08/2041	Willow Tree January 2013 Collection	Susan Lordi Marker	No
COP 21-00032	04/12/2021	04/08/2041	Willow Tree January 2014 Collection	Susan Lordi Marker	No
COP 21-00033	04/12/2021	04/08/2041	WILLOW TREE Cypress Trees January 2017.	Susan Lordi Marker	No
COP 21-00034	04/12/2021	04/08/2041	Willow Tree January 2019 Collection	Susan Lordi Marker	No
TMK 02-00064	04/02/2021	03/30/2031	COPPER AND BLACK CYLINDRICAL BATTERY DESIGN (COLOR MARK)	DURACELL U.S. OPERATIONS, INC.	No
TMK 02-00413	04/13/2021	01/16/2031	MAJOR LEAGUE BASEBALL	MAJOR LEAGUE BASEBALL PROPER-TIES, INC.	No
TMK 02-00417	04/16/2021	03/23/2031	REDS	THE CINCINNATI REDS, LLC	No
TMK 02-00512	04/29/2021	09/26/2031	ANN KRISTAL	Olem Shoe Corp.	No
TMK 03-00011	04/15/2021	01/30/2031	MAJOR LEAGUE BASEBALL	MAJOR LEAGUE BASEBALL PROPER-TIES, INC.	No
TMK 03-00231	04/16/2021	04/23/2031	NC & DESIGN	Nautica Apparel, Inc.	No

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Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tm	Owner Name	GM Restricted
TMK 05-00652	04/14/2021	04/12/2031	LAYS	FRITO-LAY NORTH AMERICA, INC.	No
TMK 06-00779	04/14/2021	05/25/2027	GUARANTEED TO KEEP YOU DRY	W. L. Gore & Associates, Inc.	No
TMK 06-00790	04/14/2021	02/06/2031	GORE-TEX	W. L. GORE & ASSOCIATES, INC.	No
TMK 06-00799	04/14/2021	10/15/2027	GORE-TEX	W. L. Gore & Associates, Inc.	No
TMK 06-00805	04/15/2021	04/11/2025	GUARANTEED TO KEEP YOU DRY GORE-TEX & DESIGN	W. L. Gore & Associates, Inc.	No
TMK 06-01027	04/12/2021	05/27/2031	BOBBI BROWN	Bobbi Brown Professional Cosmetics, Inc.	No
TMK 06-01029	04/13/2021	03/11/2031	CLINIQUE	CLINIQUE LABORATORIES, LLC	No
TMK 07-00116	04/12/2021	04/08/2031	BOSTONIAN	C. & J. CLARK AMERICA, INC.	No
TMK 07-00251	04/12/2021	04/12/2031	CONFIGURATION OF A LIP BALM CONTAINER	PF CONSUMER HEALTHCARE 1 LLC	No
TMK 07-00458	04/02/2021	01/24/2031	ATLANTIC GEM	EAST COAST SEAFOOD, LLC	No
TMK 07-00667	04/26/2021	10/12/2024	MOUNTAIN & WAVE DESIGN	BOARDRIDERS IP HOLDINGS, LLC	No
TMK 08-00451	04/27/2021	07/11/2030	DC SHOES	DC SHOES, INC.	No
TMK 08-00505	04/27/2021	09/24/2027	DCSHOECOUSA	DC SHOES, INC.	No
TMK 09-00363	04/07/2021	10/28/2027	RALPH LAUREN	(REGISTRANT) POLO FASHIONS, INC. CORPORATION NEW YORK 40 WEST 55TH STREET NEW YORK NEW YORK 10019(LAST LISTED OWNER) PRL USA Holdings, Inc. CORPORATION DELA- WARE 550 Seventh Avenue New York NEW YORK 10018	No
TMK 09-00802	04/05/2021	09/27/2030	MONROE	TENNECO AUTOMOTIVE OPERATING COMPANY INC.	No
TMK 10-00640	04/16/2021	07/09/2031	Configuration of a Container with Cylindrical Shape.	AION CO., LTD.	No

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TMK 11-00200	04/28/2021	02/16/2031	MADEWELL	MADEWELL INC.	No
TMK 11-00254	04/16/2021	01/12/2031	BEATS	BEATS ELECTRONICS, LLC	No
TMK 11-00260	04/16/2021	02/23/2031	B & DESIGN	BEATS ELECTRONICS, LLC	No
TMK 11-00293	04/20/2021	04/25/2031	GREENSHIELD	GREENOLOGY PRODUCTS, LLC	No
TMK 11-00333	04/20/2021	04/04/2031	GREENSHIELD	GREENOLOGY PRODUCTS, LLC	No
TMK 11-00438	04/02/2021	06/01/2031	Configuration of a Walther PPK	Carl Walther GmbH CORPORATION	No
TMK 11-00623	04/14/2021	07/26/2031	Horizontal bands design	Rimowa GmbH gesellschaft mit beschränkter haftung (gmbh)	No
TMK 11-00784	04/15/2021	05/01/2031	LION HEAD DESIGN	PR Trading Company, Inc.	No
TMK 11-01037	04/13/2021	04/16/2031	JOB	Republic Technologies (NA), LLC	No
TMK 11-01051	04/28/2021	05/06/2031	SR-71	LOCKHEED MARTIN CORPORATION	No
TMK 11-01088	04/28/2021	05/13/2031	BLACKBIRD	LOCKHEED MARTIN CORPORATION	No
TMK 12-00041	04/12/2021	01/03/2031	SMASHBOX	DJF Enterprises	No
TMK 12-00923	04/28/2021	03/21/2031	ORACLE	Oracle International Corporation	No
TMK 12-01322	04/13/2021	07/28/2031	QUESO RANCHERO & DESIGN	CACIQUE, LLC	No
TMK 13-00180	04/20/2021	04/04/2031	P PRECISIONIST (stylized)	CITIZEN WATCH COMPANY OF AMERICA, INC.	No
TMK 13-00424	04/26/2021	05/15/2031	HIBISCUS FLOWER DESIGN	EDGEWELL PERSONAL CARE BRANDS, LLC	No
TMK 13-00915	04/07/2021	04/11/2031	BULBRITE	Bulbrite Industries, Inc.	No
TMK 13-01269	04/20/2021	04/09/2031	CHIHULY (STYLIZED)	Chihuly, Dale	No
TMK 14-00163	04/05/2021	03/14/2031	NULOJIX	Bristol-Myers Squibb Company	No

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TMK 14-00807	04/02/2021	11/17/2020	SOMEGA	(REGISTRANT) Sobel Westex CORPORATION NEVADA 2670 S. Western Avenue Las Vegas NEVADA 89109	
TMK 15-00009	04/27/2021	09/28/2031	MEAT SEEKER	Bear Archery, Inc.	No
TMK 15-00932	04/12/2021	04/04/2031	GLAMGLOW	GLAMGLOW LLC	No
TMK 16-00596	04/27/2021	08/17/2031	DESIGN ONLY (16-LEAF LAUREL WREATH)	Fred Perry (Holdings) Limited Company	No
TMK 16-00644	04/28/2021	04/30/2031	DALIA	Modes Corwik Inc.	No
TMK 16-00849	04/22/2021	05/01/2031	CARBOND	CARBO Ceramics Inc.	No
TMK 16-01034	04/13/2021	04/09/2031	3000R	UTILITY TRAILER MANUFACTURING CO.	No
TMK 16-01199	04/28/2021	06/01/2031	EMPOWER	AMERICAN ORTHODONTICS CORPORATION	No
TMK 17-00076	04/16/2021	03/14/2031	CHRISTIAN LOUBOUTIN	Christian LOUBOUTIN	No
TMK 17-00078	04/20/2021	02/16/2031	LOUBOUTIN LOUBOUTIN (Stylized) on Soles of Shoes	Christian LOUBOUTIN INDIVIDUAL FRANCE 1 rue Volney F-75002 PARIS FRANCE	No
TMK 17-00524	04/02/2021	03/28/2031	GG GG GG GG and Design	Guess?, Inc.	No
TMK 17-00796	04/12/2021	10/05/2031	CONFIGURATION OF A BARBECUE GRILL	WEBER-STEPHEN PRODUCTS LLC	No
TMK 17-00947	04/05/2021	03/21/2031	FANATICS	Fanatics, Inc.	No
TMK 18-00505	04/05/2021	04/04/2031	CHARTER	Charter Communications Holding Company, LLC	No
TMK 18-01109	04/28/2021	01/24/2031	TITEBOND	Franklin International, Inc.	No
TMK 18-01120	04/14/2021	04/11/2031	STRANGE MUSIC	Strange Music, Inc.	No

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TMK 18-01175	04/08/2021	09/01/2030	BENLYSTA	GLAXOSMITHKLINE INTELLECTUAL PROPERTY	No
TMK 19-00044	04/26/2021	04/16/2031	RICE N EASY	Riceland Foods, Inc.	No
TMK 19-00396	04/15/2021	04/23/2031	JOB & DESIGN	Republic Technologies (NA), LLC	No
TMK 19-00483	04/12/2021	03/28/2031	BACKSTREET BOYS	BSB Entertainment, Inc.	No
TMK 19-00575	04/15/2021	05/08/2031	TOP	Top Tobacco LP	No
TMK 19-01023	04/16/2021	04/02/2031	STAMPEDE	TRAXXAS, L.P.	No
TMK 19-01031	04/02/2021	04/02/2031	RUSTLER	Traxxas, L.P.	No
TMK 20-00040	04/13/2021	08/15/2031	UMC & DESIGN	International Association of Plumbing and Mechanical Officials	No
TMK 20-00313	04/20/2021	04/19/2031	ANSI	AMERICAN NATIONAL STANDARDS INSTITUTE	No
TMK 20-00510	04/02/2021	04/23/2031	HOLLOWAY HOUSE	Holloway House, Inc.	No
TMK 21-00324	04/01/2021	01/16/2029	MY CLARINS (STYLIZED)	CLARINS Société	No
TMK 21-00325	04/02/2021	08/19/2029	ELTA MD & DESIGN	ELTA MD, INC.	No
TMK 21-00326	04/02/2021	12/04/2022	FRUITBLEND	Premium Nutritional Products, Inc.	No
TMK 21-00327	04/02/2021	04/30/2027	VEGGIBLEND	Premium Nutritional Products, Inc.	No
TMK 21-00328	04/02/2021	05/27/2028	ELTA MD	Elta MD, Inc.	No
TMK 21-00329	04/02/2021	06/17/2025	Adobe "A" logo & DESIGN	ADOBE INC. CORPORATION	No
TMK 21-00330	04/02/2021	01/21/2025	ADOBE	ADOBE INC. CORPORATION	No
TMK 21-00331	04/02/2021	05/21/2027	HOKA & DESIGN	Deckers Outdoor Corporation	No
TMK 21-00332	04/02/2021	08/31/2026	Bird design	Deckers Outdoor Corporation	No
TMK 21-00333	04/02/2021	05/13/2028	ELTA MD	Elta MD, Inc.	No
TMK 21-00334	04/02/2021	10/20/2029	ZUPREEM	Premium Nutritional Products, Inc.	No

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Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tm	Owner Name	GM Restricted
TMK 21-00335	04/02/2021	12/29/2028	ZuPreem Bird Feed Design	Premium Nutritional Products, Inc.	No
TMK 21-00336	04/02/2021	05/09/2031	FORTNITE	Epic Games, Inc.	No
TMK 21-00337	04/02/2021	08/19/2029	ELTA MD & DESIGN	ELTA MD, INC.	No
TMK 21-00338	04/02/2021	05/18/2023	WILLOW TREE	Marker, Susan Lordi INDIVIDUAL	No
TMK 21-00339	04/02/2021	01/04/2027	SENSIBLE SEED	Premium Nutritional Products, Inc.	No
TMK 21-00340	04/02/2021	12/30/2028	SUSAN LORDI	Lordi, Susan INDIVIDUAL	No
TMK 21-00341	04/02/2021	01/04/2027	PURE FUN	Premium Nutritional Products, Inc.	No
TMK 21-00342	04/02/2021	04/30/2027	NUTBLEND	Premium Nutritional Products, Inc.	No
TMK 21-00343	04/02/2021	01/02/2028	ELEMENT	STRYTEN MANUFACTURING LLC	No
TMK 21-00344	04/02/2021	06/29/2031	R Russell Athletic (STYLIZED)	Russell Brands, LLC	No
TMK 21-00345	04/02/2021	08/14/2022	BEARINGTON COLLECTION	Bearington Collection, Inc.	No
TMK 21-00346	04/02/2021	03/29/2031	MIGHTY WHEELS	Smart Zone (HK) Limited	No
TMK 21-00347	04/02/2021	06/16/2031	HoopBoot & DESIGN	James Williams INDIVIDUAL	No
TMK 21-00348	04/02/2021	08/08/2027	American Down & Feather Council Certified& DESIGN	Home Fashion Products Association, Inc.	No
TMK 21-00349	04/02/2021	06/23/2031	UT-D	Microtech Knives, Inc.	No
TMK 21-00350	04/05/2021	03/03/2030	ZYIA	ZYIA Active, LLC	No
TMK 21-00351	04/05/2021	03/03/2030	Moon and star DESIGN	ZYIA Active, LLC	No
TMK 21-00352	04/05/2021	03/03/2030	ZYIA ACTIVE & DESIGN	ZYIA Active, LLC	No
TMK 21-00353	04/05/2021	06/02/2031	Camel Sandals & Design	Camel Company for Shoes and Industry & Investment	No
TMK 21-00354	04/05/2021	08/01/2028	DOVATO	VIV HEALTHCARE UK (NO.3)	No
TMK 21-00355	04/07/2021	08/12/2029	TIVICAY	VIV HEALTHCARE COMPANY	No
TMK 21-00356	04/07/2021	04/10/2027	RUKOBIA	VIV HEALTHCARE UK (NO. 4)	No

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TMK 21-00357	04/07/2021	10/20/2030	BEXSERO	GLAXOSMITHKLINE BIOLOGICALS S.A.	No
TMK 21-00358	04/07/2021	07/01/2028	FLULAVAL	ID Biomedical Corporation of Quebec	No
TMK 21-00359	04/07/2021	11/04/2029	KINRIX	GlaxoSmithKline Biologicals S.A.	No
TMK 21-00360	04/07/2021	06/30/2031	STEPT	Diaz, Clifton S DBA Skate Trooper Experienced Personal Training	No
TMK 21-00361	04/07/2021	03/31/2030	KRINTAFEL	Glaxo Group Limited Private Company	No
TMK 21-00362	04/07/2021	01/09/2028	MENVEO	Novartis AG	No
TMK 21-00363	04/07/2021	11/08/2027	BLENREP	Glaxo Group Limited	No
TMK 21-00364	04/07/2021	10/11/2027	ZEJULIA	Tesaro, Inc.	No
TMK 21-00365	04/07/2021	03/22/2026	ARNUTY	Glaxo Group Limited	No
TMK 21-00366	04/07/2021	06/16/2031	VERISORT	Owl biomedical, Inc.	No
TMK 21-00367	04/08/2021	07/08/2024	INCRUSE	Glaxo Group Limited	No
TMK 21-00368	04/12/2021	02/24/2031	DOCKSIDES	TOS s.r.l.	No
TMK 21-00369	04/12/2021	05/25/2030	DD (STYLIZED)	Finanz St. Honore BV	No
TMK 21-00370	04/12/2021	06/09/2031	Hofbrauhaus Freising & DESIGN	Gräfliches Hofbrauhaus Freising	No
TMK 21-00371	04/12/2021	12/15/2030	Huber Weisses Freising & DESIGN	Gräfliches Hofbrauhaus Freising	No
TMK 21-00372	04/13/2021	12/22/2030	GC (STYLIZED)	Ghost Controls, LLC	No
TMK 21-00373	04/13/2021	06/23/2031	HELIX & DESIGN	Pensmore Reinforcement Technologies, LLC	No
TMK 21-00374	04/13/2021	10/17/2028	GHOST CONTROLS	Ghost Controls, LLC	No
TMK 21-00375	04/13/2021	04/02/2028	ZOMBIELOCK	Ghost Controls, LLC	No
TMK 21-00376	04/13/2021	06/30/2031	Akkima Dannielle Briscoe	Akkima Dannielle Briscoe	No
TMK 21-00377	04/13/2021	06/30/2031	Shuckmaster & Design	Shuckmaster LLC	No

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TMK 21-00378	04/13/2021	06/30/2030	M & DESIGN	Bayerische Motoren Werke Aktiengesellschaft	No
TMK 21-00379	04/13/2021	06/30/2030	M & DESIGN	Bayerische Motoren Werke	No
TMK 21-00380	04/13/2021	05/26/2029	FLEX GLUJE & DESIGN	Swift IP, LLC	No
TMK 21-00381	04/13/2021	03/01/2031	FLEX GLUJE & DESIGN	Swift IP, LLC	No
TMK 21-00382	04/13/2021	03/17/2030	MARK IV	Bestway Oilfield, Inc.	No
TMK 21-00383	04/14/2021	04/12/2031	MARK V	Bestway Oilfield, Inc.	No
TMK 21-00384	04/14/2021	06/02/2031	CML EFFICIENCY SCORE	Capital Market Laboratories, LLC.	No
TMK 21-00385	04/14/2021	03/03/2030	M & DESIGN	Rimowa GmbH	No
TMK 21-00386	04/14/2021	09/25/2029	Rimowa (STYLIZED)	RIMOWA GmbH	No
TMK 21-00387	04/15/2021	06/23/2024	NITREX	DELTA MEDICAL SYSTEMS, INC.	No
TMK 21-00388	04/15/2021	12/18/2028	FALCONIA	Altamont Company	No
TMK 21-00389	04/15/2021	12/18/2028	ALTAI	Altamont Company CORPORATION	No
TMK 21-00390	04/15/2021	12/18/2028	SLIMTECH	Altamont Company CORPORATION	No
TMK 21-00391	04/16/2021	12/18/2028	BATELEUR	Altamont Company	No
TMK 21-00392	04/16/2021	12/18/2028	BARRACUDA	Altamont Company	No
TMK 21-00393	04/16/2021	12/12/2027	ALMAMONT	Altamont Company	No
TMK 21-00394	04/16/2021	01/31/2028	ALMAMONT COMPANY & DESIGN	Altamont Company CORPORATION	No
TMK 21-00395	04/16/2021	01/31/2028	STYLIZED WATER BUFFALO DESIGN	Altamont Company	No
TMK 21-00396	04/16/2021	12/08/2030	TRIWEAVE	Altamont, Co.	No
TMK 21-00397	04/16/2021	02/05/2030	SILLY GOOSE GAMES	Cheyenne Brands, LLC	No
TMK 21-00398	04/16/2021	08/26/2030	RED ROBIN GREETINGS	Cheyenne Brands, LLC	No
TMK 21-00399	04/16/2021	05/02/2026	NAKED	CHEYENNE BRANDS, LLC	No

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TMK 21-00400	04/16/2021	06/02/2031	SYNMAX	Intco Medical Industries, Inc.	No
TMK 21-00401	04/16/2021	12/29/2030	Flame Logo Design	TBNR, LLC	No
TMK 21-00402	04/16/2021	10/21/2030	AIRPODS PRO	Apple Inc.	No
TMK 21-00403	04/16/2021	02/08/2025	FORD & DESIGN	FORD MOTOR COMPANY	No
TMK 21-00404	04/20/2021	11/10/2029	COILED COBRA DESIGN	FORD MOTOR COMPANY	No
TMK 21-00405	04/21/2021	10/24/2022	BRAND GEEK	Law Office of Lara Pearson DBA	No
TMK 21-00406	04/22/2021	06/23/2031	THE FIND BOUTIQUE	Jordan Bergman	No
TMK 21-00407	04/22/2021	05/09/2031	BIOTOUCH	Bio-Touch, Inc.	No
TMK 21-00408	04/22/2021	09/30/2029	QUIKSILVER	BOARDRIDERS IP HOLDINGS, LLC	No
TMK 21-00409	04/26/2021	01/02/2028	MOUNTAIN & WAVE DESIGN	BOARDRIDERS IP HOLDINGS, LLC	No
TMK 21-00410	04/27/2021	05/02/2031	B & DESIGN	BPARSEMENT, LLC	No
TMK 21-00411	04/28/2021	11/29/2030	Configuration of a 3 Dimensional Door Handle design.	KASON INDUSTRIES, INC.	No
TMK 21-00412	04/28/2021	02/23/2031	WELDER UP	WELDER UP, LLC	No
TMK 21-00413	04/28/2021	12/14/2030	AWESOME TWOSOME	HERSHEY CHOCOLATE & CONFEC-TIONERY LLC	No
TMK 21-00414	04/28/2021	08/17/2026	JESUS SOAP	SWANK, CHARLES R	No
TMK 21-00415	04/28/2021	11/14/2028	Fusion Color (Design & Color)	THE GILLETTE COMPANY LLC	No
TMK 21-00416	04/28/2021	03/15/2031	FISH FROM TRISH	Fish From Trish LLC	No
TMK 21-00417	04/28/2021	04/05/2031	ROOQ & DESIGN	ROOQ GmbH	No
TMK 21-00418	04/28/2021	07/20/2031	MY BIZZY KITCHEN	Elizabeth A. Velatini AKA My Bizzy Kitchen	No
TMK 21-00419	04/28/2021	10/26/2024	AROMASIN	PFTZER INC.	No
TMK 21-00420	04/28/2021	10/19/2026	BESPONSA	PFTZER INC.	No

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TMK 21-00421	04/28/2021	12/01/2030	ZIRABEV	Pfizer Inc.	No
TMK 21-00422	04/28/2021	05/06/2028	LORBRENA	Pfizer Inc.	No
TMK 21-00423	04/28/2021	12/19/2027	TALZENNA	Wyeth LLC	No
TMK 21-00424	04/28/2021	08/31/2021	BOSULIF	WYETH LLC	No
TMK 21-00425	04/28/2021	12/17/2029	UBER	Uber Technologies, Inc.	No
TMK 21-00426	04/28/2021	05/23/2031	ELROY EMELIO BROOKS JR	Executor of the ELROY EMELIO BROOKS JR estate DBA ELROY EMELIO BROOKS JR ESTATE	No
TMK 21-00427	04/28/2021	12/02/2028	Roxy heart logo	BOARDRIDERS IP HOLDINGS, LLC	No
TMK 21-00428	04/28/2021	06/03/2029	MOUNTAIN & WAVE design	BOARDRIDERS IP HOLDINGS, LLC	No
TMK 21-00429	04/29/2021	02/16/2031	UTAH	The University of Utah	No

**PROPOSED MODIFICATION OF FOUR RULING LETTERS
AND PROPOSED REVOCATION OF TREATMENT
RELATING TO THE TARIFF CLASSIFICATION OF TEXTILE
LEG COVERINGS**

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

ACTION: Notice of proposed modification of four ruling letters and proposed revocation of treatment relating to the tariff classification of textile leg coverings.

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 four ruling letters concerning tariff classification of textile leg coverings 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.

DATES: Comments must be received on or before July 30, 2021.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Erin Frey, Commercial and Trade Facilitation Division, 90 K St., NE, 10th Floor, Washington, DC 20229–1177. Due to the COVID-19 pandemic, CBP is also allowing commenters to submit electronic comments to the following email address: 1625Comments@cbp.dhs.gov. All comments should reference the title of the proposed notice at issue and the *Customs Bulletin* volume, number and date of publication. Due to the relevant COVID-19-related restrictions, CBP has limited its on-site public inspection of public comments to 1625 notices. Arrangements to inspect submitted comments should be made in advance by calling Ms. Erin Frey at (202) 325–1757.

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 four ruling letters pertaining to the tariff classification of leg coverings. Although in this notice, CBP is specifically referring to New York Ruling Letter ("NY") N295237, dated April 13, 2018 (Attachment A), NY N092979, dated March 2, 2010 (Attachment B), NY N092981, dated March 2, 2010 (Attachment C), and NY N061590, dated June 16, 2009 (Attachment D), 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 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 N295237, CBP classified the textile leg coverings in heading 6117, HTSUS, which provides for "Other made up clothing accessories, knitted or crocheted; knitted or crocheted parts of garments or of clothing accessories." In NY N092979 and NY N092981, CBP classified the leg coverings in heading 6217, HTSUS, which provides for "Other made up clothing accessories; parts of garments or of clothing accessories, other than those of heading 6212." In NY N061590, CBP classified the leg coverings in heading 6307, HTSUS, which provides for "Other made up articles, including dress patterns." CBP has

reviewed NY N295237, NY N092979, NY N092981 and NY N061590 and has determined the ruling letters to be in error. It is now CBP's position that the textile leg coverings are properly classified, in heading 6406, HTSUS, specifically in subheading 6406.90.15, HTSUS, which provides for "Parts of footwear (including uppers whether or not attached to soles other than outer soles); removable insoles, heel cushions and similar articles; gaiters, leggings and similar articles, and parts thereof: Other: Of other materials: Of textile materials."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to modify NY N295237, NY N092979, NY N092981 and NY N061590 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter ("HQ") H317808, set forth as Attachment E to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated:

CRAIG T. CLARK,
Director
Commercial and Trade Facilitation Division

Attachments

N295237

April 13, 2018

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

CATEGORY: Classification

TARIFF NO.: 6205.30.2080; 6103.43.1540;
6117.80.9540

Ms. IRENE TSIAVOS
EASTER UNLIMITED, INC.
80 VOICE ROAD
CARLE PLACE, NY 11514

RE: The tariff classification of a boys' costume from China

DEAR Ms. TSIAVOS:

In your letter dated March 15, 2018, you requested a tariff classification ruling. The sample will be returned under separate cover.

The submitted sample, Item CB17006 "Loyal Knight," is a child's costume. The costume consists of a tunic-style garment, a pair of pants, a wide belt and leg covers. The tunic-style garment resembles a knight surcoat. It is constructed from 100% polyester knit fabric. The garment features long sleeves with a mesh overlay, partial zipper closure in the rear neck, and a permanently attached cape at the shoulders. The well-made pants are constructed of 100% polyester knit fabric. They feature an elastic waistband and hemmed leg openings. The belt measures approximately 30 inches in length and 30 inches in width. The belt features a metal buckle and grommets. The belt is composed of 81% polyester, 18% cotton and 1% rayon knit fabric coated with a plastic that completely obscures the underlying fabric. The tubular shape leg covers are composed of 100% polyester knit fabric. All components of the costume are well-made with sturdy seams and styling features. The children's costume will range in sizes from 4-10. The costume is packaged for retail sale in a vinyl snap bag with hanger and insert.

The costume consists of two or more garments. Note 14 of Section XI, of the Harmonized Tariff Schedule of the United States (HTSUS), requires that textile garments of different headings be separately classified, thus preventing classification of costumes consisting of two or more garments as a set. If a set cannot exist by application of Note 14, the articles that may be packaged with the garments must also be classified separately.

The applicable subheading for the tunic-style garment will be 6205.30.2080, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Men's or boys' shirts: Of man-made fibers: Other: Other, Other: Other: Boys': Other." The rate of duty will be 29.1 cents per kilogram plus 25.9 percent ad valorem

The applicable subheading for the pants will be 6103.43.1540, HTSUS, which provides for for men's and boys'... trousers, bib and brace overalls, breeches and shorts (other than swimwear), knitted or crocheted: of synthetic fibers: trousers, breeches and shorts: other: trousers and breeches: men's. The rate of duty will be 28.2% ad valorem.

The applicable subheading for the belt and the leg covers will be 6117.80.9540, HTSUS, which provides for "Other made up clothing accessories, knitted or crocheted...Other accessories: Other: Other, Of man-made fibers: Other." The general duty rate will be 14.6 percent ad valorem.

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

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

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

Sincerely,

STEVEN A. MACK

Director

National Commodity Specialist Division

N092979

March 2, 2010

CLA-2-62-OT:RR:NC:TA:353

CATEGORY: Classification

TARIFF NO.: 6210.10.9040, 6211.42.0056,
6217.10.9530, 6506.91.0060, 9503.00.0080

PAT BEALS

TEETOT & COMPANY, INC.

341 SOUTH MELROSE, SUITE A

PLACENTIA, CA 92870

RE: The tariff classification of a child's costume from China.

DEAR Ms. BEALS:

In your letter dated January 20, 2010, received by this office on February 1, 2010, you requested a tariff classification ruling.

The Item # 10530 Centurion Costume (Turquoise) consists of a tunic, upper body garment, arm and leg covers, helmet and plastic sword. The tunic is constructed of felt fabric that is covered by plastic and has an attached cape of felt fabric; the well made sleeveless garment features a rounded neckline and decorative buttons. The well made upper body garment is constructed of woven 100% cotton fabric; it has loose short sleeves and reaches to the mid thigh. The arm and leg covers are constructed of woven 90 percent polyester and 10 percent metallic fabric laminated to felt; the cylindrical shaped covers represent armor. The centurion-style helmet is made of plastic.

The Item # 10530 Centurion Costume (Turquoise) consists of two or more garments. Note 14 of Section XI, of the HTSUS, requires that textile garments of different headings be separately classified, thus preventing classification of costumes consisting of two or more garments as sets. If a set cannot exist by application of Note 14, the articles that may be packaged with the garments must also be classified separately.

The applicable subheading for the Item # 10530 Centurion Costume (Turquoise) tunic will be 6210.10.9040, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Garments, made up of fabrics of heading 5602, 5603, 5903, 5906 or 5907: Of fabrics of heading 5602 or 5603: Other: Other: Other." The rate of duty will be 16 percent ad valorem.

The applicable subheading for the Item # 10530 Centurion Costume (Turquoise) upper body garment will be 6211.42.0056, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "...Other garments, women's or girls': Of cotton: Blouses, shirts and shirt-blouses, sleeveless tank styles and similar upper body garments, excluded from heading 6206: Other." The duty rate will be 8.1 percent ad valorem.

The applicable subheading for the Item # 10530 Centurion Costume (Turquoise) arm and leg covers will be 6217.10.9530, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Other made up clothing accessories... other than those of heading 6212: Accessories: Other: Other, Of man-made fibers." The rate of duty will be 14.6 percent ad valorem.

The applicable subheading for the Item # 10530 Centurion Costume (Turquoise) helmet will be 6506.91.0060, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Other headgear, whether or not lined or trimmed: Other: Of rubber or plastics, Other." The rate of duty will be Free.

The applicable subheading for the Item # 10530 Centurion Costume (Turquoise) sword will be 9503.00.0080, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Tricycles, scooters...dolls, other toys...parts and accessories thereof, Other.” 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 Kenneth Reidlinger at (646) 733-3053.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

N092981

March 2, 2010

CLA-2-62:OT:RR:NC:TA:353

CATEGORY: Classification

TARIFF NO.: 6210.10.9040, 6211.42.0056,
6217.10.9530, 6506.91.0060, 9503.00.0080

PAT BEALS

TEETOT & COMPANY, INC.

341 SOUTH MELROSE, SUITE A

PLACENTIA, CA 92870

RE: The tariff classification of a child's costume from China.

DEAR MS. BEALS:

In your letter dated January 20, 2010, received by this office on February 1, 2010, you requested a tariff classification ruling.

The Item # 10540 Centurion Costume (Eggplant) consists of a tunic, upper body garment, arm and leg covers, helmet and plastic sword. The tunic is constructed of felt fabric that is covered by plastic and has an attached cape of felt fabric; the well made sleeveless garment features a rounded neckline and decorative buttons. The well made upper body garment is constructed of woven 100% cotton fabric; it has loose short sleeves and reaches to the mid thigh. The arm and leg covers are constructed of woven 90 percent polyester and 10 percent metallic fabric laminated to felt; the cylindrical shaped covers represent armor. The centurion-style helmet is made of plastic.

The Item # 10540 Centurion Costume (Eggplant) consists of two or more garments. Note 14 of Section XI, of the HTSUS, requires that textile garments of different headings be separately classified, thus preventing classification of costumes consisting of two or more garments as sets. If a set cannot exist by application of Note 14, the articles that may be packaged with the garments must also be classified separately.

The applicable subheading for the Item # 10540 Centurion Costume (Eggplant) tunic will be 6210.10.9040, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Garments, made up of fabrics of heading 5602, 5603, 5903, 5906 or 5907: Of fabrics of heading 5602 or 5603: Other: Other: Other, Other." The rate of duty will be 16 percent ad valorem.

The applicable subheading for the Item # 10540 Centurion Costume (Eggplant) upper body garment will be 6211.42.0056, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "...Other garments, women's or girls': Of cotton: Blouses, shirts and shirt-blouses, sleeveless tank styles and similar upper body garments, excluded from heading 6206: Other." The duty rate will be 8.1 percent ad valorem.

The applicable subheading for the Item # 10540 Centurion Costume (Eggplant) arm and leg covers will be 6217.10.9530, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Other made up clothing accessories... other than those of heading 6212: Accessories: Other: Other, Of man-made fibers." The rate of duty will be 14.6 percent ad valorem.

The applicable subheading for the Item # 10540 Centurion Costume (Eggplant) helmet will be 6506.91.0060, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Other headgear, whether or not lined or trimmed: Other: Of rubber or plastics, Other." The rate of duty will be Free.

The applicable subheading for the Item # 10540 Centurion Costume (Eggplant) sword will be 9503.00.0080, Harmonized Tariff Schedule of the United

States (HTSUS), which provides for “Tricycles, scooters...dolls, other toys...parts and accessories thereof, Other.” 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 Kenneth Reidlinger at (646) 733-3053.

Sincerely,

ROBERT B. SWIERUPSKI
Director

National Commodity Specialist Division

N061590

June 16, 2009

CLA-2-62:OT:RR:NC:TA:353

CATEGORY: Classification

TARIFF NO.: 6211.32.0075, 6203.42.4016,
6116.93.8800, 6307.90.9889 3926.20.9050

MS. HELEN COOPER
ORIGINAL CONCEPTS
701 E. 3RD STREET, SUITE 130
LOS ANGELES, CALIFORNIA 90013

RE: The tariff classification of an adult costume from China, Vietnam/
Taiwan.

DEAR MS. COOPER:

In your letter dated May 11, 2009, on behalf Smiffys, you requested a tariff classification ruling. The samples will be returned to you.

Style 36230 Bad Costume consists of a jacket, trousers, gloves, shoe covers, two belts and a bracelet. The jacket and trousers are made of woven 100 percent cotton fabric. The gloves and shoe covers are made of knit 95 percent cotton/ 5 percent lycra fabric. The bracelet and the belts are made of 100 percent polyurethane plastic material. The jacket is not for outerwear. The garment has shoulder pads, a stand-up collar, long sleeves, zipper front with left over right flap and numerous zippers and buckles and tabs with metal grommets. The trousers have elastic at the back of the waist and a zipper fly front. The bottom of the legs has numerous straps with metal grommets. The fingerless gloves have one thumb and numerous straps with metal grommets and the shoe covers have elastic at the back and numerous straps with metal grommets. The bracelet is designed with metal studs and well as well as the belts.

The costume is well made with styling, finished neck/waist, sturdy seams, zipper closures and finished edges.

The Bad Costume, Style 36230 consists of two or more garments. Note 14 of Section XI, of the HTSUS, requires that textile garments of different headings be separately classified, thus preventing classification of costumes consisting of two or more garments as sets. If a set cannot exist by application of Note 14, the articles that may be packaged with the garments must also be classified separately.

The applicable subheading for the jacket will be 6211.32.0075, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Track suits, ski-suits and swimwear; other garments: Other garments, men's or boys': Of cotton, Jackets and jacket-type garments excluded from heading 6201." The duty rate will be 8.1 percent ad valorem.

The applicable subheading for the pants will be 6203.42.4016, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Men's or boys'...Trousers, bib and brace overalls, breeches and shorts: Of cotton: Other: Other: Other: Trousers and breeches: Men's: Other." The duty rate is 16.6 percent ad valorem.

The applicable subheading for the gloves will be 6116.93.8800, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Gloves, mittens and mitts, knitted or crocheted: Other: Of synthetic fibers: Other: Other: Without fourchettes." The rate of duty will be 18.6 percent ad valorem.

The applicable subheading for the shoe covers will be 6307.90.9889, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Other made up articles, including dress patterns: Other: Other: Other, Other." The duty rate will be 7 percent ad valorem.

The applicable subheading for the bracelet and belts will be 3926.20.9050, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Other articles of plastics...articles of apparel and clothing accessories...Other: Other, Other." The duty rate will be 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 Kenneth Reidlinger at (646) 733-3053.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

HQ H317808
OT:RR:CTF:FTM H317808 PJG
CATEGORY: Classification
TARIFF NO.: 6406.90.15

MS. HELEN COOPER
ORIGINAL CONCEPTS
701 E. 3RD STREET, SUITE 130
LOS ANGELES, CA 90013

RE: Modification of N295237, N092979, N092981 and N061590;
Classification of Textile Leg Coverings

DEAR MS. COOPER:

This is in reference to New York Ruling Letter (“NY”) N061590, dated June 16, 2009, issued to you concerning the tariff classification of the Bad Costume (style 36230) under the Harmonized Tariff Schedule of the United States (“HTSUS”). Specifically, the Bad Costume (style 36230) consists of a jacket, trousers, gloves, two belts, a bracelet, and leg coverings, which are referred to as “shoe covers.” This decision concerns only the leg coverings.

In NY N061590, U.S. Customs and Border Protection (“CBP”) classified the leg coverings in subheading 6307.90.98, HTSUS, which provides for “Other made up articles, including dress patterns: Other: Other: Other.” We have reviewed NY N061590 and find it to be in error with regard to the tariff classification of the leg coverings. For the reasons set forth below, we hereby modify NY N061590 and three other rulings with substantially similar textile leg coverings: NY N295237, dated April 13, 2018, NY N092979, dated March 2, 2010, and NY N092981, dated March 2, 2010.

FACTS:

In NY N061590, the Bad Costume (style 36230) leg coverings are constructed of knit 95 percent cotton and 5 percent lycra fabric. The leg coverings also “have elastic at the back and numerous straps with metal grommets.” In NY N061590, U.S. Customs and Border Protection (“CBP”) classified the textile leg coverings in subheading 6307.90.98, HTSUS, which provides for “Other made up articles, including dress patterns: Other: Other: Other.”

In NY N295237, the “Loyal Knit” costume (Item CB17006) leg coverings were “composed of 100% polyester knit fabric” and “tubular shape[d].” CBP classified the textile leg coverings in in subheading 6117.80.95, which provides for “Other made up clothing accessories, knitted or crocheted; knitted or crocheted parts of garments or of clothing accessories: Other accessories: Other: Other.”

In NY N092979, the Centurion Costume (Turquoise) (Item # 10530) leg coverings were “constructed of woven 90 percent polyester and 10 percent metallic fabric laminated to felt.” They were described as “cylindrical shaped covers represent[ing] armor.” In NY N092979, CBP classified the textile leg coverings in subheading 6217.10.95, HTSUS, which provides for “Other made up clothing accessories; parts of garments or of clothing accessories, other than those of heading 6212: Accessories: Other: Other.”

In NY N092981, the Centurion Costume (Eggplant) (Item # 10540) leg coverings were “constructed of woven 90 percent polyester and 10 percent metallic fabric laminated to felt.” They were described as “cylindrical shaped covers represent[ing] armor.” In NY N092979, CBP classified the textile leg coverings in subheading 6217.10.95, HTSUS, which provides for “Other made

up clothing accessories; parts of garments or of clothing accessories, other than those of heading 6212: Accessories: Other: Other.”

ISSUE:

Whether the textile leg coverings are classified as gaiters, leggings and similar articles under heading 6406, HTSUS, as other made up clothing accessories, knitted or crocheted under heading 6117, HTSUS, as other made up clothing accessories under heading 6217, HTSUS, or as other made up articles under heading 6307, HTSUS.

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 2021 HTSUS provisions under consideration are as follows:

6117	Other made up clothing accessories, knitted or crocheted; knitted or crocheted parts of garments or of clothing accessories:
6217	Other made up clothing accessories; parts of garments or of clothing accessories, other than those of heading 6212:
6307	Other made up articles, including dress patterns:
6406	Parts of footwear (including uppers whether or not attached to soles other than outer soles); removable insoles, heel cushions and similar articles; gaiters, leggings and similar articles, and parts thereof: * * *
6406.90	Other: * * *
	Of other materials:
6406.90.15	Of textile materials

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 64.06(II) provides as follows:

(II) GAITERS, LEGGINGS, AND SIMILAR ARTICLES, AND PARTS THEREOF

These articles are designed to cover the whole or part of the leg and in some cases part of the foot (e.g., the ankle and instep). They differ from socks and stockings, however, in that they do not cover the entire foot. They may be made of any material (leather, canvas, felt, knitted or crocheted fabrics, etc.) **except** asbestos. They include gaiters, leggings, spats, puttees, “mountain stockings” without feet, leg warmers and similar articles. Certain of these articles may have a retaining strap or elastic

band which fits under the arch of the foot. The heading also covers identifiable parts of the above articles.

The EN to 95.05(A)(3) provides as follows:

This heading covers:

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

* * *

- (3) Articles of fancy dress, e.g., masks, false ears and noses, wigs, false beards and moustaches (**not being** articles of postiche - **heading 67.04**), and paper hats. However, the heading **excludes** fancy dress of textile materials, of **Chapter 61** or **62**.

Heading 6406, HTSUS, provides for gaiters and leggings. The terms “gaiters” and “leggings” are not defined in the HTSUS.¹ Headquarters Ruling Letter (“HQ”) 088454, dated October 11, 1991, defines a gaiter as “1. A leather or heavy cloth covering for the legs extending from the instep to the ankle or knee. 2. An ankle-high shoe with elastic sides. 3. An overshoe with a cloth top.” *Id.* (citing *The American Heritage Dictionary*, (2nd College Ed. 1982)). HQ 088454 provides two definitions for “legging”: 1) “[a] leg covering of material such as canvas or leather” and 2) a “[c]overing for leg and ankle extending to knee or sometimes secured by stirrup strap under arch of foot. Worn in 19th c. by armed services and by civilian men. See PUTTEE and GAITER. Worn by women in suede, patent, and fabric in late 1960s.” *Id.* (citing *The American Heritage Dictionary*, (2nd College Ed. 1982) and *Fairchild’s Dictionary of Fashion*, (2nd Ed. 1988)). See also HQ 089582, dated November 6, 1991 and NY L81551, dated January 4, 2005.

In addition to gaiters and leggings, heading 6406, HTSUS, provides for “similar articles.” To “determine the scope of [a] general . . . phrase”, the United States Court of International Trade has used the rule of *ejusdem generis*. See *A.D. Sutton & Sons v. United States*, 32 C.I.T. 804, 808 (Ct. Int’l Trade 2008) (citing *Aves. in Leather, Inc. v. United States*, 178 F.3d 1241, 1244 (Fed. Cir. 1999)). Under the rule of *ejusdem generis*, “the general word or phrase is held to refer to things of the same kind as those specified.” *Id.* (citing *Sports Graphics, Inc. v. United States*, 24 F.3d 1390, 1392 (Fed. Cir. 1994)). Therefore, “to fall within the scope of the general term, the imported good ‘must possess the same essential characteristics of purposes that unite the listed examples preceding the general term or phrase.’” *Id.* (citing *Aves. in Leather, Inc.*, 178 F.3d at 1244).

Applying the rule of *ejusdem generis*, we note that the definitions of gaiters and leggings provided in HQ 088454 indicate that the articles are both leg coverings. Similarly, EN 64.06(II) describes gaiters, leggings and similar articles as “designed to cover the whole or part of the leg and in some cases part of the foot....Certain of these articles may have a retaining strap or

¹ “When...a tariff term is not defined in either the HTSUS or its legislative history”, its correct meaning is its common or commercial meaning. See *Rocknel Fastener, Inc. v. United States*, 267 F.3d 1354, 1356 (Fed. Cir. 2001). “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.’” *Id.* at 1356–1357 (quoting *C.J. Tower & Sons v. United States*, 69 C.C.P.A. 128, 673 F.2d 1268, 1271 (CCPA 1982); *Simod Am. Corp. v. United States*, 872 F.2d 1572, 1576 (Fed. Cir. 1989)).

elastic band which fits under the arch of the foot.” The EN further states that these articles are different from socks because they do not cover the entire foot.

We find that the Bad Costume (style 36230) leg coverings share the same characteristics as leggings and gaiters of heading 6406, HTSUS. The subject leg coverings provide leg coverage like leggings and gaiters, which provide leg coverage extending to the ankle or to the knee. Finally, consistent with EN 64.06(II), the subject leg coverings do not cover the entire foot. Accordingly, the subject polyester leg coverings are classifiable under heading 6406, HTSUS, as articles similar to leggings and gaiters, and are specifically classified in subheading 6406.90.15, HTSUS, which provides for “Parts of footwear (including uppers whether or not attached to soles other than outer soles); removable insoles, heel cushions and similar articles; gaiters, leggings and similar articles, and parts thereof: Other: Of other materials: Of textile materials.”

In NY N061590, CBP classified the leg coverings in heading 6307, HTSUS, which provides for “Other made up articles, including dress patterns.” In NY N295237, CBP classified the leg coverings in heading 6117, HTSUS, which provides for “Other made up clothing accessories, knitted or crocheted; knitted or crocheted parts of garments or of clothing accessories.” In NY N092979 and NY N092981, CBP classified the leg coverings in heading 6217, HTSUS, which provides for “Other made up clothing accessories; parts of garments or of clothing accessories, other than those of heading 6212.” Note 1(n) to Section XI, HTSUS, states that Section XI, HTSUS, does not cover “Footwear or parts of footwear, gaiters or leggings or similar articles of chapter 64.” Therefore, since the merchandise is classifiable in heading 6406, HTSUS, it cannot also be classifiable in headings 6117, 6212, or 6217, HTSUS.

On the other hand, heading 9505, HTSUS, provides, in relevant part, for festive articles and “parts and accessories” of festive articles. EN 95.05(A)(3) states that the heading covers costume accessories such as masks, false ears, noses, wigs, false beards, mustaches and paper hats. *See Rubie’s Costume Co. v. United States*, 337 F.3d 1350, 1359 (Fed. Cir. 2003) (stating that the Explanatory Notes do not narrow the scope of heading 9505, HTSUS, to only accessories to costumes). CBP has classified similar costume accessories under heading 9505, HTSUS. *See, e.g.*, NY N245614, dated August 29, 2013 (stretchable sleeves covered in fake tattoos are classifiable in heading 9505, HTSUS) and NY N162276 (butterfly wings and wand are classifiable in heading 9505, HTSUS). Similar to the articles described in the exemplars provided in EN 95.05(A)(3) and the cited rulings, the subject leg coverings are costume accessories.

When goods are *prima facie* classifiable under two or more headings, we must proceed to GRI 3. According to GRI 3(a), “[t]he heading which provides the most specific description shall be preferred to headings providing a more general description.” In *Russ Berrie & Co. v. United States*, 381 F.3d 1334 (Fed. Cir. 2004), the U.S. Court of Appeals for the Federal Circuit (“CAFC”) determined that Christmas and Halloween-themed lapel pins and earrings were *prima facie* classifiable as both imitation jewelry of heading 7117, HTSUS, and as festive articles of heading 9505, HTSUS. Applying GRI 3(a), the CAFC reasoned that:

We have recognized that festive articles include such disparate items as ‘placemats, table napkins, table runners, and woven rugs’ depicting ‘Christmas trees, Halloween jack-o-lanterns, [and Easter] bunnies,’ (cita-

tion omitted) ‘cast iron stocking hangers[,] ... Christmas water globes; ... [and] Easter water globes,’ (citation omitted) and jack-o-lantern mugs and pitchers (citation omitted).

Because heading 9505 covers a far broader range of items than heading 7117, the latter is more specific than the former. It is also more specific because it describes the item by name (‘imitation jewelry’) rather than by class (‘festive articles’). It therefore follows that the imported merchandise is classifiable under heading 7117 rather than under heading 9505.

Id. at 1338.

In the instant case, the “gaiters, leggings and similar articles” heading is more specific than the “festive articles” heading because “it covers a narrower set of items.” *See id.* The relevant portion of heading 6406, HTSUS, pertains to leg coverings, whereas the relevant portion of heading 9505, HTSUS, specifically “‘festive articles’... need only to be closely associated with and used or displayed during a festive occasion.” *Id.* Accordingly, heading 6406, HTSUS, is more specific than heading 9505, HTSUS, and by application of GRI 3(a), the subject leg coverings are properly classified under heading 6406, HTSUS, and specifically in subheading 6406.90.15, HTSUS, which provides for “Parts of footwear (including uppers whether or not attached to soles other than outer soles); removable insoles, heel cushions and similar articles; gaiters, leggings and similar articles, and parts thereof: Other: Of other materials: Of textile materials.”

HOLDING:

By application of GRI 3(a), the Bad Costume (style 36230) textile leg coverings are classified under heading 6406, HTSUS, and specifically, in subheading 6406.90.15, HTSUS, which provides for “Parts of footwear (including uppers whether or not attached to soles other than outer soles); removable insoles, heel cushions and similar articles; gaiters, leggings and similar articles, and parts thereof: Other: Of other materials: Of textile materials.” The 2021 column one, general rate of duty is 14.9 percent *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY N295237, dated April 13, 2018, is MODIFIED with regard to the tariff classification of the “Loyal Knit” costume (Item CB17006) “leg covers.”

NY N092979, dated March 2, 2010, is MODIFIED with regard to the tariff classification of the Centurion Costume (Turquoise) (Item # 10530) “leg covers.”

NY N092981, dated March 2, 2010, is MODIFIED with regard to the tariff classification of the Centurion Costume (Eggplant) (Item # 10540) “leg covers.”

Sincerely,

CRAIG T. CLARK,

Director

Commercial and Trade Facilitation Division

**PROPOSED MODIFICATION OF THIRTEEN RULING
LETTERS AND PROPOSED REVOCATION OF TREATMENT
RELATING TO THE TARIFF CLASSIFICATION OF PLASTIC
LEG COVERINGS**

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

ACTION: Notice of proposed modification of thirteen ruling letters and proposed revocation of treatment relating to the tariff classification of plastic leg coverings.

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 thirteen ruling letters concerning tariff classification of plastic leg coverings under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments on the correctness of the proposed actions are invited.

DATE: Comments must be received on or before July 30, 2021.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Erin Frey, Commercial and Trade Facilitation Division, 90 K St., NE, 10th Floor, Washington, DC 20229–1177. Due to the COVID-19 pandemic, CBP is also allowing commenters to submit electronic comments to the following email address: 1625Comments@cbp.dhs.gov. All comments should reference the title of the proposed notice at issue and the *Customs Bulletin* volume, number and date of publication. Due to the relevant COVID-19-related restrictions, CBP has limited its on-site public inspection of public comments to 1625 notices. Arrangements to inspect submitted comments should be made in advance by calling Ms. Erin Frey at (202) 325–1757.

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 thirteen ruling letters pertaining to the tariff classification of plastic leg coverings. Although in this notice, CBP is specifically referring to New York Ruling Letter ("NY") N096096, dated March 23, 2010 (Attachment A), NY N025677, dated May 2, 2008 (Attachment B), NY N014873, dated August 13, 2007 (Attachment C), NY N012283, dated June 21, 2007 (Attachment D), NY N006635, dated February 28, 2007 (Attachment E), NY M83717, dated October 11, 2006 (Attachment F), NY M85722, dated August 14, 2006 (Attachment G), NY M80474, dated March 17, 2006 (Attachment H), NY L87172, dated September 12, 2005 (Attachment I), NY L81757, dated January 26, 2005 (Attachment J), NY K84618, dated April 14, 2004 (Attachment K), NY J86180, dated June 24, 2003 (Attachment L), and NY J84426, dated June 2, 2003 (Attachment M), 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 thirteen 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 N096096, NY N025677, NY N014873, NY N012283, NY N006635, NY M83717, NY M85722, NY M80474, NY L87172, NY L81757, NY K84618, NY J86180, and NY J84426, CBP classified plastic leg coverings in heading 9505, HTSUS, specifically in sub-heading 9505.90.60, HTSUS, which provides for “Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: Other: Other.” CBP has reviewed NY N096096, NY N025677, NY N014873, NY N012283, NY N006635, NY M83717, NY M85722, NY M80474, NY L87172, NY L81757, NY K84618, NY J86180, and NY J84426 and has determined the ruling letters to be in error. It is now CBP’s position that the plastic leg coverings are properly classified, in heading 6406, HTSUS, specifically in subheading 6406.90.30, HTSUS, which provides for “Parts of footwear (including uppers whether or not attached to soles other than outer soles); removable insoles, heel cushions and similar articles; gaiters, leggings and similar articles, and parts thereof: Other: Of other materials: Of rubber or plastics.” With regard to NY N012283, CBP is proposing to modify the ruling to remove the reference to and classification of the leg coverings because the leg coverings were not part of the costume classified in that ruling.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to modify NY N096096, NY N025677, NY N014873, NY N012283, NY N006635, NY M83717, NY M85722, NY M80474, NY L87172, NY L81757, NY K84618, NY J86180, and NY J84426 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H249079, set forth as Attachment N to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated:

CRAIG T. CLARK,
Director
Commercial and Trade Facilitation Division

Attachments

N096096

March 23, 2010

CLA-2-61:OT:RR:NC:TA:353

CATEGORY: Classification

TARIFF NO.: 6106.20.2010, 6104.63.2011,
9505.10.2500, 6116.10.9500 9505.90.6000

MR. ROBERT A. PONTIER, CHB
AIR CARGO SALES, INC.
429 MOON CLINTON ROAD
CORAPOLIS, PENNSYLVANIA 15108

RE: The tariff classification of a unisex Santa Claus Suit from China.

DEAR MR. PONTIER:

In your letter dated February 22, 2010, on behalf of Nellam Enterprises, LLC, you requested a tariff classification ruling. The samples will be returned to you.

Style 4291 Adult Santa Suit consists of a blouse which you identify as a jacket, pants, Santa Hat, gloves, belt, boot tops, beard and mustache. The blouse, pants and Santa Hat are made of 100 percent knit acrylic fabric and the gloves are made of knit man-made fiber fabric. The boot tops and belt are made of cellular plastic material. The beard and mustache are made of man-made fiber material. All items are packages in a poly bag with colored cardboard insert.

The blouse has no opening at the front and a small one button closure at the back. The garment is trimmed with pile on the wrists, at the bottom, neck and down the front and has belts loops. The pants have a tunneled elastic waist, pockets and are without a fly. The Santa Hat has a pom pom at the top and is trimmed with pile fabric. The gloves with forchettes extend to the wrist. The boot tops are trimmed with pile fabric at the top and extend from below the knee to the top of the shoe. The belt is approximately 3 ½ inches wide with a metal buckle and metal grommets.

The Adult Santa Claus Suit, Style 4291 is well made with sturdy neck, waist, seams and styling.

The Adult Santa Claus Suit Style 4291 consists of two or more garments. Note 14 of Section XI, of the HTSUSA, requires that textile garments of different headings be separately classified, thus preventing classification of costumes consisting of two or more garments as sets. If a set cannot exist by application of Note 14, the articles that may be packaged with the garments must also be classified separately.

The applicable subheading for the blouse will be 6106.20.2010, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Women's or girls' blouses...knitted or crocheted: Of man-made fibers: Other Women's." The duty rate will be 32 percent ad valorem.

The applicable subheading for the pants will be 6104.63.2011, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Women's or girls' suits, ensembles, suit-type jackets, blazers, dresses, skirts. Divided skirts, trousers, bib and brace overalls, breeches and shorts: Trousers, bib and brace overalls, breeches and shorts: Of synthetic fibers: Other: Other, Trousers and breeches: Women's: Other." The duty rate will be 28.2 percent ad valorem.

The applicable subheading for Santa Claus Hat, will be 9505.10.2500 , Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: Christmas ornaments: Other: Other.” The rate of duty will be Free.

The applicable subheading for the gloves will be 6116.10.9500, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Gloves, mittens and mitts, knitted or crocheted: impregnated, coated or covered with plastics or rubber: Other: With fourchettes: Other.” The duty rate will be 7 percent ad valorem.

The applicable subheading for the boot tops, belt, beard and mustache will be 9505.90.6000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Festive, carnival or other entertainment articles, including magic tricks and practical jokes articles: parts and accessories thereof: Other: Other.” The duty rate 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 Kenneth Reidlinger at (646) 733-3053.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

N025677

May 2, 2008

CLA-2-61:OT:RR:NC:3:353

CATEGORY: Classification

TARIFF NO.: 6106.20.2030; 6104.63.2028;

9505.90.6000; 6106.20.2010; 6104.63.2011;

6704.11.0000; 6704.19.0000

MS. CHERRY LIN

TOM'S TOY INTERNATIONAL (HK) LTD.

ROOM 604-6, CONCORDIA PLAZA

1 SCIENCE MUSEUM ROAD

TST EAST, KOWLOON, HONG KONG

RE: The tariff classification of Santa Claus Costumes from China.

DEAR MS. LIN:

In your letter received by this office on April 4, 2008, you requested a classification ruling. As requested, the samples will be returned to you.

You have submitted two samples. Item # CL182 is a child's unisex Santa Claus costume constructed of knit 65% acrylic and 35% polyester faux fur fabric. The well-made costume consists of a lined top/jacket and lined pants. The top has a well-made collar, a well-made neckline, reinforced seams, a back opening with a button closure and well-made edges. The pants have a well-made waist with an adjustable drawstring, reinforced seams and finished ankles. The top may be worn as a jacket over other clothing or as a shirt over undergarments. We believe it will be principally used as a shirt worn over an undershirt and a pillow or some other type of stuffing to achieve the Santa Claus image. The costume also includes a same fabric Santa Claus hat, cellular plastic belt and boot covers.

Item # CL181 is an adult unisex Santa Claus costume constructed of knit 74% acrylic and 26% polyester faux fur fabric. The well-made costume consists of a top/jacket and pants. The top has a well-made collar, a well-made neckline, reinforced seams, a full frontal opening with a zipper closure and well-made edges. The pants have a well-made waist, reinforced seams and finished ankles. The top may be worn as a jacket over other clothing or as a shirt over undergarments. We believe it will be principally used as a shirt worn over an undershirt and a pillow or some other type of stuffing to achieve the Santa Claus image. The costume also includes a same fabric Santa Claus hat and cellular plastic belt, boot covers, eyeglasses without lenses, man-made fabric wig and man-made fabric beard.

The Santa Clause suits consist of two or more garments. Note 14 of Section XI, of the HTSUS, requires that textile garments of different headings be separately classified, thus preventing classification of costumes consisting of two or more garments as sets. If a set cannot exist by application of Note 14, the articles that may be packaged with the garments must also be classified separately.

The applicable subheading for Item # CL182 children's top will be 6106.20.2030, Harmonized Tariff Schedule of the United States (HTSUS), which provides for woman's or girls' blouses and shirts, knitted or crocheted: of man-made fibers: other, girl's: other. The duty rate will be 32 percent ad valorem.

The applicable subheading for Item # CL182 children's pants will be 6104.63.2028, Harmonized Tariff Schedule of the United States (HTSUS),

which provides for women's or girls' suits, ensembles, suit-type jackets, blazers, dresses, skirts. Divided skirts, trousers, bib and brace overalls, breeches and shorts: trousers, bib and brace overalls, breeches and shorts: of synthetic fibers: other: other, trousers and breeches: girls': other: other. The duty rate will be 28.2 percent ad valorem.

The applicable subheading for belt, both costumes, glasses, adult costume and boot covers, both costumes will be 9505.90.6000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for festive, carnival or other entertainment articles, including magic tricks and practical jokes articles: parts and accessories thereof: other: other. The duty rate will be Free.

The applicable subheading for Item #CL181 adult top will be 6106.20.2010, Harmonized Tariff Schedule of the United States (HTSUS), which provides for woman's or girls' blouses and shirts, knitted or crocheted: of man-made fibers: other, woman's. The duty rate will be 32 percent ad valorem.

The applicable subheading for Item # CL181 adult pants will be 6104.63.2011, Harmonized Tariff Schedule of the United States (HTSUS), which provides for women's or girls' suits, ensembles, suit-type jackets, blazers, dresses, skirts. Divided skirts, trousers, bib and brace overalls, breeches and shorts: trousers, bib and brace overalls, breeches and shorts: of synthetic fibers: other: other, trousers and breeches: women's: other. The duty rate will be 28.2 percent ad valorem.

The applicable subheading for Item # CL181 adult costume wig will be 6704.11.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for wigs, false beards, eyebrows and eyelashes, switches and the like, of human or animal hair or of other textile materials, articles of human hair not elsewhere specified or included: of synthetic textile materials: complete wigs. The duty rate will be Free.

The applicable subheading for Item # CL181 adult costume beard will be 6704.19.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for wigs, false beards, eyebrows and eyelashes, switches and the like, of human or animal hair or of other textile materials, articles of human hair not elsewhere specified or included: of synthetic textile materials: other. The duty rate will be Free.

The classification of the Santa Hats involves a consideration of whether the merchandise may be classifiable in Chapter 95 as "festive."

Section 177.7 of the Customs Regulations (19 C.F.R. §177.7) provides that rulings will not be issued in certain circumstances. Specifically, § 177.7(b) reads, in pertinent part:

No ruling letter will be issued with respect to any issue which is pending before the United States Court of International Trade, the United States Court of Appeals for the Federal Circuit or any court of appeal therefrom.

As such, CBP will not issue a classification ruling with regard to the Santa hats at this time. The classification determination may be impacted by court cases currently pending in the Court of International Trade. See *Michael Simons Designs, Inc. v. United States*, Ct. No. 04-00537; *Berwick Industries, Inc. v. United States*, Ct. Nos. 98-12-03189, 96-01-00263, 99-01-000436, 99-03-00121, 99-03-00158, 99-06-00356, 98-09-02897, 97-05-00789, 97-06-00983, 97-08-01400, 96-12-0738, 96-05-01359, and 96-04-01197; *Waterford Wedgwood USA, Inc. v. United States*, Ct. Nos. 00-05-00215, 99-03-00133 and 99-11-00721; *Cuthbertson Imports Inc. v. United States*,

Ct. No. 03-00846; and Wilton Industries, Inc. v. United States, Ct. Nos. 00-11-00528, 00-01-00218, 00-03-00014, 00-03-00015, 00-04-00193, 00-04-00194 and 00-04-00250.

If you wish, you may resubmit your request for a prospective ruling after the appropriate court cases have been resolved. The above referenced file is hereby administratively closed.

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/>.

Items # CL182 and CL81 tops fall within textile category designation 639. Items # CL182 and CL 181 pants fall within textile category designation 648. With the exception of certain products of China, quota/visa requirements are no longer applicable for merchandise which is the product of World Trade Organization (WTO) member countries. Quota and visa requirements are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information on quota and visa requirements applicable to this merchandise, we suggest you check, close to the time of shipment, the "Textile Status Report for Absolute Quotas" which is available on our web site at www.cbp.gov. For current information regarding possible textile safeguard actions on goods from China and related issues, we refer you to the web site of the Office of Textiles and Apparel of the Department of Commerce at otexa.ita.doc.gov.

Please note that separate Federal Trade Commission marking requirements exist regarding country of origin, fiber content, and other information that must appear on many textile items. You should contact the Federal Trade Commission, Division of Enforcement, 6th and Pennsylvania Avenue, N.W., Washington, D.C., 20580, for information on the applicability of these requirements to this item.

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 Kenneth Reidlinger at 646-733-3053.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

N014873

August 13, 2007

CLA-2-61:RR:NC:N3:353

CATEGORY: Classification

TARIFF NO.: 6105.20.2010, 6104.63.2011,
6704.19.0000, 6704.11.0000 9505.90.6000,
3926.20.9050, 6116.93.9400

MR. JOSEPH STINSON
LISS GLOBAL, INC.
7746 DUNGAN RD.
PHILADELPHIA, PA 19111

RE: The tariff classification of an adult Santa Claus Costume from China.

DEAR MR. STINSON:

In your letter dated July 23, 2007, you requested a classification ruling. The samples which you submitted are being returned as requested.

The submitted sample, Item 959638 is a well made Santa Claus Costume consisting of a top/shirt that you call a tunic, pants, hat, man-made fiber beard and wig, cellular plastic boot covers and belt and gloves. An eyebrow make-up stick was not included with the sample. The top/shirt, pants, hat and gloves are made of knit polyester fabric. The velour men's top/shirt has styling features, a well-made collar, a well-made neckline and a side opening at the neck with left over right button closure and well-made edges. The velour pants made without a fly have a well-made elasticized waist and ankles. The gloves extend to the wrist and have fourchettes.

The Santa Claus costume, Item 959638 consists of two or more garments. Note 14 of Section XI, of the HTSUS, requires that textile garments of different headings be separately classified, thus preventing classification of costumes consisting of two or more garments as sets. If a set cannot exist by application of Note 14, the articles that may be packaged with the garments must also be classified separately.

The applicable subheading for the top/shirt will be 6105.20.2010, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Men's or boys' shirts, knitted or crocheted: Of man-made fibers: Other, Men's." The duty rate will be 32% ad valorem. The textile category designation is 638.

The applicable subheading for the pants will be 6104.63.2011, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Women's or girls' suits, ensembles, suit-type jackets, blazers, dresses, skirts. Divided skirts, trousers, bib and brace overalls, breeches and shorts: Trousers, bib and brace overalls, breeches and shorts: Of synthetic fibers: Other: Other, Trousers and breeches: Women's: Other." The duty rate will be 28.2% ad valorem. The textile category designation is 648.

The applicable subheading for the beard will be 6704.19.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Wigs, false beards, eyebrows and eyelashes, switches and the like, of human or animal hair or of other textile materials, articles of human hair not elsewhere specified or included: Of synthetic textile materials: Other." The duty rate will be Free.

The applicable subheading for the wig will be 6704.11.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Wigs, false beards, eyebrows and eyelashes, switches and the like, of human or animal

hair or of other textile materials, articles of human hair not elsewhere specified or included: Of synthetic textile materials: Complete wigs.” The duty rate will be Free.

The applicable subheading for the boot covers will be 9505.90.6000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “festive, carnival and other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: Other: Other.” The duty rate will be Free.

The applicable subheading for the belt will be 3926.20.9050, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Other articles of plastics and articles of other materials of headings 3901 to 3914: articles of apparel and clothing accessories: Other: Other, Other.” The rate of duty will be 5% ad valorem.

The applicable subheading for the gloves will be 6116.93.9400, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Gloves, mittens and mitts, knitted or crocheted: other: of synthetic fibers: other: other: with fourchettes.” The duty rate will be 18.6% ad valorem. The textile category designation is 631.

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/>.

With the exception of certain products of China, quota/visa requirements are no longer applicable for merchandise which is the product of World Trade Organization (WTO) member countries. Quota and visa requirements are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information on quota and visa requirements applicable to this merchandise, we suggest you check, close to the time of shipment, the “Textile Status Report for Absolute Quotas” which is available on our web site at www.cbp.gov. For current information regarding possible textile safeguard actions on goods from China and related issues, we refer you to the web site of the Office of Textiles and Apparel of the Department of Commerce at otexa.ita.doc.gov.

Please note that separate Federal Trade Commission marking requirements exist regarding country of origin, fiber content, and other information that must appear on many textile items. You should contact the Federal Trade Commission, Division of Enforcement, 6th and Pennsylvania Avenue, N.W., Washington, D.C., 20580, for information on the applicability of these requirements to this item. Information can also be found at the FTC website www.ftc.gov (click on “Consumer Protection,” “Business Information,” “Clothing & Textiles,” “Threading Your Way Through the Labeling Requirements”).

We cannot classify the eyebrow make-up stick without a sample. If you wish to have it classified you must submit a sample.

Regarding the Santa Claus Hat, the issue of classification under heading 9505, HTSUS, of functional articles that incorporate holiday or seasonal motifs is currently at the Court of International Trade in *LTD Commodities LLC v. United States* (Court No. 03–00861), *Michael Simon Design, Inc. v. United States* (Court No. 04–00537), and other cases.

Section 177.7, Customs Regulations (19 CFR 177.7) provides that rulings will not be issued in certain circumstances. Section 177.7(b) states, in pertinent part, the following:

No ruling letter will be issued with respect to any issue which is pending before the United States Court of International Trade, the United States Court of Appeals for the Federal Circuit, or any court of appeal therefrom.

In light of the prohibition set out in 19 CFR 177.7(b), and as the instant classification ruling request on the Santa Claus hat is closely related to the issue presently pending in the Court of Appeals, we are unable to issue a classification ruling letter to you with respect to the Santa Claus hat. Accordingly, we are administratively closing our file on this item.

When all litigation has been concluded on the case referenced above, you may resubmit your request for a ruling on the Santa Claus hat. If you decide to resubmit your request, please include all materials that we have returned to you and mail your request to Director, National Commodity Specialist Division, U.S. Customs Service, Attn: CIE/Ruling Request, One Penn Plaza, 10th Floor, New York, NY 10119.

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 Kenneth Reidlinger at 646-733-3053.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

N012283

June 21, 2007

CLA-2-61:RR:NC:N3:353

CATEGORY: Classification

TARIFF NO.: 6114.30.1020, 6104.63.2011,
6505.90.6090, 9505.90.6000

Ms. LEAH C. NAVIDAD
DISGUISE
11906 TECH CENTER CT
POWAY, CA 92064

RE: The tariff classification of an adult costume from China.

DEAR Ms. NAVIDAD:

In your letter dated May 31, 2007, you requested a classification ruling. The sample will be returned to you.

The submitted sample, Style 521, Buccaneer Beauty Adult Costume consists of top, pants, hat and eye patch. The top, pants and hat are made of knit 100% polyester fabric.

The midriff top has long sleeves with lace trim at the wrists, beaded trim at the bust line and midriff, lace inset at the front center of the bodice and a self tie belt and hook and loop closure at the back.

The pants extend to just below the knee with piping trim and have an elasticized waist with an embellishment of an attached scarf-like tie at the hip.

The pirate-style hat has a feather plume and trim around the brim.

The jeweled and lace trimmed eye patch has elastic that fits onto the head to hold it in place.

The costume is well made with a finished neckline, waist, styling and embellishments.

The Buccaneer Beauty Adult Costume consists of two or more garments. Note 14 of Section XI, of the HTSUS, requires that textile garments of different headings be separately classified, thus preventing classification of costumes consisting of two or more garments as sets. If a set cannot exist by application of Note 14, the articles that may be packaged with the garments must also be classified separately.

The applicable subheading for the midriff top will be 6114.30.1020, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Other garments, knitted or crocheted: Of man-made fibers: Tops, Women's or girls." The general duty rate will be 28.2% ad valorem. The textile category designation is 639.

The applicable subheading for the pants will be 6104.63.2011, Harmonized tariff Schedule of the United States (HTS), which provides for "Women's or girls'...trousers...Trousers...Of synthetic fibers: Other: Other, Trousers and breeches: Women's: Other." The duty rate will be 28.2% ad valorem. The textile category designation is 648.

The applicable subheading for hat will be 6505.90.6090, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Hats and other headgear, knitted or crocheted...Other: Of man-made fibers: Knitted or crocheted or made up from knitted or crocheted fabric: Not in part of braid, Other: Other: Other." The duty rate will be 20 cents per kilogram plus 7% ad valorem. The textile category designation is 659.

The applicable subheading for boot covers and eye patch will be 9505.90.6000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Festive, carnival or other entertainment articles, including magic tricks and practical jokes articles: parts and accessories thereof: Other: Other.” The duty rate 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/>.

With the exception of certain products of China, quota/visa requirements are no longer applicable for merchandise which is the product of World Trade Organization (WTO) member countries. Quota and visa requirements are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information on quota and visa requirements applicable to this merchandise, we suggest you check, close to the time of shipment, the “Textile Status Report for Absolute Quotas” which is available on our web site at www.cbp.gov. For current information regarding possible textile safeguard actions on goods from China and related issues, we refer you to the web site of the Office of Textiles and Apparel of the Department of Commerce at otexa.ita.doc.gov.

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

Please note that separate Federal Trade Commission marking requirements exist regarding country of origin, fiber content, and other information that must appear on many textile items. You should contact the Federal Trade Commission, Division of Enforcement, 6th and Pennsylvania Avenue, N.W., Washington, D.C., 20580, for information on the applicability of these requirements to this item. Information can also be found at the FTC website www.ftc.gov (click on “Consumer Protection,” “Business Information,” “Clothing & Textiles,” “Threading Your Way Through the Labeling Requirements”).

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 Kenneth Reidlinger at 646-733-3053.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

N006635

February 28, 2007

CLA-2-61:RR:NC:N3:353

CATEGORY: Classification

TARIFF NO.: 6206.40.3030, 6106.20.2010,
6211.43.0091, 9505.90.6000

MS. ANNALEE C. MC KAY

MARIO CHIODO STUDIOS/SEASONAL VISIONS

1919 PERALTA ST.

OAKLAND, CA 94607

RE: The tariff classification of unisex costumes from China.

DEAR MS. MC KAY:

In your letter dated February 6, 2007, you requested a classification ruling. The samples will be returned to you as requested.

The submitted samples are style 5148030-031, The Haunted Hotel: Bones the Bellboy Costume Set and style 5148050-051 Midnight Carnival Deluxe: Leo the Lion Tamer Costume.

Style 5148030-031, Bones the Bellboy Costume Set consists of a blouse, mask, hat and gloves with boney fingers. The blouse is made of woven 100% polyester fabric. The blouse has a hook and loop closure at the back and faux buttons on each side at the front with epaulets, long sleeves with trim and a stand-up collar.

The costume is well made with a finished neckline styling and embellishments.

General Rule of Interpretation (GRI) 3(b) is applicable when goods are, prima facie, classifiable under two or more headings, and have been put up in sets for retail sale. GRI 3(b) states that the goods "shall be classified as if they consisted of the material or component which gives them their essential character." In this case, the blouse imparts the essential character of the set.

The applicable subheading for style 5148030-031, The Haunted Hotel: Bones the Bellboy Costume Set will be 6206.40.3030, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Women's or girls' blouses, shirts and shirt blouses: Of man-made fibers: Other: Other: Other: Women's." The duty rate will be 26.9% ad valorem. The textile category is 641.

Style 5148050-051, Midnight Carnival Deluxe Leo the Lion Tamer Costume consists of shirt, cape, belt and boot covers. The shirt is made of knit polyester fabric. The garment has long sleeves, an attached vest and a lace closure. The cape is made of woven polyester fabric and is designed with a large trimmed collar, tie closure and embellishments on the sides. The boot covers and belt are made of plastic material.

The costume is well made with finished edges, styling and embellishments.

The Midnight Carnival Deluxe Leo the Lion Tamer Costume consists of two or more garments. Note 13 of Section XI, of the HTSUS, requires that textile garments of different headings be separately classified, thus preventing classification of costumes consisting of two or more garments as sets. If a set cannot exist by application of Note 13, the articles that may be packaged with the garments must also be classified separately.

The applicable subheading for style shirt/blouse will be 6106.20.2010, Harmonized Tariff Schedule of the United States (HTSUS), which provides for

“Women’s...shirts, knitted or crocheted: Of man-made fibers: Other, Women’s.” The rate of duty will be 32 % ad valorem. The textile category designation is 639.

The applicable subheading for cape will be 6211.43.0091, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Other garments, women’s or girls’ (con.): Of man-made fibers...Other”. The rate of duty will be 16% ad valorem. The textile category is 659.

The applicable subheading for the boot covers and belt will be 9505.90.6000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Festive, carnival or other entertainment articles, including magic tricks and practical joke articles, parts and accessories thereof: Other: Other.” The duty rate 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/>.

With the exception of certain products of China, quota/visa requirements are no longer applicable for merchandise, which is the product of World Trade Organization (WTO) member countries. The textile category number above applies to merchandise produced in non-WTO member-countries. Quota and visa requirements are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information on quota and visa requirements applicable to this merchandise, we suggest you check, close to the time of shipment, the “Textile Status Report for Absolute Quotas” which is available on our web site at www.cbp.gov. For current information regarding possible textile safeguard actions on goods from China and related issues, we refer you to the web site of the Office of Textiles and Apparel of the Department of Commerce at otexa.ita.doc.gov.

Please note that separate Federal Trade Commission marking requirements exist regarding country of origin, fiber content, and other information that must appear on many textile items. You should contact the Federal Trade Commission, Division of Enforcement, 6th and Pennsylvania Avenue, N.W., Washington, D.C., 20580, for information on the applicability of these requirements to this item.

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 Kenneth Reidlinger at 646-733-3053.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

NY M83717

October 11, 2006

CLA-2-62:RR:NC:3:353 M83717

CATEGORY: Classification

TARIFF NO.: 6206.40.3030, 6104.69.8026,
6506.91.0060, 9505.90.6000

MS. DARLA J PERRY
PONY EXPRESS CREATIONS, INC.
9350 TRADE PLACE, SUITE C
SAN DIEGO, CA 92126

RE: The tariff classification of a costume from China, Hong Kong and Vietnam.

DEAR MS. PERRY:

In your letter dated May 16, 2006, you requested a classification ruling. We apologize for the delay in our response; this office was waiting for a Customs Laboratory Report, which was recently received. As requested, the samples will be returned to you.

The submitted sample is a Style 350476 Deluxe Knight costume consisting of a top, pants, headpiece and boot covers.

The top, which you call a tunic, is a well-made upper body garment featuring long sleeves, a collar, partial front zipper closure, styling features, and a finished neckline and edges. The upper body garment is constructed of woven faux-suede synthetic fiber fabric and knit fabric consisting of two-ply yarn composed of one-ply filament nylon twisted with one-ply metallized mylar-type strip and is 84% nylon and 15% metallized strip by weight. The front panel and approximately 75% of the back panel are constructed of woven fabric; the sleeves and approximately 25% of the rear panel are constructed of the knit fabric. The woven fabric imparts the essential character of the garment.

The well-made pants are lined and feature a finished elasticized waistband and cuffs. You state that the fiber content is 100% polyester. In order to verify the fiber content of the pants and to analyze the yarn structure of the fabric, we submitted a swatch of the fabric to the U.S. Customs Laboratory. The laboratory has reported that the fabric of the pants is composed of knit two-ply yarn composed of one-ply filament nylon twisted with one-ply metallized mylar-type strip and is 84% nylon and 15% metallized strip by weight. A yarn that contains any amount of metal is regarded as being composed entirely of "metallized yarn" for tariff purposes.

The headpiece, which resembles a suit-of-armor helmet, and boot covers are constructed of knit fabric that is coated on one side with polyurethane and on the other side with foam. Chapter 59 Note 2(a) (3) states that "Heading 5903 applies to: (a) Textile fabrics impregnated, coated, covered, or laminated with plastics...other than: (3) Products in which the textile fabric is either completely embedded in plastic or entirely coated or covered on both sides with such material, provided such coating can be seen by the naked eye...(chapter 39)." The knit fabric is entirely coated or covered on both sides with plastic that is visible to the naked eye and is classifiable in Chapter 39.

The Style 350476 Deluxe Knight costume consists of two or more garments. Note 13 of Section XI, of the HTSUS, requires that textile garments of different headings be separately classified, thus preventing classification of

costumes consisting of two or more garments as sets. If a set cannot exist by application of Note 13, the articles that may be packaged with the garments must also be classified separately.

The applicable subheading for the Style 350476 Deluxe Knight costume upper body garment will be 6206.40.3030, Harmonized Tariff Schedule of the United States (HTSUS), which provides for women's or girls' blouses, shirts and shirt-blouses: of man-made fibers: other, other; women's. The duty rate will be 26.9 percent ad valorem. The textile category designation is 641.

The applicable subheading for the Style 350476 Deluxe Knight costume pants will be 6104.69.8026, Harmonized Tariff Schedule of the United States (HTSUS), which provides for women's or girls' suits, ensembles...trousers, bib and brace overalls, breeches and shorts: trousers, bib and brace overalls, breeches and shorts: of other textile materials: other, trousers and breeches, subject to man-made fiber restraints. The duty rate will be 5.6 percent ad valorem. The textile category designation is 648.

The applicable subheading for the Style 350476 Deluxe Knight costume hat will be 6506.91.0060, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other headgear, whether or not lined or trimmed: other: of rubber or plastics, other. The duty rate will be Free.

The applicable subheading for the Style 350476 Deluxe Knight costume boot covers will be 9505.90.6000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: other: other." The duty rate 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/>.

With the exception of certain products of China, quota/visa requirements are no longer applicable for merchandise which is the product of World Trade Organization (WTO) member countries. The textile category number above applies to merchandise produced in non-WTO member-countries. Quota and visa requirements are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information on quota and visa requirements applicable to this merchandise, we suggest you check, close to the time of shipment, the "Textile Status Report for Absolute Quotas" which is available on our web site at www.cbp.gov. For current information regarding possible textile safeguard actions on goods from China and related issues, we refer you to the web site of the Office of Textiles and Apparel of the Department of Commerce at otexa.ita.doc.gov.

Please note that separate Federal Trade Commission marking requirements exist regarding country of origin, fiber content, and other information that must appear on many textile items. You should contact the Federal Trade Commission, Division of Enforcement, 6th and Pennsylvania Avenue, N.W., Washington, D.C., 20580, for information on the applicability of these requirements to this item.

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 Kenneth Reidlinger at 646-733-3053.

Sincerely,
ROBERT B. SWIERUPSKI
Director,
National Commodity Specialist Division

NY M85722

August 14, 2006

CLA-2-61:RR:NC:3:353 M85722

CATEGORY: Classification

TARIFF NO.: 6105.20.2010; 6104.63.2011;
9004.90.0000; 6117.80.9540; 9505.90.6000;
6704.11.0000; 6704.19.0000

Ms. DARLA J. PERRY
PONY EXPRESS CREATIONS, INC.
9350 TRADE PLACE, SUITE C
SAN DIEGO, CA 92126

RE: The tariff classification of a Santa Claus Costume from China, Hong Kong or Vietnam.

DEAR Ms. PERRY:

In your letter dated August 3, 2006, you requested a classification ruling. As requested, the sample will be returned to you.

The submitted sample, style 300755 Deluxe Santa Suit Set is an adult Santa Claus costume constructed of knit man-made faux fur fabric. The well-made costume consists of a top/jacket and pants. The men's top has styling features, a well-made collar, a well-made neckline, reinforced seams, a full frontal opening with left over right hook and loop closures and well-made edges. The pants have a well-made waist, elasticized and finished ankles. The top may be worn as a jacket over other clothing or as a shirt over undergarments. We believe it will be principally used as a shirt worn over an undershirt and a pillow or some other type of stuffing to achieve the Santa Claus image. The costume also includes a same fabric Santa Claus hat, stuffable belly and cellular plastic belt, boot covers, eyeglasses with lenses, man-made fabric wig, eyebrows and man-made fabric beard.

Style 300755 consists of two or more garments. Note 13 of Section XI, of the HTSUS, requires that textile garments of different headings be separately classified, thus preventing classification of costumes consisting of two or more garments as sets. If a set cannot exist by application of Note 13, the articles that may be packaged with the garments must also be classified separately.

The applicable subheading for the top will be 6105.20.2010, Harmonized Tariff Schedule of the United States (HTSUS), which provides for man's or boys' shirts, knitted or crocheted: of man-made fibers: other, men's. The duty rate will be 32 percent ad valorem.

The applicable subheading for the pants will be 6104.63.2011, Harmonized Tariff Schedule of the United States (HTSUS), which provides for women's or girls' suits, ensembles, suit-type jackets, blazers, dresses, skirts. Divided skirts, trousers, bib and brace overalls, breeches and shorts: trousers, bib and brace overalls, breeches and shorts: of synthetic fibers: other: other, trousers and breeches: women's: other. The duty rate will be 28.2 percent ad valorem.

The applicable subheading for stuffable belly will be 6117.80.9540, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other made up clothing accessories, knitted or crocheted; knitted or crocheted parts of garments or of clothing accessories: other accessories: other: other, of man-made fibers: other. The duty rate will be 14.6 percent ad valorem.

The applicable subheading for belt and boot covers will be 9505.90.6000, Harmonized Tariff Schedule of the United States (HTSUS), which provides

for festive, carnival or other entertainment articles, including magic tricks and practical jokes articles: parts and accessories thereof: other: other. The duty rate will be Free.

The applicable subheading for the glasses will be 9004.90.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for spectacles, goggles and the like, corrective, protective or other: other. The duty rate will be 2.5 percent ad valorem.

The applicable subheading for the wig will be 6704.11.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for wigs, false beards, eyebrows and eyelashes, switches and the like, of human or animal hair or of other textile materials, articles of human hair not elsewhere specified or included: of synthetic textile materials: complete wigs. The duty rate will be Free.

The applicable subheading for the beard and eyebrows will be 6704.19.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for wigs, false beards, eyebrows and eyelashes, switches and the like, of human or animal hair or of other textile materials, articles of human hair not elsewhere specified or included: of synthetic textile materials: other. The duty rate 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/>.

The top falls within textile category designation 638. The pants fall within textile category designation 648. The stuffable belly falls within textile category designation 659. Quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information as to whether quota and visa requirements apply to this merchandise, we suggest that you check, close to the time of shipment, the "Textile Status Report for Absolute Quotas" available at our web site at www.cbp.gov. In addition, you will find current information on textile import quotas, textile safeguard actions and related issues at the web site of the Office of Textiles and Apparel, at teta.ita.doc.gov.

Please note that separate Federal Trade Commission marking requirements exist regarding country of origin, fiber content, and other information that must appear on many textile items. You should contact the Federal Trade Commission, Division of Enforcement, 6th and Pennsylvania Avenue, N.W., Washington, D.C., 20580, for information on the applicability of these requirements to this item.

Regarding the Santa hat, the issue of classification under heading 9505, HTSUS, of functional articles that incorporate holiday or seasonal motifs is currently at the Court of International Trade in *LTD Commodities LLC v. United States* (Court No. 03-00861), *Michael Simon Design, Inc. v. United States* (Court No. 04-00537), and other cases.

Section 177.7, Customs Regulations (19 CFR 177.7) provides that rulings will not be issued in certain circumstances. Section 177.7(b) states, in pertinent part, the following:

No ruling letter will be issued with respect to any issue which is pending before the United States Court of International Trade, the United States Court of Appeals for the Federal Circuit, or any court of appeal therefrom.

In light of the prohibition set out in 19 CFR 177.7(b), and as the instant classification ruling request on the Santa hat is closely related to the issue presently pending in the Court of Appeals, we are unable to issue a classifi-

cation ruling letter to you with respect to the Santa Hat. Accordingly, we are administratively closing our file on this item.

When all litigation has been concluded on the case referenced above, you may resubmit your request for a ruling on the Santa hat. If you decide to resubmit your request, please include all materials that we have returned to you and mail your request to Director, National Commodity Specialist Division, U.S. Customs Service, Attn: CIE/Ruling Request, One Penn Plaza, 10th Floor, New York, NY 10119.

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 Kenneth Reidlinger at 646-733-3053.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

NY M80474

March 17, 2006

CLA-2-61:RR:NC:3:353 M80474

CATEGORY: Classification

TARIFF NO.: 6106.20.2010; 6104.63.2011;

9505.10.2500; 9505.90.6000; 6704.11.0000;

6704.19.0000

NEWCLASSIC ENTERPRISE CO., LTD.

UNIT 606-609,

PROMISE COMMERCIAL MANSION

584# YIN BIN ROAD

DASHI PAN YU GUANG ZHOU, CHINA

RE: The tariff classification of a Santa Claus Costume from China.

DEAR ROBERT:

In your letter received by this office on February 14, 2006, you requested a classification ruling.

The submitted sample, Santa Claus Suit is an adult unisex Santa Claus costume constructed of knit 74% acrylic and 26% polyester faux fur fabric. The well-made costume consists of a top/jacket and pants. The top has a well-made collar, a well-made neckline, reinforced seams, a full frontal opening with a zipper closure and well-made edges. The pants have a well-made waist, reinforced seams and finished ankles. The top may be worn as a jacket over other clothing or as a shirt over undergarments. We believe it will be principally used as a shirt worn over an undershirt and a pillow or some other type of stuffing to achieve the Santa Claus image. The costume also includes a same fabric Santa Claus hat and cellular plastic belt, boot covers, eye-glasses without lenses, man-made fabric wig and man-made fabric beard.

The Santa Claus suit consist(s) of two or more garments. Note 13 of Section XI, of the HTSUS, requires that textile garments of different headings be separately classified, thus preventing classification of costumes consisting of two or more garments as sets. If a set cannot exist by application of Note 13, the articles that may be packaged with the garments must also be classified separately.

The applicable subheading for the top will be 6106.20.2010, Harmonized Tariff Schedule of the United States (HTSUS), which provides for woman's or girls' blouses and shirts, knitted or crocheted: of man-made fibers: other, woman's. The duty rate will be 32 percent ad valorem.

The applicable subheading for the pants will be 6104.63.2011, Harmonized Tariff Schedule of the United States (HTSUS), which provides for women's or girls' suits, ensembles, suit-type jackets, blazers, dresses, skirts. Divided skirts, trousers, bib and brace overalls, breeches and shorts: trousers, bib and brace overalls, breeches and shorts: of synthetic fibers: other: other, trousers and breeches: women's: other. The duty rate will be 28.2 percent ad valorem.

The applicable subheading for the hat will be 9505.10.2500, Harmonized Tariff Schedule of the United States (HTSUS), which provides for festive, carnival or other entertainment articles, including magic tricks and practical jokes articles: parts and accessories thereof: articles for Christmas festivities and parts and accessories thereof: other: other. The duty rate will be Free.

The applicable subheading for belt, glasses and boot covers will be 9505.90.6000, Harmonized Tariff Schedule of the United States (HTSUS),

which provides for festive, carnival or other entertainment articles, including magic tricks and practical jokes articles: parts and accessories thereof: other: other. The duty rate will be Free.

The applicable subheading for the wig will be 6704.11.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for wigs, false beards, eyebrows and eyelashes, switches and the like, of human or animal hair or of other textile materials, articles of human hair not elsewhere specified or included: of synthetic textile materials: complete wigs. The duty rate will be Free.

The applicable subheading for the beard will be 6704.19.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for wigs, false beards, eyebrows and eyelashes, switches and the like, of human or animal hair or of other textile materials, articles of human hair not elsewhere specified or included: of synthetic textile materials: other. The duty rate 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/>.

The top falls within textile category designation 639. The pants fall within textile category designation 648. Quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information as to whether quota and visa requirements apply to this merchandise, we suggest that you check, close to the time of shipment, the "Textile Status Report for Absolute Quotas" available at our web site at www.cbp.gov. In addition, you will find current information on textile import quotas, textile safeguard actions and related issues at the web site of the Office of Textiles and Apparel, at otexa.ita.doc.gov.

Please note that separate Federal Trade Commission marking requirements exist regarding country of origin, fiber content, and other information that must appear on many textile items. You should contact the Federal Trade Commission, Division of Enforcement, 6th and Pennsylvania Avenue, N.W., Washington, D.C., 20580, for information on the applicability of these requirements to this item.

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 Kenneth Reidlinger at 646-733-3053.

Sincerely,

ROBERT B. SWIERUPSKI
Director,

National Commodity Specialist Division

NY L87172

September 12, 2005

CLA-2-61:RR:NC:3:353 L87172

CATEGORY: Classification

TARIFF NO.: 6106.20.2010; 6104.63.2011;
9505.10.2500; 9505.90.6000

MR. GENE ROSE

LOFTUS INTERNATIONAL

865 SOUTH 200 EAST

SALT LAKE CITY, UT 84111

RE: The tariff classification of a Santa Claus Costume from China.

DEAR MR. ROSE:

In your letter received by this office on August 31, 2005, you requested a classification ruling. The sample will be retained by this office.

The submitted sample, style CA-0001 Santa Claus Suit Plus is an adult unisex Santa Claus costume constructed of knit polyester faux fur fabric. The well-made costume consists of a top/jacket and pants. The top has a well-made collar, a well-made neckline, reinforced seams, a full frontal opening with a zipper closure. The pants have a well-made waist and reinforced seams. The top may be worn as a jacket over other clothing or as a shirt over undergarments. We believe it will be principally used as a shirt worn over an undershirt and a pillow or some other type of stuffing to achieve the Santa Claus image. The costume also includes a same fabric Santa Claus hat and cellular plastic belt and boot covers.

Style CA-0001 consist(s) of two or more garments. Note 13 of Section XI, of the HTSUSA, requires that textile garments of different headings be separately classified, thus preventing classification of costumes consisting of two or more garments as sets. If a set cannot exist by application of Note 13, the articles that may be packaged with the garments must also be classified separately.

The applicable subheading for style CA-0001 top will be 6106.20.2010, Harmonized Tariff Schedule of the United States (HTS), which provides for woman's or girls' blouses and shirts, knitted or crocheted: of man-made fibers: other, woman's. The duty rate will be 32 percent ad valorem.

The applicable subheading for style CA-0001 pants will be 6104.63.2011, Harmonized Tariff Schedule of the United States (HTS), which provides for women's or girls' suits, ensembles, suit-type jackets, blazers, dresses, skirts. Divided skirts, trousers, bib and brace overalls, breeches and shorts: trousers, bib and brace overalls, breeches and shorts: of synthetic fibers: other: other, trousers and breeches: women's: other. The duty rate will be 28.2 percent ad valorem.

The applicable subheading for style CA-0001 hat will be 9505.10.2500, Harmonized Tariff Schedule of the United States (HTS), which provides for festive, carnival or other entertainment articles, including magic tricks and practical jokes articles: parts and accessories thereof: articles for Christmas festivities and parts and accessories thereof: other: other. The duty rate will be Free.

The applicable subheading for style CA-0001 belt and boot covers will be 9505.90.6000, Harmonized Tariff Schedule of the United States (HTS), which

provides for festive, carnival or other entertainment articles, including magic tricks and practical jokes articles: parts and accessories thereof: other: other. The duty rate will be Free.

The top falls within textile category designation 639. The pants fall within textile category designation 648. Quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information as to whether quota and visa requirements apply to this merchandise, we suggest that you check, close to the time of shipment, the "Textile Status Report for Absolute Quotas" available at our web site at www.cbp.gov. In addition, you will find current information on textile import quotas, textile safeguard actions and related issues at the web site of the Office of Textiles and Apparel, at otexa.ita.doc.gov.

Please note that separate Federal Trade Commission marking requirements exist regarding country of origin, fiber content, and other information that must appear on many textile items. You should contact the Federal Trade Commission, Division of Enforcement, 6th and Pennsylvania Avenue, N.W., Washington, D.C., 20580, for information on the applicability of these requirements to this item.

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 Kenneth Reidlinger at 646-733-3053.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

NY L81757

January 26, 2005

CLA-2-61:RR:NC:3:353 L81757

CATEGORY: Classification

TARIFF NO.: 6110.30.3055, 6104.63.2011,
9505.90.6000, 6114.30.3070 6505.90.6090

Ms. EMILY HUANG

HANDERSON HANDICRAFT MFG., Co.

11F/6, No.2, JIAN-BA RD., CHUNG-Ho

TAIPEI, TAIWAN

RE: The tariff classification of costumes from China.

DEAR Ms. HUANG:

In your letter dated November 24, 2004 received in this office on December 29, 2004, on behalf of Kmart Co., you requested a classification ruling.

Five adult costumes were submitted with your request. Style M-0800-00, Royal King Costume consists of a pullover, pants, boot covers and belt. The pullover and pants are composed of knit polyester fabric and the boot covers and belt are composed of cellular plastic material. The long sleeve pullover has a jewel neckline with laces at the front. The pullover is well made with styling and has a finished neckline and edges. The well made long pants have an elasticized waistband with a turned hem.

Style M-012-00, Devil Count Costume Set consists of a hooded cape, long robe and sash. The cape, robe and sash are composed of knit polyester fabric. The well-made hooded cape has a full front opening, styling features at the shoulders and a finished neckline. The flimsy made long robe has a closure at the back and unfinished hem and sleeves.

Style M-1014-00, Roman Prince Costume Set consists of a robe and headpiece composed of knit polyester fabric. The toga (long dress) is well made with finished neckline and arms.

Style M-1015-00, Hippie Man Costume consists of a pullover, pants, hat and plastic necklace. The pullover, pants and hat are composed of knit polyester fabric. The long sleeve pullover is well made with styling features and finished edges. The long pants are well made with a finished, turned elasticized waistband. The hat has a large brim and crown and the necklace has a peace sign.

Style M-1020-00, Bat Cape-Purple is composed of knit polyester fabric. The full length cape has a large stand-up collar and a full front opening with a self-tie closure.

The Royal King Costume, style M-0800-00 and the Hippie Man Costume, style M-1015-00 consist(s) of two or more garments. Note 13 of Section XI, of the HTSUSA, requires that the textile garments of different headings be separately classified, thus preventing classification of costumes consisting of two or more garments as sets. If a set cannot exist by application of Note 13, the articles that may be packaged with the garments must also be classified separately.

GRI 3(b) is applicable when goods are, prima facie, classifiable under two or more headings, and have been put up in sets for retail sale. GRI 3(b) states that the goods "shall be classified as if they consisted of the material or component which gives them their essential character." In this case, the **robe**

of the Devil Count Costume Set, M-1012-00 and the **toga (robe)** of the Roman Prince Costume Set, style M-1014-00 imparts the essential character of the set.

The applicable subheading for styles M-0800-00, Royal King and M-1015-00 Hippie Man Costume pullover will be 6110.30.3055, Harmonized Tariff Schedule of the United States (HTS), which provides for “pullovers ...similar articles, knitted or crocheted: Of man made fibers: Other...Other: Other, Other: Women’s or girls’.” The duty rate will be 32% ad valorem. The textile category designation is 639.

The applicable subheading for styles M-0800-00, Royal King and M-1015-00, Hippie Man Costume pants will be 6104.63.2011, Harmonized Tariff Schedule of the United States (HTS), which provides for “Women’s or girls’...trousers...knitted or crocheted: Trousers...Of synthetic fibers: Other: Other, Trousers and breeches: Other.” The general duty rate will be 28.2% ad valorem. The textile category designation is 648.

The applicable subheading for the boot covers and belt, Royal King Costume, style M-0800-00 will be 9505.90.6000, Harmonized Tariff Schedule of the United States (HTS), which provides for “Festive, carnival or other entertainment articles, including magic tricks and practical joke articles, parts and accessories thereof: Other: Other.” The duty rate will be Free.

The applicable subheading for the Devil Count Costume Set, style M-1012-00 and the Roman Prince Costume Set, style M-1014-00 and the Bat Cape-Purple, style M-1020-00 will be 6114.30.3070, Harmonized Tariff Schedule of the United States (HTS), which provides for “Other garments, knitted or crocheted: Of man-made fibers: Other, Other: Women’s or girls’.” The rate of duty will be 14.9% ad valorem. The textile category designation is 659.

The applicable subheading for style M-1015-00, Hippie Man Costume hat will be 6505.90.6090, Harmonized Tariff Schedule of the United States (HTS), which provides for “Hats and other headgear, knitted or crocheted, or made up from lace, felt or other textile fabric, in the piece (but not in strips), whether or not lined or trimmed; hair-nets of any material, whether or not lined or trimmed: Other: Of man-made fibers: Not in part of braid, Other: Other.” The duty rate will be 20 cents/kg + 7% ad valorem.

The applicable subheading for the style M-1020-00, Bat Cape-Purple will be 6114.30.3070, Harmonized Tariff Schedule of the United States (HTS), which provides for “Other garments, knitted or crocheted: of man-made fibers: Other, Other; Women’s or girls’.” The duty rate will be 14.9% ad valorem.

Quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information as to whether quota and visa requirements apply to this merchandise, we suggest that you check, close to the time of shipment, the “Textile Status Report for Absolute Quotas” available at our web site at www.cbp.gov. In addition, you will find current information on textile import quotas, textile safeguard actions and related issues at the web site of the Office of Textiles and Apparel, at otexa.ita.doc.gov.

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 Kenneth Reidlinger at 646-733-3053.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

NY K84618

April 14, 2004

CLA-2-61:RR:NC:3:353 K84618

CATEGORY: Classification

TARIFF NO.: 6106.20.2010, 6104.63.2010,
9505.10.2500, 6116.93.8800, 9505.90.6000,
6104.43.2010, 6211.33.0017

MR. KEN AUGUST
FUN WORLD
80 VOICE RD.
CARLE PLACE, NY 11514

RE: The tariff classification of costumes from Taiwan.

DEAR MR. AUGUST:

In your letter dated March 29, 2004 you requested a classification ruling.

Three samples of costumes were submitted with your request. Style 7500 is a unisex Santa Claus Costume consisting of a blouse, pants, hat, belt, gloves and boot covers. The blouse, pants, hat and gloves are made of knit 100% polyester fabric. The well-made blouse is trimmed with faux fur and has a small opening at the back and the well-made pants have an elasticized waistband. The boot tops are constructed of cellular plastic material that is reinforced by a man made fiber fabric and features a white man-made fiber fabric faux fur trim around the top. The belt is constructed of cellular plastic material that is reinforced by a man made fiber fabric, and features a metal buckle. You state that you will be importing Plus size, style 7510, and that it will be identical to style 7500.

The Santa Claus Costume consists of two garments, a blouse and pants. Section XI Note 13 of the HTSUSA, requires that the textile garments of different headings be separately classified, thus preventing classification of costumes consisting of two or more garments as sets. If a set cannot exist by application of Note 13, the articles that may be packaged with the garments must also be classified separately.

Style 5054 Adult Southern Bell Costume Set consists of a dress, belt or headband and large brim hat. The well-made dress is made of knit polyester fabric with three layers of tulle, puff sleeves and an elasticized neckline. You state that you will be importing style 5054H, Identical to style 5054, the difference is that it will be imported on a hanger.

GRI 3(b) is applicable when goods are, prima facie, classifiable under two or more headings, and have been put up in sets for retail sale. GRI 3(b) states that the goods "shall be classified as if they consisted of the material or component which gives them their essential character." In this case, the dress imparts the essential character of the set.

You state that Style 5892 is a child's jumpsuit made of woven 100% polyester fabric. The well-made jumpsuit has long sleeves, pointed collar, pockets and a full front hook and loop closure with a flap that closes left over right. You also state that Style 5892H is identical to style 5892, however it will be imported on a hanger.

The applicable subheading for the Santa Claus blouse, styles 7500 and 7510 will be 6106.20.2010, Harmonized Tariff Schedule of the United States (HTS), which provides for "Women's or girls' blouses and shirts, knitted or crocheted, Of man-made fibers: Other, Women's." The rate of duty will be 32% ad valorem. The textile category designation is 639.

The applicable subheading for the Santa Claus pants will be 6104.63.2011, Harmonized Tariff Schedule of the United States (HTS), which provides for “Women’s or girls’...trousers...knitted or crocheted: Trousers...Of synthetic fibers: Other: Other, Trousers and breeches: Other.” The general duty rate will be 28.2% ad valorem. The textile category designation is 648.

The applicable subheading for the Santa hat will be 9505.10.2500, Harmonized Tariff Schedule of the United States (HTS), which provides for “Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: Articles for Christmas festivities and parts and accessories thereof: Christmas ornaments: Other: Other.” The rate of duty will be Free.

The applicable subheading for the belt and boot tops will be 9505.90.6000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for “Festive, carnival or other entertainment articles...Other.” The rate of duty will be Free.

The applicable subheading for the gloves will be 6116.93.8800, Harmonized Tariff Schedule of the United States (HTS), which provides for “Gloves, mittens and mitts, knitted or crocheted: Other, Of synthetic fibers: Other: Other: Without fourchettes.” The duty rate will be 18.6% ad valorem. There are no quota restrictions or visa requirements on the gloves at this time.

The applicable subheading for the Southern Bell Costume Set, styles 5054 and 5054H will be 6104.43.2010, Harmonized Tariff Schedule of the United States (HTS), which provides for “Woman’s or girls’ ...dresses, . . . knitted or crocheted: Dresses: Of synthetic fibers: Other, Women’s.” The duty rate will be 16% percent ad valorem. The textile category designation is 636.

Even though the Southern Belle hat is included as a constituent part of the set for classification purposes., it still falls within textile category 659, and products originating in Taiwan are subject to visa and quota requirements which must still be met.

The applicable subheading for the Child’ Maniac Mechanic Costume will be 6211.33.0017, Harmonized Tariff Schedule of the United States (HTS), which provides for “Track suits,...other garments: Other garments, men’s or boys’: Of man-made fibers, Other: Boys’: Other.” The duty rate will be 16% ad valorem. The textile category designation is 659.

The designated textile and apparel categories and their quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information, we suggest that you check, close to the time of shipment, the *Textile Status Report for Absolute Quotas*, which is available at our Web site at www.cbp.gov. In addition, the designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected and should also be verified at the time of shipment.

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 Kenneth Reidlinger at 646-733-3053.

Sincerely,
ROBERT B. SWIERUPSKI
Director,
National Commodity Specialist Division

NY J86180

June 24, 2003

CLA-2-95:RR:NC:SP:225 J86180

CATEGORY: Classification

TARIFF NO.: 6702.90.6500; 9615.19.6000;
9503.90.0080; 9505.90.6000; 6116.93.8800

MS. ANNA MARIA SALAS ROGALSKI
DISGUISE™ INC.
11906 TECH CENTER COURT
POWAY, CA 92064

RE: The tariff classification of an artificial flower, hair clip, toy gun, boot covers, and gloves from China.

DEAR MS. SALAS ROGALSKI:

In your letter dated June 10, 2003, you requested a tariff classification ruling.

You submitted the following samples:

1. Style IM867, Yellow Flower with Safety Pin, is a yellow paper flower that measures approximately 6 inches in height and 5 inches across, with a safety pin attached at the "stem."

2. Style IM879, Hairclip with Flower, is a metal-hinged polyvinyl chloride hair clip that measures approximately ½ inch in height and 4-¼ inches in length. Attached to the hair clip are orange, red, and green paper flowers that each measure approximately 6 inches in height and 5 inches across.

3. Style IM922, Toy Ray Gun, is a plastic futuristic-looking toy gun that measures approximately 4 inches in height and 8 inches in length with a gray stock and a red muzzle, with the end of the muzzle covered with a red safety cap. When the trigger is pulled, the gun emits a burst of "clicking" sounds.

4. Style IM962, Ranger Boot Covers, consists of two blue boot covers made of polyvinyl chloride material with black foam tops and secured with four textile ties. The boot covers are of flimsy non-durable construction and intended for use as a costume for a child.

5. Style IM963, Ranger Gloves, consists of a pair of white, blue and gold gloves constructed of a knitted polyester fabric from the wrist to the fingertips. Each glove features a long gauntlet cuff constructed of polyvinyl chloride material.

The applicable subheading for Style IM867, Yellow Flower with Safety Pin, will be 6702.90.6500, Harmonized Tariff Schedule of the United States (HTS), which provides for "Artificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit: Of other materials: Other: Other." The rate of duty will be 17% ad valorem.

The applicable subheading for Style IM879, Hairclip with Flower, will be 9615.19.6000, HTS, which provides for "Combs, hair-slides and the like: Other: Other." The rate of duty will be 11% ad valorem.

The applicable subheading for Style IM922, Toy Ray Gun, will be 9503.90.0080, HTS which provides for "Other toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof: Other: Other." The rate of duty will be free.

The applicable subheading for Style IM962, Ranger Boot Covers, will be 9505.90.6000, HTS, which provides for "Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: Other: Other." The rate of duty will be free.

The applicable subheading for Style IM963, Ranger Gloves, will be 6116.93.8800, HTS, which provides for “Gloves, mittens and mitts, knitted or crocheted: Other: of synthetic fibers: Other: Other: Without fourchettes.” The rate of duty will be 18.7% ad valorem.

Your samples are being returned as requested.

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 Alice Wong at 646-733-3026.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

NY J84426

June 2, 2003

CLA-2-61:RR:NC:3:353 J84426

CATEGORY: Classification

TARIFF NO.: 6110.30.3055, 6104.63.2011,
9505.10.2500, 9505.90.6000

MR. JOEL G. McCLURE
RESTORATION HARDWARE
2391 WEST WINTON AVENUE
HAYWARD, CA 94545

RE: The tariff classification of Santa Costume from Taiwan.

DEAR MR. McCLURE:

In your letter dated April 29, 2003 you requested a classification ruling. The sample will be returned to you.

The submitted sample is a Style 4315-0040 Santa Costume. The well-made costume consists of a top, pants, hat, belt, boot covers, wig, beard and eyebrows. The top, pants and hat are constructed of knit 75% acrylic, 25% plush polyester fabric; the belt and boot covers are constructed of cellular vinyl plastic with a backing of textile fabric that is present merely for reinforcing purposes. The cardigan-style top is red with white faux fur trim and a full front zipper closure. The pants have a heavily elasticized waist and turned edges. The hat is cone-shaped and is red with white faux fur trim. The belt is constructed of cellular plastic and is approximately 3½ inches wide with an oversized metal buckle. The boot covers are black with white faux fur trim. The wig beard and eyebrows are made of man-made fibers.

The amount of finishing is such that the garments, the top and pants, are neither flimsy in nature or construction, nor lacking in durability.

Note 13 of Section XI, of the HTSUSA, requires that textile garments of different headings be separately classified, thus preventing classification of costumes consisting of two or more garments as sets. If a set cannot exist by application of Note 13, the articles that may be packaged with the garments must also be classified separately.

The applicable subheading for the Style 4315-0040 Santa cardigan-style top will be 6110.30.3055, Harmonized Tariff Schedule of the United States (HTS), which provides for "Sweaters, pullovers...and similar articles, knitted or crocheted: Of man-made fibers: Other: Other: Other, Other: Other: Women's or girls'." The rate of duty will be 32.2% ad valorem. The textile category designation is 639.

The applicable subheading for the Style 4315-0040 Santa pants will be 6104.63.2011, Harmonized Tariff Schedule of the United States (HTS), which provides for "Women's or girls'...dresses, skirts... trousers, bib and brace overalls, breeches and shorts...knitted or crocheted...Of synthetic fibers: Other: Other, Trousers and breeches: Women's: Other." The rate of duty will be 28.4% ad valorem. The textile category designation is 648.

The applicable subheading for the Style 4315-0040 Santa hat will be 9505.10.2500, Harmonized Tariff Schedule of the United States (HTS), which provides for "...Articles for Christmas festivities...Other." The rate of duty will be Free.

The applicable tariff provision for the Style 4315-0040 Santa belt, boot covers, wig, beard and eyebrows will be 9505.90.6000, Harmonized Tariff

Schedule of the United States Annotated (HTSUSA), which provides for “Festive, carnival or other entertainment articles...Other.” The rate of duty will be Free.

The Style 4315-0040 cardigan-style top falls within textile category designation 639; the Style 4315-0040 pants fall within textile category designation 648. Based upon international textile trade agreements products of Taiwan are subject to quota and the requirement of a visa.

The designated textile and apparel categories and their quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information, we suggest that you check, close to the time of shipment, the *Textile Status Report for Absolute Quotas*, which is available at our Web site at www.cbp.gov. In addition, the designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected and should also be verified at the time of shipment.

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 Kenneth Reidlinger at 646-733-3053.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

HQ H249079
OT:RR:CTF:FTM H249079 PJG
CATEGORY: Classification
TARIFF NO.: 6406.90.30

MR. ROBERT A. PONTIER, CHB
AIR CARGO SALES, INC.
429 MOON CLINTON ROAD
CORAPOLIS, PENNSYLVANIA 15108

RE: Modification of NY N096096, NY N025677, NY N014873, NY N012283, NY N006635, NY M83717, NY M85722, NY M80474, NY L87172, NY L81757, NY K84618, NY J86180, and NY J84426; Classification of Plastic Leg Coverings

DEAR MR. PONTIER:

This is in reference to New York Ruling Letter (“NY”) NY N014873, dated August 13, 2007, issued to you concerning the tariff classification of the Santa Claus costume (item 959638) under the Harmonized Tariff Schedule of the United States (“HTSUS”). The costume consists of a top/shirt, pants, hat, beard, wig, leg coverings (referred to as “boot covers”), belt and gloves. This decision concerns only the leg coverings, which are made of cellular plastic material.

In NY N014873, U.S. Customs and Border Protection (“CBP”) classified the leg coverings in subheading 9505.90.6000, HTSUSA, which provides for “Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: Other: Other.” We have reviewed NY N014873 and find it to be in error regarding the tariff classification of the leg coverings. For the reasons set forth below, we hereby modify NY N014873 and eleven other rulings with substantially similar plastic leg coverings: NY N096096, dated March 23, 2010, NY N025677, dated May 2, 2008, NY N006635, dated February 28, 2007, NY M83717, dated October 11, 2006, NY M85722, dated August 14, 2006, NY M80474, dated March 17, 2006, NY L87172, dated September 12, 2005, NY L81757, dated January 26, 2005, NY K84618, dated April 14, 2004, NY J86180, dated June 24, 2003, and NY J84426, dated June 2, 2003.

We have also reviewed the original ruling request for NY N012283, dated June 21, 2007, and determined that the leg coverings, therein referred to as “boot covers,” were not part of the Buccaneer Beauty adult costume (style 521). Therefore, we are modifying that ruling to remove the reference to and classification of the leg coverings.

FACTS:

In NY N014873, CBP classified a well-made Santa Claus costume (item 959638), which consists of a top/shirt, pants, hat, beard, wig, leg coverings (referred to as “boot covers”), belt and gloves. This decision concerns only the leg coverings, which are made of cellular plastic material. The cellular plastic leg coverings were classified in subheading 9505.90.6000, HTSUSA, which provides for “Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: Other: Other.”

ISSUE:

Whether the leg coverings are classified as gaiters, leggings and similar articles under heading 6406, HTSUS, or as festive articles under heading 9505, HTSUS.

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 2021 HTSUS provisions under consideration are as follows:

6406	Parts of footwear (including uppers whether or not attached to soles other than outer soles); removable insoles, heel cushions and similar articles; gaiters, leggings and similar articles, and parts thereof: * * *
6406.90	Other: * * *
	Of other materials: * * *
6406.90.30	Of rubber or plastics
* * *	
9505	Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: * * *
9505.90	Other: * * *
9505.90.60	Other

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 64.06(II) provides as follows:

(II) GAITERS, LEGGINGS, AND SIMILAR ARTICLES, AND PARTS THEREOF

These articles are designed to cover the whole or part of the leg and in some cases part of the foot (e.g., the ankle and instep). They differ from socks and stockings, however, in that they do not cover the entire foot. They may be made of any material (leather, canvas, felt, knitted or crocheted fabrics, etc.) **except** asbestos. They include gaiters, leggings, spats, puttees, “mountain stockings” without feet, leg warmers and similar articles. Certain of these articles may have a retaining strap or elastic

band which fits under the arch of the foot. The heading also covers identifiable parts of the above articles.

The EN to 95.05(A)(3) provides as follows:

This heading covers:

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

* * *

- (3) Articles of fancy dress, e.g., masks, false ears and noses, wigs, false beards and moustaches (**not being** articles of postiche - **heading 67.04**), and paper hats. However, the heading **excludes** fancy dress of textile materials, of **Chapter 61** or **62**.

Heading 6406, HTSUS, provides for gaiters and leggings. The terms “gaiters” and “leggings” are not defined in the HTSUS.¹ Headquarters Ruling Letter (“HQ”) 088454, dated October 11, 1991, defines a gaiter as “1. A leather or heavy cloth covering for the legs extending from the instep to the ankle or knee. 2. An ankle-high shoe with elastic sides. 3. An overshoe with a cloth top.” *Id.* (citing *The American Heritage Dictionary*, (2nd College Ed. 1982)). HQ 088454 provides two definitions for “legging”: 1) “[a] leg covering of material such as canvas or leather” and 2) a “[c]overing for leg and ankle extending to knee or sometimes secured by stirrup strap under arch of foot. Worn in 19th c. by armed services and by civilian men. See PUTTEE and GAITER. Worn by women in suede, patent, and fabric in late 1960s.” *Id.* (citing *The American Heritage Dictionary*, (2nd College Ed. 1982) and *Fairchild’s Dictionary of Fashion*, (2nd Ed. 1988)). See also HQ 089582, dated November 6, 1991 and NY L81551, dated January 4, 2005.

In addition to gaiters and leggings, heading 6406, HTSUS, provides for “similar articles.” To “determine the scope of [a] general . . . phrase”, the United States Court of International Trade has used the rule of *ejusdem generis*. See *A.D. Sutton & Sons v. United States*, 32 C.I.T. 804, 808 (Ct. Int’l Trade 2008) (citing *Aves. in Leather, Inc. v. United States*, 178 F.3d 1241, 1244 (Fed. Cir. 1999)). Under the rule of *ejusdem generis*, “the general word or phrase is held to refer to things of the same kind as those specified.” *Id.* (citing *Sports Graphics, Inc. v. United States*, 24 F.3d 1390, 1392 (Fed. Cir. 1994)). Therefore, “to fall within the scope of the general term, the imported good ‘must possess the same essential characteristics of purposes that unite the listed examples preceding the general term or phrase.’” *Id.* (citing *Aves. in Leather, Inc.*, 178 F.3d at 1244).

Applying the rule of *ejusdem generis*, we note that the definitions of gaiters and leggings provided in HQ 088454 indicate that the articles are both leg coverings. Similarly, EN 64.06(II) describes gaiters, leggings and similar articles as “designed to cover the whole or part of the leg and in some cases part of the foot....Certain of these articles may have a retaining strap or

¹ “When...a tariff term is not defined in either the HTSUS or its legislative history”, its correct meaning is its common or commercial meaning. See *Rocknel Fastener, Inc. v. United States*, 267 F.3d 1354, 1356 (Fed. Cir. 2001). “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.’” *Id.* at 1356–1357 (quoting *C.J. Tower & Sons v. United States*, 69 C.C.P.A. 128, 673 F.2d 1268, 1271 (CCPA 1982); *Simod Am. Corp. v. United States*, 872 F.2d 1572, 1576 (Fed. Cir. 1989)).

elastic band which fits under the arch of the foot.” The EN further states that these articles are different from socks because they do not cover the entire foot.

We find that the leg coverings included with the Santa Claus costume (item 959638) share the same characteristics as leggings and gaiters of heading 6406, HTSUS. The subject leg coverings provide leg coverage like leggings and gaiters, which provide leg coverage extending to the ankle or to the knee. Accordingly, the subject polyester leg coverings are classifiable under heading 6406, HTSUS, as articles similar to leggings and gaiters, and are specifically classified in subheading 6406.90.30, HTSUS, which provides for “Parts of footwear (including uppers whether or not attached to soles other than outer soles); removable insoles, heel cushions and similar articles; gaiters, leggings and similar articles, and parts thereof: Other: Of other materials: Of rubber or plastics.”

In NY N014873, CBP classified the leg coverings in heading 9505, HTSUS. Heading 9505, HTSUS, provides, in relevant part, for festive articles and “parts and accessories” of festive articles. EN 95.05(A)(3) states that the heading covers costume accessories such as masks, false ears, noses, wigs, false beards, mustaches and paper hats. *See Rubie’s Costume Co. v. United States*, 337 F.3d 1350, 1359 (Fed. Cir. 2003) (stating that the Explanatory Notes do not narrow the scope of heading 9505, HTSUS, to only accessories to costumes). CBP has classified similar costume accessories under heading 9505, HTSUS. *See, e.g.*, NY N245614, dated August 29, 2013 (stretchable sleeves covered in fake tattoos are classifiable in heading 9505, HTSUS) and NY N162276 (butterfly wings and wand are classifiable in heading 9505, HTSUS). Similar to the articles described in the exemplars provided in EN 95.05(A)(3) and the cited rulings, the subject merchandise are costume accessories.

When goods are *prima facie* classifiable under two or more headings, we must proceed to GRI 3. According to GRI 3(a), “[t]he heading which provides the most specific description shall be preferred to headings providing a more general description.” In *Russ Berrie & Co. v. United States*, 381 F.3d 1334 (Fed. Cir. 2004), the U.S. Court of Appeals for the Federal Circuit (“CAFC”) determined that Christmas and Halloween-themed lapel pins and earrings were *prima facie* classifiable as both imitation jewelry of heading 7117, HTSUS, and as festive articles of heading 9505, HTSUS. Applying GRI 3(a), the CAFC reasoned that:

We have recognized that festive articles include such disparate items as ‘placemats, table napkins, table runners, and woven rugs’ depicting ‘Christmas trees, Halloween jack-o-lanterns, [and Easter] bunnies,’ (citation omitted) ‘cast iron stocking hangers[;] ... Christmas water globes; ... [and] Easter water globes,’ (citation omitted) and jack-o-lantern mugs and pitchers (citation omitted).

Because heading 9505 covers a far broader range of items than heading 7117, the latter is more specific than the former. It is also more specific because it describes the item by name (‘imitation jewelry’) rather than by class (‘festive articles’). It therefore follows that the imported merchandise is classifiable under heading 7117 rather than under heading 9505.

Id. at 1338.

In the instant case, the “gaiters, leggings and similar articles” heading is more specific than the “festive articles” heading because “it covers a narrower set of items.” *See id.* The relevant portion of heading 6406, HTSUS, pertains to leg coverings, whereas the relevant portion of heading 9505, HTSUS, specifically “‘festive articles’... need only to be closely associated with and used or displayed during a festive occasion.” *Id.* Accordingly, heading 6406, HTSUS, is more specific than heading 9505, HTSUS, and by application of GRI 3(a), the subject leg coverings are properly classified under heading 6406, HTSUS, and specifically in subheading 6406.90.15, HTSUS, which provides for “Parts of footwear (including uppers whether or not attached to soles other than outer soles); removable insoles, heel cushions and similar articles; gaiters, leggings and similar articles, and parts thereof: Other: Of other materials: Of textile materials.”

HOLDING:

By application of GRI 3(a), the Santa Claus costume (item 959638) leg coverings are classified under heading 6406, HTSUS, and specifically, in subheading 6406.90.30, HTSUS, which provides for “Parts of footwear (including uppers whether or not attached to soles other than outer soles); removable insoles, heel cushions and similar articles; gaiters, leggings and similar articles, and parts thereof: Other: Of other materials: Of rubber or plastics.” The 2021 column one, general rate of duty is 5.3 percent *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY N096096, dated March 23, 2010, is MODIFIED with regard to the tariff classification of the Adult Santa Suit (style 4291) “boot tops.”

NY N025677, dated May 2, 2008, is MODIFIED with regard to the tariff classification of the “boot covers” for the child’s unisex Santa Claus costume (Item # CL 182) and the “boot covers” for the adult unisex Santa Claus costume (item # CL 181).

NY N014873, dated August 13, 2007, is MODIFIED with regard to the tariff classification of the Santa Claus (item 959638) “boot covers.”

NY N012283, dated June 21, 2007, is MODIFIED to remove the reference to and tariff classification of the Buccaneer Beauty Adult Costume (style 521) “boot covers.”

NY N006635, dated February 28, 2007, is MODIFIED with regard to the tariff classification of the Midnight Carnival Deluxe Leo the Lion Tamer Costume (style 5148050–051) “boot covers.”

NY M83717, dated October 11, 2006, is MODIFIED with regard to the tariff classification of the Deluxe Knight costume (style 350476) “boot covers.”

NY M85722, dated August 14, 2006, is MODIFIED with regard to the tariff classification of the Deluxe Santa Suit Set (style 300755) “boot covers.”

NY M80474, dated March 17, 2006, is MODIFIED with regard to the tariff classification of the Santa Claus Suit “boot covers.”

NY L87172, dated September 12, 2005, is MODIFIED with regard to the tariff classification of the Santa Claus Suit Plus (style CA-0001) “boot covers.”

NY L81757, dated January 26, 2005, is MODIFIED with regard to the tariff classification of the Royal King Costume (M-0800–00) “boot covers.”

NY K84618, dated April 14, 2004, is MODIFIED with regard to the tariff classification of the Santa Claus Costume (styles 7500 and 7510) “boot covers” or “boot tops.”

NY J86180, dated June 24, 2003, is MODIFIED with regard to the tariff classification of the Ranger Boot Covers (style IM962) “boot covers.”


NY J84426, dated June 2, 2003, is MODIFIED with regard to the tariff classification of the Santa Costume (style 4315–0040) “boot covers.”

Sincerely,

CRAIG T. CLARK,

Director

Commercial and Trade Facilitation Division



**PROPOSED MODIFICATION OF SIXTEEN RULING
LETTERS AND PROPOSED REVOCATION OF TREATMENT
RELATING TO THE TARIFF CLASSIFICATION OF TEXTILE
LEG COVERINGS**

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

ACTION: Notice of proposed modification of sixteen ruling letters and proposed revocation of treatment relating to the tariff classification of textile leg coverings.

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 sixteen ruling letters concerning tariff classification of textile leg coverings under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments on the correctness of the proposed actions are invited.

DATE: Comments must be received on or before July 30, 2021.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Erin Frey, Commercial and Trade Facilitation Division, 90 K St., NE, 10th Floor, Washington, DC 20229–1177. Due to the COVID-19 pandemic, CBP is also allowing commenters to submit electronic comments to the following email address: 1625Comments@cbp.dhs.gov. All comments should reference the title of the proposed notice at issue and the *Customs Bulletin* volume, number and date of publication. Due to the relevant

COVID-19-related restrictions, CBP has limited its on-site public inspection of public comments to 1625 notices. Arrangements to inspect submitted comments should be made in advance by calling Ms. Erin Frey at (202) 325-1757.

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 sixteen ruling letters pertaining to the tariff classification of textile leg coverings. Although in this notice, CBP is specifically referring to New York Ruling Letter ("NY") N196588, dated January 5, 2012 (Attachment A), NY N152983, dated April 4, 2011 (Attachment B), NY N141478, dated February 2, 2011 (Attachment C), NY N141467, dated February 2, 2011 (Attachment D), NY N104375, dated June 3, 2010 (Attachment E), NY N045816, dated December 15, 2008 (Attachment F), NY N043382, dated December 2, 2008 (Attachment G), NY N041398, dated November 5, 2008 (Attachment H), NY N005706, dated February 9, 2007 (Attachment I), NY M84821, dated July 31, 2006 (Attachment J), NY M81135, dated March 27, 2006 (Attachment K), NY L85036, dated June 17, 2005 (Attachment L), NY L82557, dated March 11, 2005 (Attachment M), NY E82340, dated June 3, 1999 (Attachment N), NY E80263, dated May 5, 1999 (Attachment O), and NY B86150, dated August 8, 1997 (Attachment P), 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 sixteen identified. No further rulings have been found. Any party who has re-

ceived 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 N196588, NY N152983, NY N141478, NY N141467, NY N104375, NY N045816, NY N043382, NY N041398, NY N005706, NY M84821, NY M81135, NY L85036, NY L82557, NY E82340, NY E80263 and NY B86150, CBP classified the textile leg coverings in heading 9505, HTSUS, specifically in subheading 9505.90.60, HTSUS, which provides for "Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: Other: Other." It is now CBP's position that the textile leg coverings are properly classified, in heading 6406, HTSUS, specifically in subheading 6406.90.15, HTSUS, which provides for "Parts of footwear (including uppers whether or not attached to soles other than outer soles); removable insoles, heel cushions and similar articles; gaiters, leggings and similar articles, and parts thereof: Other: Of other materials: Of textile materials."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to modify NY N196588, NY N152983, NY N141478, NY N141467, NY N104375, NY N045816, NY N043382, NY N041398, NY N005706, NY M84821, NY M81135, NY L85036, NY L82557, NY E82340, NY E80263 and NY B86150 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter ("HQ") H239479, set forth as Attachment Q to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated:

CRAIG T. CLARK,
Director
Commercial and Trade Facilitation Division

Attachments

N196588

January 5, 2012

CLA-2-62 OT:RR:NC:N3:353

CATEGORY: Classification

TARIFF NO.: 6211.43.0060; 6104.43.2010;

6211.43.0091; 6114.30.3070; 7117.90.7500;

6110.30.3059; 6104.53.2010; 6505.90.6090;

6217.10.9530; 9505.90.6000

MS. PAULINA DONG
SEASONAL VISIONS INTERNATIONAL INC.
1368 PARK AVENUE
EMERYVILLE, CA 94608

RE: The tariff classification of costumes from China.

DEAR MS. DONG:

In your letter dated December 2, 2011, but received on December 12, 2011, you requested a tariff classification ruling. The samples will be returned to you as requested.

You submitted a sample, identified as an Adult Pink Ninja Costume, which consists of a shirt, flimsy pants, an obi-style belt and a mask. The costume will be imported in three sizes; small, item number 5147316; medium, item number 5147317; and large, item number 5147318. GRI 3(b) is applicable when goods are, prima facie, classifiable under two or more headings, and have been put up in sets for retail sale. GRI 3(b) states that the goods "shall be classified as if they consisted of the material or component which gives them their essential character." The essential character is imparted by the tunic length shirt, which is constructed of woven 100% polyester fabric. The multi-paneled shirt features a surplice wrap front, flared sleeves, a jagged hemline with slits and a sturdy waist and seams. The cuffs, neckline and hemline of the garment are all trimmed with pink fabric.

You submitted a sample, identified as an Adult Classic Witch Costume, which consists of a dress, hat, brooch, apron and well-made cape. The costume will be imported in three sizes; small, item number 5147322; medium, item number 5147323; and large, item number 5147324. The long black dress is constructed of knit 100% polyester fabric. The dress has a multi-paneled bodice with lace-like fabric inserts, long two-piece puff sleeves, and green satin fabric capping the bodice. The dress has a well-made neck and waist, sturdy interior seams, and lace-like fabric sewn around the wrists and bodice of the garment. The cape, which is constructed of woven 100% polyester fabric, is double-layered and reversible, with a well-made neck, sturdy seams and finished edges. The apron, which is constructed of knit 100% polyester fabric, is trimmed with ruffled lace-like fabric, has a turned waistline and has a waistband capped with green satin fabric. The witch's hat is black with a green satin hatband encased in black lace-like fabric. The brooch is made of plastic and resembles a cameo.

You submitted a sample, identified as an Adult Pink Viking Costume, which consists of a pullover top, skirt, hat, arm covers and boot covers. The costume will be imported in three sizes; small, item number 5147319; medium, item number 5147320; and large, item number 5147321. The same costume will be imported in a silver color under the item numbers 5147193, 5147194 and 5147195. The multi-panel pullover, which is constructed pri-

marily of knit polyester fabric, has a silver metallic knit mesh overlay, a large faux fur collar, and a decorative non-functional lace-up with grommets. The short-sleeved garment also features a well-made neck, sturdy seams and faux fur trim at the arms. Two vertical strips of silver metallic fabric also embellish the front of the garment. The multi-panel skirt, which is constructed of knit 100% polyester fabric, has two frontal slits, sturdy seams and two decorative non-functional grommet and lace closures. The hat is constructed from knit polyester fabric with a foam lining to give it body. It features six panels, a silver metallic knit mesh overlay, a faux fur cuff around the brim and a plastic wing sewn to each side of the crown. The arm covers, which are constructed of woven polyester fabric, have a silver metallic knit mesh overlay and a faux fur cuff. They measure approximately 7 ½ inches in length. The boot covers have a faux fur cuff and elastic attached to the bottom for securing around the shoe.

You state that you believe the costumes are properly classified under heading 9505 as “festive articles.” Costumes are considered “fancy dress.” The Court of Appeals ruled on the classification of costumes in its decision in *Rubie’s Costume Co. v. United States*, slip op 02–1373 (Fed. Cir. Aug. 1, 2003). The decision stated that all flimsy, non-durable textile costumes that are not ordinary articles of apparel are classified under 9505.90.6000 (flimsy); all textile costumes that do not meet flimsy, non-durable standards (well made), or are ordinary articles of apparel are classified in chapters 61 or 62. The overall amount of finishing in these costumes is such that the articles are neither flimsy in nature or construction, nor lacking in durability; these costumes are well made.

The Classic Witch and Pink Viking Costumes consist(s) of two or more garments. Note 14 of Section XI, of the HTSUSA, requires that textile garments of different headings be separately classified, thus preventing classification of costumes consisting of two or more garments as sets. If a set cannot exist by application of Note 14, the articles that may be packaged with the garments must also be classified separately.

The applicable subheading for the Adult Pink Ninja Costume Set will be 6211.43.0060, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Track suits, ski-suits and swimwear; other garments: Other garments, women’s or girls’: Of man-made fibers: Blouses, shirts and shirt-blouses, sleeveless tank styles and similar upper body garments excluded from heading 6206.” The rate of duty will be 16 percent ad valorem.

The applicable subheading for the Adult Classic Witch Costume dress will be 6104.43.2010, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Women’s or girls’...dresses, skirts, divided skirts...knitted or crocheted: Dresses: Of synthetic fibers: Other, Women’s.” The rate of duty will be 16 percent ad valorem.

The applicable subheading for the Adult Classic Witch Costume cape will be 6211.43.0091, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Other garments, women’s or girls’: Of man-made fibers, Other”. The rate of duty will be 16 percent ad valorem.

The applicable subheading for the Adult Classic Witch Costume apron will be 6114.30.3070, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Other garments, knitted or crocheted: Of man-made fibers: Other, Other: Women’s or girls’.” The rate of duty will be 14.9 percent ad valorem.

The applicable subheading for the Adult Classic Witch Costume brooch will be 7117.90.7500, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Imitation jewelry: Other: Of plastics." The rate of duty will be Free.

The applicable subheading for the Adult Pink Viking pullover will be 6110.30.3059, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: Of man-made fibers: Other: Other: Other: Women's or girls': Other." The rate of duty will be 32 percent ad valorem.

The applicable subheading for the Adult Pink Viking skirt will be 6104.53.2010, Harmonized Tariff Schedule of the United States (HTS), which provides for "Women's or girls'...skirts...knitted or crocheted: Skirts and divided skirts: Of synthetic fibers: Other, Other, Women's." The rate of duty will be 16 percent ad valorem.

The applicable subheading for the Adult Pink Viking hat will be 6505.90.6090, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Hats and other headgear, knitted or crocheted, or made up from lace, felt or other textile fabric...Other: Of man-made fibers: Knitted or crocheted or made up from knitted or crocheted fabric: Not in part of braid, Other: Other: Other." The rate of duty will be 20 cents per kilogram plus 7 percent ad valorem.

The applicable subheading for the Adult Pink Viking Costume arm covers will be 6217.10.9530, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Other made up clothing accessories... other than those of heading 6212: Accessories: Other: Other, Of man-made fibers." The rate of duty will be 14.6 percent ad valorem.

The applicable subheading for the Adult Pink Viking Costume boot covers will be 9505.90.6000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: Other: Other." 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 the World Wide Web at <http://www.usitc.gov/tata/hts/>.

We are unable to issue a ruling on the Classic Witch hat because it involves a consideration of whether the merchandise may be classifiable in Chapter 95 as "festive."

A question arising in connection with a Customs transaction already before a Customs office will normally be resolved by that office in accordance with the principles and precedents previously announced by the Headquarters Office. If such a question cannot be resolved on the basis of clearly established rules set forth in the Customs and related laws, or in the regulations there under, or in applicable Treasury Decisions, rulings, opinions, or court decisions published in the Customs Bulletin, that office may be requested to forward the question to the Headquarters Office for consideration, as more fully described in Section 177.11 of the Customs Regulations.

Since the subject Classic Witch Hat concerns an issue (the classification of witch hats) which is currently before CBP Headquarters, we are precluded from issuing a ruling on the merchandise at this time. If you wish you may resubmit your request for a prospective ruling on the Classic Witch Hat after CBP Headquarters has rendered their decision.

Please note that separate Federal Trade Commission marking requirements exist regarding country of origin, fiber content, and other information that must appear on many textile items. You should contact the Federal Trade Commission, Division of Enforcement, 6th and Pennsylvania Avenue, N.W., Washington, D.C., 20580, for information on the applicability of these requirements to this item. Information can also be found at the FTC website www.ftc.gov (click on “For Business” and then on “Textile, Wool, Fur”).

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 Kimberly Praino at (646) 733-3053.

Sincerely,

THOMAS J. RUSSO

Director

National Commodity Specialist Division

N152983

April 4, 2011

CLA-2-61 OT:RR:NC:N3:353

CATEGORY: Classification

TARIFF NO.: 6106.20.2010; 6104.53.2010;

6505.90.6090; 6117.10.2030 6116.93.8800;

6117.80.9540; 9505.90.6000

MS. ANNALEE C. MINTZ
SEASONAL VISIONS INTERNATIONAL, INC.
1368 PARK AVENUE
EMERYVILLE, CA 94608

RE: The tariff classification of an adult costume from China.

DEAR MS. MINTZ:

In your letter dated March 8, 2011, you requested a tariff classification ruling. The sample will be returned to you.

The submitted sample, Pulp Vintage Cowgirl costume, consists of a blouse, skirt, cowgirl-style hat, neck scarf, fingerless gloves, belt with faux holster and boot covers. The blouse, skirt, hat, neck scarf, fingerless gloves and boot covers are made of 100 percent polyester knit fabric. The belt is made of polyester knit fabric coated with a compact plastic material. The costume will be imported in styles 5145140, size extra small; 5145141, small; 5145142, medium and 5145143, large.

The blouse has short sleeves, a large pointed collar, two faux breast pockets and a full front snap closure that closes right over left. The short skirt has an elastic waist and a seven inch fringe at the bottom. The neck scarf is approximately 15 inches long and 3 inches wide and the fingerless gloves have a thumbhole and are trimmed with a 4 inch fringe. The belt with faux holster measures approximately 40 inches in length and 1 3/4 inches in width with a metal buckle closure. The boot covers extend to just below the calf and have two elasticized strips at the bottom. All pieces of the costume are trimmed with small spaced plastic discs that resemble sequins.

The costume is well made with sturdy seams, a turned neckline, styling and embellishments.

The Pulp Vintage Cowgirl costume consists of two or more garments. Note 14 of Section XI, of the HTSUSA, requires that textile garments of different headings be separately classified, thus preventing classification of costumes consisting of two or more garments as sets. If a set cannot exist by application of Note 14, the articles that may be packaged with the garments must also be classified separately.

The applicable subheading for the blouse will be 6106.20.2010, Harmonized Tariff Schedule of the United States (HTS), which provides for "Women's or girls' blouses...knitted or crocheted: Of man-made fibers: Other Women's." The duty rate will be 32 percent ad valorem.

The applicable subheading for the skirt will be 6104.53.2010, Harmonized Tariff Schedule of the United States (HTS), which provides for "Women's or girls'...skirts...knitted or crocheted: Skirts and divided skirts: Of synthetic fibers: Other, Women's." The duty rate will be 16 percent ad valorem.

The applicable subheading for the hat will be 6505.90.6090, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Hats and other headgear, knitted or crocheted, or made up from lace, felt or other textile fabric...Other: Of man-made fibers: knitted or crocheted or made up

from knitted or crocheted fabric: Not in part of braid, Other: Other: Other.” The duty rate will be 20 cents per kilogram plus 7 percent ad valorem.

The applicable subheading for the neck scarf will be 6117.10.2030, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Other made up clothing accessories, knitted or crocheted...Shawls, scarves, mufflers, mantillas, veils and the like: Of man-made fibers, Other.” The rate of duty will be 11.3 percent ad valorem.

The applicable subheading for the fingerless gloves will be 6116.93.8800, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Gloves, mittens and mitts, knitted or crocheted: Other: Of synthetic fibers: Other: Other: Without fourchettes.” The rate of duty will be 18.6 percent ad valorem.

The applicable subheading for the belt will be 6117.80.9540, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Other made up clothing accessories, knitted or crocheted: knitted or crocheted parts of garments or of clothing accessories: Other Accessories: Other: Other, Of man-made fibers: Other.” The duty rate will be 14.6 percent ad valorem.

The applicable subheading for the boot covers will be 9505.90.6000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Festive, carnival or other entertainment articles, including magic tricks and practical jokes articles: parts and accessories thereof: Other: Other.” The duty rate will be Free.

Please note that separate Federal Trade Commission marking requirements exist regarding country of origin, fiber content, and other information that must appear on many textile items. You should contact the Federal Trade Commission, Division of Enforcement, 6th and Pennsylvania Avenue, N.W., Washington, D.C., 20580, for information on the applicability of these requirements to this item. Information can also be found at the FTC website www.ftc.gov (click on “For Business” and then on “Textile, Wool, Fur”).

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the World Wide Web at <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 Kimberly Praino at (646) 733-3053.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

N141478

February 2, 2011

CLA-2-61:OT:RR:NC:TA:353

CATEGORY: Classification

TARIFF NO.: 6114.30.3070, 6104.63.2011,
6217.10.9530, 3926.20.9050, 6505.90.6045,
9505.90.6000, 6505.90.6090, 6110.30.3035,
6106.20.2010, 6104.43.2010

MS. CHRISTIAN LEE
HANDERSON HANDICRAFT MFG. CO.
11F/6, No. 2, JIAN-BA ROAD, CHUNG-HO
TAIPEI, TAIWAN

RE: The tariff classification of adult unisex costumes from China

DEAR MS. LEE:

In your letter dated January 3, 2011, you requested a tariff classification ruling. The samples will be returned to you.

The Pirate costume, style M-3309-00, consists of an upper body garment that you call a jacket, pants, a tri-corner pirate-style hat, a jabot, a belt, and boot covers. The upper body garment, pants, hat, and boot covers are made of 100 percent polyester knit fabric. The jabot is made of 100 percent polyester woven fabric. The belt is made of cellular plastic material with a fabric backing. The long sleeve upper body garment extends to almost the knee area and features an attached vest and trimming down the front. The pants are without a fly and feature elastic at the waist and bottom of the legs. The boot covers have a cuff at the top and a strip of elastic at the bottom. The three-ruffle jabot has a hook and loop closure at the back. The belt measures approximately 3-1/2 inches and features a hook and loop closure at the back and a faux buckle at the front.

The Zombie Bride costume, style W-3455-00, consists of a dress, a belt, and a veil headpiece. The velveteen sleeveless dress is made of 100 percent polyester knit fabric and features trim around the neckline and multiple layers of net ruffles at the bottom.

The Black Vampire costume, style M-3287-01, consists of an upper body garment that you call a coat, vest, pants, an oversized novelty tie, and an oversized fedora-style hat. The upper body garment, vest, pants, and hat are made of 100 percent polyester knit fabric. The tie is made of 100 percent polyester woven fabric. The upper body garment is tattered and open at the front. The velveteen vest has buttons at the front, oversized armholes, and a deep V-neckline. The pants are tattered and feature a tunneled elastic waist.

The Royal King costume, style M-3321-00, consists of a blouse, pants, boot covers, and a crown made of 100 percent polyester knit fabric. The blouse has a hook and loop closure at the back, long sleeves, and a stand-up collar. The pants extend to the knee and have a tunneled elastic waistband. The boot covers have a cuff at the top and a strip of elastic at the bottom. The crown does not cover the crown of the head, is designed with points at the top, and it is secured by a hook and loop closure.

The Royal Queen costume, style W-3525-00, consists of a dress and a headpiece. The long dress is made of 100 percent polyester velveteen knit and woven fabric. The knit component imparts the essential character of the garment. The long dress has a hoop under skirt, mutton-style sleeves, and is heavily embellished.

The costumes are very well made with sturdy seams, styling, and embellishments. All styles will be imported in size OSFM (one size fits most).

The Pirate, Black Vampire, and Royal King costumes consist of two or more garments. Note 14 of Section XI, of the HTSUSA, requires that textile garments of different headings be separately classified, thus preventing classification of costumes consisting of two or more garments as sets. If a set cannot exist by application of Note 14, the articles that may be packaged with the garments must also be classified separately.

General Rule of Interpretation (GRI) 3(b) is applicable when goods are, *prima facie*, classifiable under two or more headings, and have been put up in sets for retail sale. GRI 3(b) states that the goods “shall be classified as if they consisted of the material or component which gives them their essential character.” In this case, the dresses for the Zombie Bride and Royal Queen costumes impart the essential of the sets.

The applicable subheading for the Pirate and Black Vampire costumes’ upper body garments will be 6114.30.3070, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Other garments, knitted or crocheted: Of man-made fibers: Other, Other: Women’s or girls’.” The rate of duty will be 14.9 percent ad valorem.

The applicable subheading for the Pirate, Black Vampire, and Royal King costumes’ pants will be 6104.63.2011, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Women’s or girls’ suits, ensembles, suit-type jackets, blazers, dresses, skirts. Divided skirts, trousers, bib and brace overalls, breeches and shorts: Trousers, bib and brace overalls, breeches and shorts: Of synthetic fibers: Other: Other, Trousers and breeches: Women’s: Other.” The duty rate will be 28.2 percent ad valorem.

The applicable subheading for the Pirate costume’s jabot and the Black Vampire costume’s novelty tie will be 6217.10.9530, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Other made up clothing accessories; parts of garments...Accessories: Other: Other: Of man-made fibers.” The duty rate will be 14.6 percent ad valorem.

The applicable subheading for the Pirate costume’s belt will be 3926.20.9050, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Other articles of plastics and articles of other materials of headings 3901 to 3914: Articles of apparel and clothing accessories: Other: Other, Other.” The rate of duty will be 5 percent ad valorem.

The applicable subheading for the Royal King costume’s crown will be 6505.90.6045, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Hats and other headgear, knitted or crocheted, ...of any material, whether or not lined or trimmed: Other: Of man-made fibers: Knitted or crocheted or made up from knitted or crocheted fabric: Not in part of braid, Other: visors, and other headgear which provides no covering for the crown of the head.” The duty rate will be 20 cents per kilogram plus 7 percent ad valorem.

The applicable subheading for the Pirate and Royal King costumes’ boot covers will be 9505.90.6000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Festive, carnival or other entertainment articles, including magic tricks and practical jokes articles: parts and accessories thereof: Other: Other.” The duty rate will be free.

The applicable subheading for the Pirate and Black Vampire costumes’ hats will be 6505.90.6090, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Hats and other headgear, knitted or crocheted,

or made up from lace, felt or other textile fabric...Other: Other: Of man-made fibers: knitted or crocheted or made up from knitted or crocheted fabric: Not in part of braid, Other: Other: Other.” The duty rate will be 20 cents per kilogram plus 7 percent ad valorem.

The applicable subheading for the Black Vampire costume’s vest will be 6110.30.3035, Harmonized Tariff Schedule of the United States, (HTSUS), which provides for: sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: of man-made fibers: other: other: other: other: vests, other than sweater vests: women’s or girls’. The rate of duty is 32 percent ad valorem.

The applicable subheading for the Royal King costume’s blouse will be 6106.20.2010, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Women’s or girls’ blouses...knitted or crocheted: Of man-made fibers: Other Women’s.” The duty rate will be 32 percent ad valorem.

The applicable subheading for the Zombie Bride and Royal Queen costume sets will be 6104.43.2010, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Women’s or girls’...dresses, skirts, divided skirts...knitted or crocheted: Dresses: Of synthetic fibers: Other, Women’s.” The rate of duty will be 16 percent ad valorem.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact the National Import Specialist at (646) 733-3053.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

N141467

February 2, 2011

CLA-2-61:OT:RR:NC:TA:353

CATEGORY: Classification

TARIFF NO.: 6110.30.3059, 6104.63.2028,
9505.90.6000, 6505.90.6090, 6104.43.2020,
6204.43.4040

MS. CHRISTIAN LEE
HANDERSON HANDICRAFT MFG. CO.
11F/6, No. 2, JIAN-BA ROAD, CHUNG-HO
TAIPEI, TAIWAN

RE: The tariff classification of children's costumes from China

DEAR MS. LEE:

In your letter dated December 23, 2010, you requested a tariff classification ruling. The samples will be returned to you.

The Pirate costume, style B-2012-00 (child sizes small, medium, and large), consists of a pullover top, pants, boot covers, and a pirate-style hat made of 100 percent polyester knit fabric. The brushed knit pullover has long sleeves, an attached belt, and a strip of fabric across the chest. The pants have an elasticized waist and elastic at the ankles. The boot covers have a cuff at the top and a strip of elastic at the bottom.

The Purple Princess costume, style G-4265-00 (child sizes small, medium, and large), consists of a dress and headpiece. The long dress is made of 100 percent polyester fabric and features a short peplum, short sleeves, and gold ric-rac trim. The top portion of the dress is made of knit fabric, and the bottom, with the exception of an inset, is made of woven fabric.

The 50's Girl costume, style G-4266-00 (child sizes small, medium, and large), consists of a dress, a belt, and a neckpiece. The short sleeve dress is made of 100 percent polyester fabric. The top portion is made of knit fabric, and the bottom portion is made of sateen woven fabric.

The Spider Web Witch costume, style G-4246-00 (child sizes small, medium, and large), consists of a dress and hat made of 100 percent polyester fabric. The dress features a small knit fabric portion at the top front, a large woven fabric inset, and a woven fabric shirt. The woven components impart the essential character of the garment. The dress has a pinafore-style top, faux ribbon laces down the front, a self tie at the back, and a ruffle at the bottom.

The Purple Witch costume, style G-4267-00 (child sizes small, medium, and large), consists of a dress and witch hat made of 100 percent polyester knit fabric. The pinafore-style dress features trim and embellishments at the front and a handkerchief-style skirt bottom.

The costumes are well made with sturdy seams, styling, and embellishments.

The Pirate costume consists of two or more garments. Note 14 of Section XI, of the HTSUSA, requires that textile garments of different headings be separately classified, thus preventing classification of costumes consisting of two or more garments as sets. If a set cannot exist by application of Note 14, the articles that may be packaged with the garments must also be classified separately.

General Rule of Interpretation (GRI) 3(b) is applicable when goods are, prima facie, classifiable under two or more headings, and have been put up in

sets for retail sale. GRI 3(b) states that the goods “shall be classified as if they consisted of the material or component which gives them their essential character.” In this case, the dresses for the Purple Princess, 50’s Girl, Spider Web Witch, and Purple Witch costumes impart the essential of the sets.

The dresses for the Purple Princess and the 50’s Girl costumes are composed of both knit and woven components. Neither component imparts the essential character of the dresses, which will be classified in accordance with General Rule of Interpretation (GRI) 3(c) under the heading that occurs last in numerical order in the HTSUS.

The applicable subheading for Pirate costume’s pullover top will be 6110.30.3059, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: Of man-made fibers: Other...Other: Women’s or Girls’: Other.” The duty rate will be 32 percent ad valorem.

The applicable subheading for Pirate costume’s pants will be 6104.63.2028, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Women’s or girls’...trousers, bib and brace overalls, breeches and shorts: Of synthetic fibers: Other: Other, Trousers and breeches: Girls’: Other: Other.” The duty rate will be 28.2 percent ad valorem.

The applicable subheading for the Pirate costume’s boot covers will be 9505.90.6000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Festive, carnival or other entertainment articles, including magic tricks and practical jokes articles: parts and accessories thereof: Other: Other.” The duty rate will be free.

The applicable subheading for the Pirate costume’s hat will be 6505.90.6090, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Hats and other headgear, knitted or crocheted, or made up from lace, felt or other textile fabric...Other: Other: Of man-made fibers: knitted or crocheted or made up from knitted or crocheted fabric: Not in part of braid, Other: Other: Other.” The duty rate will be 20 cents per kilogram plus 7 percent ad valorem.

The applicable subheading for the Purple Witch costume set will be 6104.43.2020, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Women’s or girls’...dresses, skirts, divided skirts...knitted or crocheted: Dresses: Of synthetic fibers: Other, Girls’.” The rate of duty will be 16 percent ad valorem.

The applicable subheading for the Purple Princess, 50’s Girl, and Spider Web Witch costume sets will be 6204.43.4040, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Women’s or girls’ suits, ensembles, suit-type jackets, blazers, dresses, . . . Dresses: Of synthetic fibers: Other: Other, Other: Girls’.” The duty rate will be 16 percent ad valorem.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact the National Import Specialist at (646) 733–3053.

Sincerely,
ROBERT B. SWIERUPSKI
Director
National Commodity Specialist Division

N104375

June 3, 2010

CLA-2-61:OT:RR:NC:TA:353

CATEGORY: Classification

TARIFF NO.: 6110.30.3059, 6104.63.2028,
6113.00.1012, 9505.90.6000 6117.80.9540

Ms. KIM BENEDETTO
SEASONS USA, INC.
3434 HEATHER LANE
WANTAGH, NEW YORK 11793

RE: The tariff classification of a unisex child's costume from China.

DEAR Ms. BENEDETTO:

In your letter dated May 3, 2010, you requested a tariff classification ruling. The sample will be returned to you.

Style HWN10-0008 Kid Kiss Destroyer Costume consists of a pullover top, pants, chest armor, boot tops, gauntlets/wrist bands and belt. The pullover top and pants are made of knit 90 percent polyester and 10 percent spandex fabric. The armor, boot covers, gauntlet/wrist bands and belt are made of knit polyester fabric coated with polyurethane plastic material on the outer surface which completely obscures the underlying fabric. The pullover top has long sleeves and a jewel neckline. The long pants have a tunneled elastic waist and no fly. The chest armor is an upper body garment that covers the chest and has attached upper arm "armor" sleeves. The boot covers and wrist bands/gauntlets resemble metal armor. The wide belt with a hook and loop closure at the back is decorated with metal studs.

The costume is well made with sturdy seams, finished neck and waist and hemmed edges.

Style HWN10-0008 Kid Kiss Destroyer Costume consists of two or more garments. Note 14 of Section XI, of the HTSUSA, requires that textile garments of different headings be separately classified, thus preventing classification of costumes consisting of two or more garments as sets. If a set cannot exist by application of Note 14, the articles that may be packaged with the garments must also be classified separately.

The applicable subheading for Style HWN10-0008 pullover will be 6110.30.3059, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: Of man-made fibers: Other...Other: Women's or Girls': Other." The duty rate will be 32 percent ad valorem.

The applicable subheading for Style HWN10-0008 pants will be 6104.63.2028, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Women's or girls'...trousers, bib and brace overalls, breeches and shorts: Of synthetic fibers: Other: Other, Trousers and breeches: Girls': Other: Other." The duty rate will be 28.2 percent ad valorem.

The applicable subheading for Style HWN10-0008 chest armor will be 6113.00.1012, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Garments, made up of knitted or crocheted fabrics of heading 5903, 5906 or 5907: Having an outer surface impregnated, coated, covered, or laminated with rubber or plastics material which completely obscures the underlying fabric, Other." The rate of duty will be 3.8 percent ad valorem.

The applicable subheading for Style HWN10-0008 boot covers will be 9505.90.6000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Festive, carnival or other entertainment articles, including magic tricks and practical jokes articles: parts and accessories thereof: Other: Other.” The duty rate will be Free.

The applicable subheading for the Style HWN10-0008 belt and gauntlets/wrist bands will be 6117.80.9540, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Other made up clothing accessories, knitted or crocheted; knitted or crocheted parts of garments or of clothing accessories: Other accessories: Other: Other, Of man-made fibers: Other.” The duty rate will be 14.6 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 Kenneth Reidlinger at (646) 733-3053.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

N045816

December 15, 2008

CLA-2-62:OT:RR:NC:N3:353

CATEGORY: Classification

TARIFF NO.: 6211.43.0091, 6114.30.1020,
6212.90.0030, 9505.90.6000

MS. ROSEMARY BECK
PAPER MAGIC GROUP, HALLOWEEN DIVISION
345 7TH AVENUE, 6TH FLOOR
NEW YORK, NEW YORK 10001

RE: The tariff classification of a costume from China.

DEAR MS. BECK:

In your letter dated November 25, 2008 you requested a classification ruling. The samples which you submitted are being returned as requested.

The French Kiss Showgirl Costume will be imported as follows:

Item 6869024 Size XS

Item 6869025 Size S

Item 6869026 Size M

Item 6899027 Size L

The French Kiss Showgirl Costume consists of an upper body garment, top, hot pants and boot covers which you call spats. The upper body garment is made of woven 100 percent polyester fabric. The garment resembles formal wear and has long sleeves, collar, tails trimmed with piping, two faux pockets and a full front right over left snap opening. The top is made of knit polyester/spandex fabric. The garment has thin straps and a buckle at the top and bottom. The hot pants are made of knit 100 percent polyester fabric and have ruffles at the back and permanently attached garters at the bottom. The boot covers are made of woven polyester fabric and have sequins at the sides, elastic strap at the bottom and hook and loop closure at the sides.

All garments are well made with styling, finished waist/neck, sturdy seams, finished edges, and sewn-on embellishments.

The applicable subheading for upper body garment will be 6211.43.0091, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Track suits and swimwear; other garments: Other garments women's or girls': Of man-made fibers, Other." The duty rate will be 16 percent ad valorem. The textile category designation is 659.

The applicable subheading for the top will be 6114.30.1020, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Other garments, knitted or crocheted: Of man-made fibers: Tops: Women's or girls'." The duty rate will be 28.2 percent ad valorem. The textile category designation is 639.

The applicable subheading for the panty with attached garters will be 6212.90.0030, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Brassieres, girdles, corsets, braces, suspenders, garters and similar articles, whether or not knitted or crocheted: Other, Of man-made fibers or man-made fibers and rubber or plastics." The duty rate will be 6.6 percent ad valorem. The textile category designation is 659.

The applicable subheading for boot covers will be 9505.90.6000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for

“Festive, carnival or other entertainment articles, including magic tricks and practical jokes articles: parts and accessories thereof: Other: Other.” The duty rate 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/>.

With the exception of certain products of China, quota/visa requirements are no longer applicable for merchandise which is the product of World Trade Organization (WTO) member countries. Quota and visa requirements are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information on quota and visa requirements applicable to this merchandise, we suggest you check, close to the time of shipment, the “Textile Status Report for Absolute Quotas” which is available on our web site at www.cbp.gov. For current information regarding possible textile safeguard actions on goods from China and related issues, we refer you to the web site of the Office of Textiles and Apparel of the Department of Commerce at otexa.ita.doc.gov.

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 Kenneth Reidlinger at (646) 733-3053.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

N043382

December 2, 2008

CLA-2-61:OT:RR:NC:N3:353

CATEGORY: Classification

TARIFF NO.: 6114.30.3060, 6114.30.3070,
9505.90.6000, 6217.10.9530 6211.43.0091,
6206.40.3030, 6505.90.6090

MR./MS. CHRISTIAN LEE/EDITH HO
HANDERSON HANDICRAFT MFG. CO.
11F/6 No.2, JIAN-BA ROAD, CHUNG-HO
TAIPEI, TAIWAN

RE: The tariff classification of adult costumes from China.

DEAR MR./MS. LEE/HO

In your letter dated October 29, 2008, on behalf of Sears Holdings Global Sourcing Ltd., you requested a classification ruling. The samples which you submitted are being returned as requested.

Style M-1520-00 Count Costume consists of an upper body garment, cape and pants made of knit 100 percent polyester fabric, and a jabot made of woven 100 percent polyester fabric. The upper body garment has long sleeves, extends to the knee, and has a full front opening with left over right hook and loop closures. The knee length lined cape has a large collar and hook and loop tape on each shoulder to facilitate adhering to the upper body garment. The flimsy pants have an elasticized waistband and no fly.

Style M-1522-00 Deluxe Pirate Costume consists of a coat, pants, top, hat and boot covers. The coat is made of woven 93 percent man-made fiber fabric and 7 percent cotton fabric. The top, pants, Pirate's hat and boot covers are made of knit 100 percent polyester fabric. The coat does not protect from the elements and has long sleeves, decorative cuffs and a full front opening with decorative buttons without a closure. The blouse/top has an entire woven fabric front with a knit fabric back. The essential character of the top is imparted by the woven fabric front. The sleeveless garment has a high stand-up collar with a self-tie at the front and a hook and loop closure at the back at the neck. The velour above the knee boot covers have an elastic strip at the bottom and the flimsy pants have an elasticized waist without a fly.

Styles M-1520-00 upper body garment and cape, and M-1522-00 coat and top are well made with styling, finished neck, sturdy seams, finished edges and sewn-on embellishments.

Styles M-1520-00 and M-1522-00 consist of two or more garments. Note 14 of Section XI, of the HTSUS, requires that textile garments of different headings be separately classified, thus preventing classification of costumes consisting of two or more garments as sets. If a set cannot exist by application of Note 14, the articles that may be packaged with the garments must also be classified separately.

The applicable subheading for the Style M-1520-00 upper body garment will be 6114.30.3060, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Other garments, knitted or crocheted: Of man-made fibers: Other, Other: Men's or boys'." The duty rate will be 14.9 percent ad valorem. The textile category designation is 659.

The applicable subheading for the Style M-1520-00, cape will be 6114.30.3070, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Other garments, knitted or crocheted: Of man-made

fibers: Other, Other: Women's or girls'." The duty rate will be 14.9 percent ad valorem. The textile category designation is 659.

The applicable subheading for Styles M-1520-00 and M-1522-00 pants, and Style M-1522-00 boot covers, will be 9505.90.6000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: Other: Other. The duty rate will be Free.

The applicable subheading for the Style M-1520-00, jabot will be 6217.10.9530, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Other made up clothing accessories; parts of garments or of clothing accessories, other than those of heading 6212: Accessories: Other: Other, Of man-made fibers." The duty rate will be 14.6 percent ad valorem. The textile category designation is 659.

The applicable subheading for the Style M-1522-00, coat-like garment will be 6211.43.0091, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Tracks suits, ski-suits and swimwear; other garments: Other garments, women's or girls': Of man-made fibers: Other." The duty rate will be 16 percent ad valorem. The textile category designation is 659.

The applicable subheading for the Style M-1522-00, blouse/top will be 6206.40.3030, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Women's or girls' blouses, shirts and shirt blouses: Of man-made fibers: Other: Other, Other: Women's." The duty rate will be 26.9 percent ad valorem. The textile category is 641.

The applicable subheading for the Style M-1522-00, Pirate's hat will be 6505.90.6090, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Hats and other headgear, knitted or crocheted, or made up from lace, felt or other textile fabric...Other: Of man-made fibers: knitted or crocheted or made up from knitted or crocheted fabric: Not in part of braid, Other: Other: Other." The duty rate will be 20 cents per kilogram plus 7 percent ad valorem. The textile category designation is 659.

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/>.

With the exception of certain products of China, quota/visa requirements are no longer applicable for merchandise which is the product of World Trade Organization (WTO) member countries. Quota and visa requirements are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information on quota and visa requirements applicable to this merchandise, we suggest you check, close to the time of shipment, the "Textile Status Report for Absolute Quotas" which is available on our web site at www.cbp.gov. For current information regarding possible textile safeguard actions on goods from China and related issues, we refer you to the web site of the Office of Textiles and Apparel of the Department of Commerce at otexa.ita.doc.gov.

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 Kenneth Reidlinger at (646) 733-3053.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

N041398

November 5, 2008

CLA-2-61:OT:RR:NC:N3:353

CATEGORY: Classification

TARIFF NO.: 6114.30.3070, 6114.30.2010,
6113.00.9086, 6505.90.6090,
6116.93.8800 9505.90.6000

MR. SCOTT HARRIS
REVOLUTION DANCEWEAR
6100 WEST HOWARD STREET
NILES, ILLINOIS 60714

RE: The tariff classification of dancewear from China.

DEAR MR. HARRIS:

In your letter dated October 8, 2008, you requested a classification ruling. The samples which you submitted are being returned as requested.

Style 0106 'A' You're Adorable Set consists of a leotard with an attached skirt and headpiece with bobby pins. The top portion of the garment is made of knit 90 percent polyester/10 percent spandex fabric. The trunks are made of knit 83 percent nylon/17 percent spandex fabric and the skirt is made of knit 100 percent nylon fabric. The sleeveless garment has a multi-layer skirt trimmed with spangles, a flower at the waist and a neckline trimmed with spangles. Style 0106 will be imported in child sizes only.

Style 0107 Espana Set consists of a leotard with an attached skirt and a headpiece. The body of the garment is made of knit 83 percent nylon/17 percent spandex fabric and the skirt is made of knit 100 percent fabric. The garment has long sleeves and is trimmed with ribbon and rosettes. Style 0107 will be imported in child and adult sizes.

Style 0113 Born to be Wild consists of a bodysuit, vest, hat, gloves and boot covers. The bodysuit is made of knit 83 percent nylon/17 percent spandex fabric. The vest, boot covers and hat are made of brushed knit fabric coated on the outer surface with polyurethane compact plastic material which completely obscures the underlying fabric. The fingerless gloves are made of knit man-made fiber fabric. The leotard has a symmetrical neckline with a buckle and short sleeves and boy cut trunk bottom. The vest has an embroidered front and a textile closure at the front. The biker-style cap has embroidery, eight panels and a button at the top. The boot covers have elastic at the bottom. Style 0113 will be imported in child and adult sizes.

The Explanatory Note to heading 61.14 states that "The heading includes, inter alia: (5) Special articles of apparel used for certain sports or for dancing or gymnastics (e.g., fencing clothing, jockeys' silks, ballet skirts, leotards)."

General Rule of Interpretation (GRI) 3(b) is applicable when goods are, prima facie, classifiable under two or more headings, and have been put up in sets for retail sale. GRI 3(b) states that the goods "shall be classified as if they consisted of the material or component which gives them their essential character." In this case, the leotard for Styles 0106 and 0107 imparts the essential character of the set.

The applicable subheading for Styles 0106 and 0107 will be 6114.30.3070, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Other garments, knitted or crocheted: Of man-made fibers: Other, Other: Women's or girls'." The rate of duty will be 14.9 percent ad valorem. The textile category designation is 659.

Style 0113 consists of two or more garments. Note 14 of Section XI, of the HTSUS, requires that textile garments of different headings be separately classified, thus preventing classification of costumes consisting of two or more garments as sets. If a set cannot exist by application of Note 14, the articles that may be packaged with the garments must also be classified separately.

The applicable subheading for the Style 0113 bodysuit will be 6114.30.2010, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Other garments, knitted or crocheted: Of man-made fibers: Bodysuits and bodyshirts, Of fabric containing by weight 5 percent or more of elastomeric yarn or rubber thread." The rate of duty will be 32 percent ad valorem. The textile category designation is 659.

The applicable subheading for the Style 0113 vest will be 6113.00.9086, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Garments, made up of knitted or crocheted fabrics of heading 5903, 5906 or 5907: Other, Other: Other: Women's or girls'." The duty rate will be 7.1 percent ad valorem. The textile category designation is 659.

The applicable subheading for the Style 0113 hat will be 6505.90.6090, Harmonized Tariff Schedule of the United States (HTSUS), which provides for hats and other headgear, knitted or crocheted, or made up from lace, felt or other textile fabric. . . : other: of man-made fibers: knitted or crocheted or made up from knitted or crocheted fabric: not in part of braid, other: other: other The duty rate will be 20 cents per kilogram plus 7 percent ad valorem. The textile category designation is 659.

The applicable subheading for the Style 0113 gloves will be 6116.93.8800, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Gloves, mittens and mitts, knitted or crocheted: Other: Of synthetic fibers: Other: Other: Without fourchettes." The rate of duty will be 18.6 percent ad valorem. The textile category designation is 631.

The applicable subheading for the Style 0113 boot covers will be 9505.90.6000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "festive, carnival and other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: Other: Other." The duty rate 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/>.

Your inquiry does not provide enough information for us to give a classification ruling on Style 0101 Texas Star. Your request for a classification ruling should also include fabric content for the hat, scarf and boot covers. When this information is available, you may wish to consider resubmission of your request. We are returning any related samples, exhibits, etc. If you decide to resubmit your request, please include all of the material that we have returned to you.

With the exception of certain products of China, quota/visa requirements are no longer applicable for merchandise which is the product of World Trade Organization (WTO) member countries. Quota and visa requirements are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information on quota and visa requirements applicable to this merchandise, we suggest you check, close to the time of shipment, the "Textile Status Report for Absolute Quotas" which is available on our web site at www.cbp.gov. For current information regarding possible textile safeguard actions on goods from China and related issues,

we refer you to the web site of the Office of Textiles and Apparel of the Department of Commerce at otexa.ita.doc.gov.

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 Kenneth Reidlinger at (646) 733-3053.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

N005706

February 9, 2007

CLA-2-61:RR:NC:N3:353

CATEGORY: Classification

TARIFF NO.: 6113.00.9086, 6215.20.0000,
6104.63.2011, 6505.90.8090,
9505.90.6000, 6117.80.9540

MS. EMILY HUANG

HANDERSON HANDICRAFT MFG. CO.

11F/6, No. 2, JIAN BA RD., CHUNG-HO

TAIPEI, TAIWAN

RE: The tariff classification of an adult costume from Taiwan.

DEAR MS. HUANG:

In your letter dated January 16, 2007, on behalf of Sears Holdings Global Sourcing Ltd., you requested a classification ruling. The sample will be returned to you as requested.

The submitted sample, style M-1154-00, Deluxe Pirate Captain Costume consists of a coat, cravat, pants, hat, boot covers, belt and eye patch. You state that the coat is constructed of woven 100% polyester fabric that is coated with polyurethane. Examination of the sample reveals that the fabric is knit. Due to the polyurethane coating, the coat is considered to be constructed of a fabric of heading 5903. The coat has long sleeves with trimmed cuffs, a large collar, trim down the front with laces and a full front hook and loop closure that closes left over right. The coat does not protect from the elements. You state that the cravat is made of knit polyester, examination reveals that it is made of woven fabric with a hook and loop closure at the back. The pants are made of knit 100% polyester fabric and have a tunneled elastic waist and elastic at the ankles. The pirate-style hat is made of knit polyester fabric. You state that the boot covers are made of knit fabric, examination reveals that the boot covers are made of a woven polyester fabric at the front and sides and knit fabric panel at the back. The belt is made of knit polyester fabric coated with compact plastic material, and measures approximately 1 ¾" with a metal buckle. The eye patch has elastic that fits onto the head to hold it in place.

The costume is well made with a finish neckline, seams styling and embellishments.

The Deluxe Pirate Captain Costume, style M-1154-00, consists of two or more garments. Note 13 of Section XI, of the HTSUS, requires that textile garments of different headings be separately classified, thus preventing classification of costumes consisting of two or more garments as sets. If a set cannot exist by application of Note 13, the articles that may be packaged with the garments must also be classified separately.

The applicable subheading for the coat will be 6113.00.9086, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Garments, made up of knitted or crocheted fabrics of heading 5903, 5906 or 5907: Other, Other: Other: Women's or girls.'" The duty rate will be 7.1% ad valorem.

The applicable subheading for the cravat will be 6215.20.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Ties, bow ties and cravats: Of man-made fibers." The duty rate will be 24.8 cents per kilogram plus 12.7% ad valorem.

The applicable subheading for the pants will be 6104.63.2011, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Women’s or girls’ suits, ensembles, suit-type jackets, blazers, dresses, skirts. Divided skirts, trousers, bib and brace overalls, breeches and shorts: trousers, bib and brace overalls, breeches and shorts: Of synthetic fibers: Other: Other, Trousers and breeches: Women’s: Other.” The duty rate will be 28.2% ad valorem.

The applicable subheading for the hat will be 6505.90.8090, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Hats and other headgear..Of man-made fibers: Other: Not in part of braid, Other: Other: Other.” The duty rate will be 18.7 cents/kg + 6.8% ad valorem.

The applicable subheading for belt will be 6117.80.9540 Harmonized Tariff Schedule of the United States (HTSUS), which provides for provides for “Other made up clothing accessories, knitted or crocheted; knitted or crocheted parts of garments and clothing accessories: Other accessories: Other: Other, Of man-made fibers: Other.” The duty rate will be 14.6% ad valorem.

The applicable subheading for boot covers and eye patch will be 9505.90.6000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for festive, carnival or other entertainment articles, including magic tricks and practical jokes articles: parts and accessories thereof: other: other. The duty rate 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/>.

Please note that separate Federal Trade Commission marking requirements exist regarding country of origin, fiber content, and other information that must appear on many textile items. You should contact the Federal Trade Commission, Division of Enforcement, 6th and Pennsylvania Avenue, N.W., Washington, D.C., 20580, for information on the applicability of these requirements to this item.

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 Kenneth Reidlinger at 646-733-3053.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

NY M84821

July 31, 2006

CLA-2-61:RR:NC:3:353 M84821

CATEGORY: Classification

TARIFFNO.: 6106.20.2030; 6104.63.2028;
9506.90.6000; 6505.90.6090; 6116.93.8800

MS. DARLA J. PERRY
PONY EXPRESS CREATIONS, INC.
9350 TRADE PLACE
SUITE C
SAN DIEGO, CA 92126

RE: The tariff classification of costumes from China, Hong Kong and Vietnam.

DEAR MS. PERRY:

In your letter dated June 21, 2006, you requested a classification ruling. As requested, the sample will be returned to you.

Your submitted sample, style 48691 Boney Pirate Costume, is a child's costume. The well-made costume consists of a knit polyester shirt and pants. The tunic-style shirt has styling features, well-made neck and seams and sewn on embellishments. The pants have styling features, a well-made waist and seams. The costume also features flimsy boot covers, a knit polyester pirate hat with attached bandana and hair and knit polyester gloves with a depiction of skeleton bones on the back of the hand. As per a telephone call with this office, you have stated that the following style numbers: 10612750, 10612751, 10612752, 400009466737, 400009466812, 40000466997 and 400009467079 are the same as style 48691, except they will be sold in different children's sizes and at different retail locations.

The Boney Pirate costume consists of two or more garments. Note 13 of Section XI, of the HTSUS, requires that the textile garments of different headings be separately classified, thus preventing classification of costumes consisting of two or more garments as sets. If a set cannot exist by application of Note 13, the articles that may be packaged with the garments must also be classified separately.

The applicable subheading for the tunic style shirt will be 6106.20.2030, Harmonized Tariff Schedule of the United States (HTSUS), which provides for women's or girls' blouses and shirts, knitted or crocheted: of man-made fibers: other, girls': other. The duty rate will be 32 percent ad valorem.

The applicable subheading for the pants will be 6104.63.2028, Harmonized Tariff Schedule of the United States (HTSUS), which provides for women's or girls' suits-type jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts, knitted or crocheted: trousers, bib and brace overalls, breeches and shorts: of synthetic fibers: other: other, trousers and breeches: girls': other: other. The duty rate will be 28.2 percent ad valorem.

The applicable subheading for the boot covers will be 9505.90.6000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for festive, carnival or other entertainment articles, including magic tricks and practical joke articles: parts and accessories thereof: other: other. The duty rate will be Free.

The applicable subheading for the hat will be 6505.90.6090, Harmonized Tariff Schedule of the United States (HTSUS), which provides for which

provides for hats and other headgear, knitted or crocheted, or made up from lace, felt or other textile fabric. . . . : other: of man-made fibers: knitted or crocheted or made up from knitted or crocheted fabric: not in part of braid, other: other: other The duty rate will be 20 cents per kilogram plus 7 percent ad valorem.

The applicable subheading for the gloves will be 6116.93.8800, Harmonized Tariff Schedule of the United States (HTSUS), which provides for gloves, mittens, mitts, knitted or crocheted: other: of synthetic fibers: other: other: without fourchettes. The duty rate will be 18.6 percent ad valorem.

The tunic-style shirt fall within textile category designation 639. The pants fall within textile category designation 648. The hat falls within textile category designation 659. The gloves fall within textile category designation 631. Quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information as to whether quota and visa requirements apply to this merchandise, we suggest that you check, close to the time of shipment, the "Textile Status Report for Absolute Quotas" available at our web site at www.cbp.gov. In addition, you will find current information on textile import quotas, textile safeguard actions and related issues at the web site of the Office of Textiles and Apparel, at otexa.ita.doc.gov.

Please note that separate Federal Trade Commission marking requirements exist regarding country of origin, fiber content, and other information that must appear on many textile items. You should contact the Federal Trade Commission, Division of Enforcement, 6th and Pennsylvania Avenue, N.W., Washington, D.C., 20580, for information on the applicability of these requirements to this item.

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 Kenneth Reidlinger at 646-733-3053.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

NY M81135

March 27, 2006

CLA-2-61:RR:NC:N3:353 M81135

CATEGORY: Classification

TARIFF NO.: 6114.30.3070, 6505.90.6090,
3926.20.9050 6104.53.2010, 9505.90.6000

MS. IRENE TSIAVOS
FUN WORLD
80 VOICE RD.
CARLE PLACE, NY 11514

RE: The tariff classification of an adult costume from China and Taiwan.

DEAR MS. TSIAVOS:

In your letter dated March 8, 2006, you requested a classification ruling. The sample will be returned to you as requested.

The submitted sample, style 5130, Sexy Captain Black Heart Costume consists of an over-garment, hat, belt, skirt and boot covers. The over-garment, skirt, hat and boot tops are made of knit polyester fabric. The belt is made of cellular plastic material.

The over-garment that you describe as a coat has no opening at the front or back to facilitate putting on the garment by any other means than over the head. The garment is full length in the back with a large collar, long sleeves, and a bodice with faux laces. Under the bodice to the hemline it is without fabric in the front. The item is decorated with ruffles and embellishments. The hat is a pirate-style hat with gold trim and the belt is approximately 2" wide with a metal buckle. The mini skirt has an elasticized waist, faux laces down the front and a ruffle and gold trim at the bottom. The boot tops have a cuff at the top and elastic at the bottom.

The Sexy Captain Black Heart Costume consists of two or more garments. Note 13 of Section XI, of the HTSUS, requires that textile garments of different headings be separately classified, thus preventing classification of costumes consisting of two or more garments as sets. If a set cannot exist by application of Note 13, the articles that may be packaged with the garments must also be classified separately.

The costume is well made with a finished neckline, styling and embellishments.

The applicable subheading for the over-garment will be 6114.30.3070, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Other garments, knitted or crocheted: Of man-made fibers: Other, Other: Women's or girls'." The duty rate will be 14.9% ad valorem. The textile category designation is 659.

The applicable subheading for the hat will be 6505.90.6090, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Hats and other headgear, knitted or crocheted...Other: Of man-made fibers: Knitted or crocheted or made up from knitted or crocheted fabric: Not in part of braid, Other: Other: Other." The duty rate will be 20 cents per kilogram plus 7% ad valorem. The textile category designation is 659.

The applicable subheading for the belt will be 3926.20.9050, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Other articles of plastics...Articles of apparel and clothing accessories (including gloves): Other: Other, Other." The duty rate will be 5% ad valorem.

The applicable subheading for the skirt will be 6104.53.2010, Harmonized Tariff Schedule of the United States (HTS), which provides for “Women’s or girls’...skirts...knitted or crocheted: Skirts and divided skirts: Of synthetic fibers: Other, Other, Women’s. The duty rate will be 16% ad valorem. The textile category designation is 642.

The applicable subheading for the boot tops will be 9505.90.6000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Festive, carnival or other entertainment articles...Other.” The duty rate 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/>.

Quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information as to whether quota and visa requirements apply to this merchandise, we suggest that you check, close to the time of shipment, the “Textile Status Report for Absolute Quotas” available at our web site at www.cbp.gov. In addition, you will find current information on textile import quotas, textile safeguard actions and related issues at the web site of the Office of Textiles and Apparel, at otexa.ita.doc.gov.

Please note that separate Federal Trade Commission marking requirements exist regarding country of origin, fiber content, and other information that must appear on many textile items. You should contact the Federal Trade Commission, Division of Enforcement, 6th and Pennsylvania Avenue, N.W., Washington, D.C., 20580, for information on the applicability of these requirements to this item.

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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 Kenneth Reidlinger at 646-733-3053.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

NY L85036

June 17, 2005

CLA-2-61:RR:NC:3:353 L85036

CATEGORY: Classification

TARIFFNO.: 6106.20.2030; 6104.63.2028;
9506.90.6000; 6505.90.8090; 6116.93.8800

MS. BONNIE KERR-GAGNON
PONY EXPRESS CREATIONS, INC.
9350 TRADE PLACE
SUITE C
SAN DIEGO, CA 92126

RE: The tariff classification of costumes from China, Hong Kong and Vietnam.

DEAR MS. KERR-GAGNON:

In your letter dated May 13, 2005, you requested a classification ruling.

You have submitted two samples. Style 410014 Boney Pirate Costume - DD is a child's costume. The well-made costume consists of a knit polyester shirt and pants. The tunic-style shirt has styling features, finished edges, a finished neck and sewn on embellishments. The pants have styling features, finished edges and a turned waist. The costume also features flimsy boot covers and a woven polyester pirate hat with attached bandana and hair.

Style 410013 Deluxe Boney Pirate Costume - DS is a child's costume. The well-made costume consists of a knit polyester shirt and pants. The tunic-style shirt has styling features, finished edges, a finished neck and sewn on embellishments. The pants have styling features, finished edges and a turned waist. The costume also features flimsy boot covers and knit polyester gloves with a depiction of skeleton bones on the back of the hand.

Styles 410014 and 410013 consist of two or more garments. Note 13 of Section XI, of the HTSUSA, requires that the textile garments of different headings be separately classified, thus preventing classification of costumes consisting of two or more garments as sets. If a set cannot exist by application of Note 13, the articles that may be packaged with the garments must also be classified separately.

The applicable subheading for styles 410014 and 410013 tunic style shirt will be 6106.20.2030, Harmonized Tariff Schedule of the United States (HTS), which provides for women's or girls' blouses and shirts, knitted or crocheted: of man-made fibers: other, girls': other. The duty rate will be 32 percent ad valorem.

The applicable subheading for styles 410014 and 410013 pants will be 6104.63.2028, Harmonized Tariff Schedule of the United States (HTS), which provides for women's or girls' suits-type jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts, knitted or crocheted: trousers, bib and brace overalls, breeches and shorts: of synthetic fibers: other: other, trousers and breeches: girls': other: other. The duty rate will be 28.2 percent ad valorem.

The applicable subheading for styles 410014 and 410013 boot covers will be 9505.90.6000, Harmonized Tariff Schedule of the United States (HTS), which provides for festive, carnival or other entertainment articles, including magic tricks and practical joke articles: parts and accessories thereof: other: other. The duty rate will be Free.

The applicable subheading for style 410014 hat will be 6505.90.8090, Harmonized Tariff Schedule of the United States (HTS), which provides for provides for hats and headgear, knitted or crocheted, or made up from lace, felt or other textile fabric, in the piece (but not in strips), whether or not lined or trimmed . . . other: of man-made fibers: other: not in part of braid, other: other: other. The duty rate will be 18.7 cents per kg. plus 6.8 percent ad valorem.

The applicable subheading for style 410013 gloves will be 6116.93.8800, Harmonized Tariff Schedule of the United States (HTS), which provides for gloves, mittens, mitts, knitted or crocheted: other: of synthetic fibers: other: other: without fourchettes. The duty rate will be 18.6 percent ad valorem.

The tunic-style shirts fall within textile category designation 639. The pants fall within textile category designation 648. The hat falls within textile category designation 659. The gloves fall within textile category designation 631. Quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information as to whether quota and visa requirements apply to this merchandise, we suggest that you check, close to the time of shipment, the "Textile Status Report for Absolute Quotas" available at our web site at www.cbp.gov. In addition, you will find current information on textile import quotas, textile safeguard actions and related issues at the web site of the Office of Textiles and Apparel, at otexa.ita.doc.gov.

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 Kenneth Reidlinger at 646-733-3053.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

NY L82557

March 11, 2005

CLA-2-61:RR:NC:3:353 L82557

CATEGORY: Classification

TARIFF NO.; 9505.90.6000; 6113.00.9086

MR. FRANK GOMEZ
WORLD EXCHANGE, INC.
8840 BELLANCA AVENUE
LOS ANGELES, CA 90045

RE: The tariff classification of costumes from China.

DEAR MR. GOMEZ:

In your letter dated February 4, 2005, on behalf of California Costume Collection, you requested a classification ruling.

Your submitted sample, style 05095 is an adult's Moonlight Vixen costume. The costume set features a skirt and top made from coated man-made knit fabric. The well-made top has styling features, a finished neck and well-made closures. The well-made skirt features styling features and a finished waist. The set also contains flimsy leg covers and arm covers.

The costume consists of two garments. Note 13 of Section XI, of the HTSUSA, requires that the textile garments of different headings be separately classified, thus preventing classification of costumes consisting of two or more garments as sets. If a set cannot exist by application of Note 13, the articles that may be packaged with the garments must also be classified separately.

The applicable subheading for the skirt and top will be 6113.00.9086 Harmonized Tariff Schedule of the United States (HTS), which provides for garments, made up of knitted or crocheted fabrics of heading 5903, 5906 or 5907: other, other: other: women's or girls'. The duty rate will be 7.1 percent ad valorem.

The applicable subheading for the boot covers and sleevelets will be 9505.90.6000, Harmonized Tariff Schedule of the United States (HTS), which provides for festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: other: other. The duty rate will be Free.

The skirt and top fall within textile category designation 659. Quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information as to whether quota and visa requirements apply to this merchandise, we suggest that you check, close to the time of shipment, the "Textile Status Report for Absolute Quotas" available at our web site at www.cbp.gov. In addition, you will find current information on textile import quotas, textile safeguard actions and related issues at the web site of the Office of Textiles and Apparel, at otexa.ita.doc.gov.

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 Kenneth Reidlinger at 646-733-3053.

Sincerely,
ROBERT B. SWIERUPSKI
Director,
National Commodity Specialist Division

NY E82340

June 3, 1999

CLA-2-61:RR:NC:3:353 E82340

CATEGORY: Classification

TARIFF NO.: 6110.30.3055; 6104.63.2011;
6104.53.2010; 6117.80.9540; 9505.90.6000

MR. KEN AUGUST
FUN WORLD
80 VOICE RD.
CARLE PLACE, NEW YORK 11514

RE: The tariff classification of Pirate Costumes from Taiwan.

DEAR MR. AUGUST:

In your letter dated May 13, 1999, you requested a classification ruling. Samples were submitted for examination with your request. Both are packed for retail sale in a polybag.

Two samples of unisex Pirate costumes were submitted with your request. Style #9942 is a four piece costume which consists of a pullover, pants, boot tops and sash and is composed of a knit man-made fiber fabric. The pullover top has long sleeves elasticized at the wrists and a jewel neckline with a slit at the front. The pants extend to below the knee with a tattered bottom and a elasticized waistband. The boot tops have a cuff at the top and extend to the top of the foot. The sash is not hemmed and has tattering at the ends. Style #9950 is a six piece Pirate costume composed of knit man-made fiber fabric. It consists of a pullover top, knickers, skirt, sash, bandana and belt. The top has short sleeves with elastic and lace trim and the neckline is elasticized with lace trim. The knickers have an elasticized waistband, extend below the knees with elastic at the bottom. The skirt features a hemmed handkerchief bottom and an elasticized waistband. The sash is not hemmed and tattered at the ends. The belt is approximately six inches wide at the front with a four eyelet lace closure. Also featured is a three pointed bandana without a hem.

Style #sH9942 and H9950 are identical to Style #s9942 and 9950 with the exception that are packaged on a hanger with a photo.

ISSUE:

Whether the costumes are festive articles of chapter 95 or of textile articles of fancy dress classifiable under chapter 61 or 62.

LAW AND ANALYSIS

Classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is made in accordance with the General Rules of Interpretation (GRI's). The systematic detail of the harmonized system is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and relative section of the chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and the headings and legal notes do not otherwise require, the remaining GRI's may then be applied. The Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI's.

Heading 9505, HTSUSA, includes articles which are for “Festive, carnival, or other entertainment.” It must be noted, however, that Note 1(e), chapter 95, HTSUSA, does not cover “fancy dress, of textiles, of chapter 61 or 62.” The EN’s to 9505, state that the heading covers:

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

(3) Articles of fancy dress, e.g., masks, false ears and noses, wigs, false beards and moustaches (**not being** articles of pastiche- **heading 67.04**), and paper hats. However, the heading **excludes** fancy dress of textile materials, of **chapter 61 or 62**.

In interpreting the phrase “fancy dress, of textiles, of chapter 61 or 62,” Customs initially took the view that fancy dress included “all” costumes regardless of quality, durability, or the nature of the item. However, Customs has reexamined its view regarding the scope of the term “fancy dress” as it related to costumes. On November 15, 1994, Customs issued Headquarters Ruling Letter (HRL) 957318, which referred to the settlement agreement of October 18, 1994, reached by the United States and Traveler Trading. In HRL 957318, Customs stated that it had agreed to classify as festive articles in subheading 9505.90.6000, costumes of a flimsy nature and construction, lacking in durability, and generally recognized as not being a normal article of apparel.

In view of the aforementioned, Customs must distinguish between costumes of chapter 95 (festive articles), and costumes of chapters 61 and 62 (articles of fancy dress). This can be accomplished by separately identifying characteristics in each article that would indicate whether or not it is of a flimsy nature and construction, lacking in durability, and generally recognized as a normal article of apparel.

The submitted samples are comparable in construction and durability. The tops have sleeves that are finished with hemming and some trim. The waists on the pants, knickers and shirt are fully elasticized with the elastic encased in textile and sewn down. The costumes are of a durable fabric and can be worn many times. The amount of finishing is such that the articles are neither flimsy in nature or construction, nor lacking in durability.

In as much as the Pirate costumes consist of two or more distinct garments, Note 13, Section XI, of the HTSUSA is applicable and provides:

Unless the context otherwise requires, textile garments of different headings are to be classified in their own headings even if put in sets for retail sale.

Note 13 of Section XI requires that the textile garments of different headings be separately classified, thus preventing classification of costumes consisting of two or more garments as sets. If a set cannot exist by application of Note 13, the articles which may be packaged with the garments must also be classified separately. Accordingly the accessories for Style #9942 the sash and boot tops, and Style #9950, the sash, bandana and belt, must also be classified separately.

The applicable subheading for the pullovers will be 6110.30.3055, Harmonized Tariff Schedule of the United States (HTS), which provides for “Sweaters, pullovers, sweatshirts..., knitted or crocheted: Of man-made fibers: Other: Other: Other: Other: Other: Women’s or girls’.” The duty rate will be 33.1% percent ad valorem. The textile category designation is 639.

The applicable subheading for the trousers will be 6104.63.2011, Harmonized Tariff Schedule of the United States (HTS), which provides for “Wom-

en's or girls' suits, ensembles, suit-type jackets,...trousers,...knitted or crocheted: Trousers, bib and brace overalls, breeches and shorts: Of synthetic fibers: Other: Other, Trousers and breeches: Women's." The rate of duty will be 29.1 percent ad valorem. The textile category designation is 648.

The applicable subheading for the skirt will be 6104.53.2010, Harmonized Tariff Schedule of the United States (HTS), which provides for "Women's or girls'...skirts, divided skirts...knitted or crocheted: Skirts and divided skirts: Of synthetic fibers: Other, Women's." The rate of duty will be 16.5 percent ad valorem. The textile category designation is 642.

The applicable subheading for the belt will be 6117.80.9540, Harmonized Tariff schedule of the United States (HTS), which provides for "Other made up clothing accessories, knitted or crocheted; parts of garment or of clothing accessories: Other: Other, Of man-made fibers: Other." The rate of duty will be 15 per cent ad valorem. The textile category designation is 659.

The applicable subheading for the boot top, sashes and bandana will be 9505.90.6000, Harmonized Tariff Schedule of the United States (HTS), which provides for "Festive, carnival or other entertainment articles,...and accessories thereof: Other: Other." The rate of duty will be Free.

Based upon international textile trade agreements products of Taiwan are subject to quota and the requirement of a visa.

The designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes. To obtain the most current information available, we suggest that you check, close to the time of shipment, the *Status Report on Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

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 Kenneth Reidlinger at 212-637-7084.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

NY E80263

May 5, 1999

CLA-2-61:RR:NC:WA:3:353 E80263

CATEGORY: Classification

TARIFF NO.: 6104.43.2020, 6104.63.2028,
6106.20.2030, 9505.90.6000

MR. ROBERT GLOVER
COPPERSMITH INC.
P.O. Box 90151
LOS ANGELES, CA 90009

RE: The tariff classification of costumes from Taiwan.

DEAR MR. GLOVER:

In your letter dated April 7, 1999, on behalf of Lakeshore Learning Materials, you requested a classification ruling. The samples provided with the ruling request will be returned to you.

The submitted samples are #77059 Princess Dress-Gold, #77066 Princess Dress-Pink, #77052 Princess Dress-Blue and #77054 Pirate King Outfit. All costumes are for children.

#77059 Princess Dress-Gold is ankle length and features a woven metallic and polyester bodice with an empire waist, 3/4 length sleeves with turned, single stitch cuffs, a turned neckline with a decorative gold ribbon, unfinished back closure with 3 self-ties, and a front inset with decorative criss-cross ribbon surrounded by decorative gold ribbon. Below the empire waist is knit polyester fabric with a turned, single stitch hem.

#77066 Princess Dress-Pink consists of a knit polyester fabric dress. It is ankle length and features an empire waist, long sheer sleeves with a decorative net cuff finished with sewn gold ribbon, a turned neckline with decorative net that is finished with sewn gold ribbon, an unfinished back closure with a self tie, a front inset surrounded by decorative gold ribbon and net, and an elasticized waist with sewn in decorative net finished with sewn gold ribbon. Below the empire waist the knit polyester fabric has a sheer fabric overlay, both with a turned, single stitch hems.

#77052 Princess Dress-Blue consists of a knit polyester fabric dress and same fabric belt. It is ankle length and features, short sleeves with turned edges, an elasticized neckline with attached double ruffles with turned finished edges, an elasticized waist, and a hoop skirt with a decorative drape, and flounce with a turned finished hem.

#77054 Pirate King Outfit consists of knit polyester top, pants, boot tops and bandana. The unisex top features a neck with a finished turned collar, sewn in decorative unfinished flounce, back opening with overlay stitching and self tie, long sleeves with sewn in decorative cuffs that are unfinished, raw front slit and overlay stitch bottom hem. The front of the garment and the sleeves feature sewn in decorative braid. The unisex pants feature a turned, elasticized waist with tight single stitching and an overlay stitch hem at the bottom of the leg. The boot tops feature edges with overlock stitching and the bandana is knotted but otherwise unfinished.

ISSUE:

Whether the costumes are festive articles of chapter 95 or articles of fancy dress, of textiles, classifiable under chapter 61 or 62.

LAW AND ANALYSIS

Classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is made in accordance with the General Rules of Interpretation (GRI's). The systematic detail of the harmonized system is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and and relative section of the chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and the headings and legal notes do not otherwise require, the remaining GRI's may then be applied. The Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI's.

Heading 9505, HTSUSA, includes articles which are for "Festive, carnival, or other entertainment." It must be noted, however, that Note 1(e), chapter 95, HTSUSA, does not cover "fancy dress, of textiles, of chapter 61 or 62." The EN's to 9505, state that the heading covers:

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

* * *

(3) Articles of fancy dress, e.g., masks, false ears and noses, wigs, false beards and moustaches (**not being** articles of postiche- **heading 67.04**), and paper hats. However, the heading **excludes** fancy dress of textile materials, of **chapter 61 or 62**.

In interpreting the phrase "fancy dress, of textiles, of chapter 61 or 62," Customs initially took the view that fancy dress included "all" costumes regardless of quality, durability, or the nature of the item. However, Customs has reexamined its view regarding the scope of the term "fancy dress" as it related to costumes. On November 15, 1994, Customs issued Headquarters Ruling Letter (HRL) 957318, which referred to the settlement agreement of October 18, 1994, reached by the United States and Traveler Trading. In HRL 957318, Customs stated that it had agreed to classify as festive articles in subheading 9505.90.6000, costumes of a flimsy nature and construction, lacking in durability, and generally recognized as not being a normal article of apparel.

In view of the aforementioned, Customs must distinguish between costumes of chapter 95 (festive articles), and costumes of chapters 61 and 62 (articles of fancy dress). This can be accomplished by separately identifying characteristics in each article that would indicate whether or not it is of a flimsy nature and construction, lacking in durability, and generally recognized as a normal article of apparel.

The #77059 Princess Dress-Gold, #77066 Princess Dress-Pink, #77052 Princess Dress-Blue and #77054 Pirate King Outfit are all well made with finished edges and decorative embellishments. The overall amount of finishing is such that the article is neither flimsy in nature or construction, nor lacking in durability.

GRI 3(b) is applicable when goods are, *prima facie*, classifiable under two or more headings, and have been put up in sets for retail sale. GRI 3(b) states that the goods "shall be classified as if they consisted of the material component which gives them their essential character." In this case the #77052

Princess Dress-Blue same fabric belt is governed by GRI 3(b) because this item is packaged as an accessory with a single garment wherein each item in the set is classifiable under a separate heading. Pursuant to GRI 3(b), however, the accessory item in the set is classified in accordance with that article from which the set derives its essential character. Customs believes that the essential character of costumes consisting of a single garment with accessories is generally imparted by that garment, which in this case is the dress.

In as much as the #77054 Pirate King Outfit consists of two distinct garments, Note 13, Section XI, of the HTSUSA is applicable and provides:

Unless the context otherwise requires, textile garments of different headings are to be classified in their own headings even if put in sets for retail sale.

Note 13 of Section XI requires that the textile garments of different headings be separately classified, thus preventing classification of costumes consisting of two or more garments as sets. If a set cannot exist by application of Note 13, the articles which may be packaged with the garments must also be classified separately. Accordingly the accessory boot tops and bandana must also be classified separately.

The applicable subheading for the #77059 Princess Dress-Gold, #77066 Princess Dress-Pink and #77052 Princess Dress-Blue costumes will be 6104.43.2020, Harmonized Tariff Schedule of the United States (HTS), which provides for "Women's or girls' suits, ensembles, suit-type jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear), knitted or crocheted: Dresses: Of synthetic fibers: Other... Girls'." The rate of duty will be 16.5% ad valorem. The textile category designation is 636.

The applicable subheading for the #77054 Pirate King top will be 6106.20.2030, Harmonized Tariff Schedule of the United States (HTS), which provides for "Women's or girls' blouses and shirts, knitted or crocheted: Of man-made fibers: Other...Girls': Other." The rate of duty will be 33.3% ad valorem. The textile category designation is 639.

The applicable subheading for the #77054 Pirate King pants will be 6104.63.2028, Harmonized Tariff Schedule of the United States (HTS), which provides for "Women's or girls' suits, ensembles, suit-type jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear), knitted or crocheted: Trousers, bib and brace overalls, breeches and shorts: Of synthetic fibers: Other: Other...Trousers and breeches: Girls': Other: Other." The rate of duty will be 29.1% ad valorem. The textile category designation is 648.

The applicable subheading for the boot tops and bandana will be 9505.90.6000, Harmonized Tariff Schedule of the United States (HTS), which provides for "Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: Other: Other." The rate of duty will be Free.

Based upon international textile trade agreements products of Taiwan are subject to quota and the requirement of a visa.

The designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes. To obtain the most current information available, we suggest that you check,

close to the time of shipment, the *Status Report on Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

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 Kenneth Reidlinger at 212-637-7084.

Sincerely,

ROBERT S. SWIERUPSKI

Director,

National Commodity Specialist Division

NY B86150

August 8, 1997

CLA-2-62:RR:NC:WA:353 B86150

CATEGORY: Classification

TARIFF NO.: 6211.33.0061; 6217.10.9530;
9505.90.6000

Ms. ANNE MASON
LILLIAN VERNON CORPORATION
543 MAIN STREET
NEW ROCHELLE, NEW YORK 10801

RE: The tariff classification of a boy's fantasy dress up kit from China

DEAR Ms. MASON

In your letter dated June 3, 1997, you requested a classification ruling. A sample of the kit was submitted for examination.

The submitted sample, style HK989000 is stated to be made of man-made textile materials which appears woven. It consists of two collarless capes, two boot covers, two belts, one collar, one "v" shape tenie(yoke), four cuffs, two hoods and two eye masks. The kit is configured with reversible components so the wearer can choose a different color sceme to pretend to be a different character. The collarless capes are made up of two layers of fabric, finished edges and a velcro closure at the neck. The boot covers, belts, collar yoke, cuffs and one mask is also made up of two layered fabric, finished edges and except for one mask has velcro closures. One mask is a piece of narrow fabric with eye slits and the other, reversible, has an elastic band to hold the mask in place.

ISSUE:

Whether the costumes are festive articles of chapter 95 or of textile articles of fancy dress classifiable under chapter 61 or 62.

LAW AND ANALYSIS

Classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is made in accordance with the General Rules of Interpretation (GRI's). The systematic detail of the harmonized system is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and ant relative section of the chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and the headings and legal notes do not otherwise require, the remaining GRI's may then be applied. The Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRIs.

Heading 9505, HTSUSA, includes articles which are for "Festive, carnival, or other entertainment." It must be noted, however, that Note 1(e), chapter 95, HTSUSA, does not cover "fancy dress, of textiles, of chapter 61 or 62." The EN's to 9505, state that the heading covers:

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

* * *

(3) Articles of fancy dress, e.g., masks, false ears and noses, wigs, false beards and moustaches (not being articles of postiche- heading 67.04), and paper hats. However, the heading excludes fancy dress of textile materials,, of chapter 61 or 62.

In interpreting the phrase “fancy dress, of textiles, of chapter 61 or 62,” Customs initially took the view that fancy dress included “all” costumes regardless of quality, durability, or the nature of the item. However, Customs has reexamined its view regarding the scope of the term “fancy dress” as it related to costumes. On November 15, 1994, Customs issued Headquarters Ruling Letter (HRL) 957318, which referred to the settlement agreement of October 18, 1994, reached by the United States and Traveler Trading. In HRL 957318, Customs stated that it had agreed to classify as festive articles in subheading 9505.90.6090, costumes of a flimsy nature and construction, lacking in durability, and generally recognized as not being a normal article of apparel.

In view of the aforementioned, Customs must distinguish between costumes of chapter 95 (festive articles), and costumes of chapters 61 and 62 (articles of fancy dress). This can be accomplished by separately identifying characteristics in each article that would indicate whether or not it is of a flimsy nature and construction, lacking in durability, and generally recognized as a normal article of apparel.

In as much as the dress up kit consists of two distinct garments, the capes, Note 13, Section XI, of the HTSUSA is applicable and provides:

Unless the context otherwise requires, textile garments of different headings are to be classified in their own headings even if put in sets for retail sale.

Note 13 of Section XI requires that the textile garments of different headings be separately classified, thus preventing classification of costumes consisting of two or more garments as sets. If a set cannot exist by application of Note 13, the articles which may be packaged with the garments must also be classified separately. Accordingly the accessories must also be classified separately.

The overall amount of finishing of the capes, belts, collar, and tenie(yoke) is such that these articles are considered neither flimsy in nature or construction, nor lacking in durability. The boot covers, hoods, cuffs and two eye masks are considered as articles of Chapter 95.

The applicable subheading for the capes will be 6211.33.0061, Harmonized Tariff Schedule of the United States (HTS), which provides for “Track suits, ski-suits and swimwear; other garments: Other garments, men’s or boys’: Of man-made fibers: Other”. The rate of duty will be 16.7 percent ad valorem. The textile category designation will be 659.

The applicable subheading for the belts, collar and tenie(yoke) will be 6217.10.9530 (HTS) which provides for “Other made up clothing accessories; parts of garments or of clothing accessories, other than those of heading 6212: Accessories: Other: Other: Of man-made fibers”. The rate of duty will be 15.2 percent ad valorem. The textile category designation is 659.

The applicable subheading for the boot covers, hoods, cuffs and two eye masks will be 9505.90.6000 (HTS) which provides for festive, carnival or other entertainment articles, including magic tricks and practical jokes articles; parts and accessories thereof: Other: Other.” The rate of duty will be free.

Based upon international textile trade agreements products of China are subject to quota and the requirement of a visa.

The designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes. To obtain the most current information available, we suggest that you check, close to the time of shipment, the Status Report on Current Import Quotas (Restraint Levels), an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

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 Martin Weiss at 212-466-5881.

Sincerely,

PAUL K. SCHWARTZ

Chief,

Textiles and Apparel Branch

National Commodity Specialist Division

HQ H239479
OT:RR:CTF:FTM H239479 PJG
CATEGORY: Classification
TARIFF NO.: 6406.90.15

MS. PAULINA DONG
SEASONAL VISIONS INTERNATIONAL INC.
1368 PARK AVENUE
EMERYVILLE, CA 94608

RE: Modification of NY N196588, NY N152983, NY N141478, NY N141467, NY N104375, NY N045816, NY N043382, NY N041398, NY N005706, NY M84821, NY M81135, NY L85036, NY L82557, NY E82340, NY E80263 and NY B86150; Classification of Textile Leg Coverings

DEAR MS. DONG:

This is in reference to New York Ruling Letter (NY) N196588, dated January 5, 2012, issued to you concerning the tariff classification of three different adult costumes under the Harmonized Tariff Schedule of the United States (“HTSUS”). Specifically, NY N196588 classified the following costumes: Adult Pink Ninja Costume (item numbers: 5147316, 5147317, and 5147318); Adult Classic Witch Costume (item numbers: 5147322, 5147323, and 5147324); and Adult Viking Costume (item numbers: 5147319, 5147320, 5147321, 5147193, 5147194 and 5147195). This decision concerns only the Adult Viking Costume, and in particular, the polyester leg coverings, which are referred to as “boot covers,” designed to resemble boots when worn over the consumer’s shoes.

In NY N196588, U.S. Customs and Border Protection (“CBP”) classified the leg coverings in subheading 9505.90.60, HTSUS, which provides for “Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: Other: Other.” We have reviewed NY N196588 and find it to be in error regarding the tariff classification of the leg coverings. For the reasons set forth below, we hereby modify NY N196588 and fifteen other rulings with substantially similar textile leg coverings: NY N152983, dated April 4, 2011, NY N141478, dated February 2, 2011, NY N141467, dated February 2, 2011, NY N104375, dated June 3, 2010, NY N045816, dated December 15, 2008, NY N043382, dated December 2, 2008, NY N041398, dated November 5, 2008, NY N005706, dated February 9, 2007, NY M84821, dated July 31, 2006, NY M81135, dated March 27, 2006, NY L85036, dated June 17, 2005, NY L82557, dated March 11, 2005, NY E82340, dated June 3, 1999, NY E80263, dated May 5, 1999, and NY B86150, dated August 8, 1997.

FACTS:

In your original request, dated December 12, 2011, you requested a tariff classification ruling for a Ninja costume, a Classic Witch costume, and a Viking costume. You included pictures of the Viking costume with your request and indicated that the costume is 100 percent knit polyester.

In NY N196588, the textile leg coverings are described as follows: “[t]he boot covers have a faux fur cuff and elastic attached to the bottom for securing around the shoe.” In the picture of the Viking Costume, the leg coverings are secured under the female model’s footwear with a strap. The leg coverings cover part of the boots and extend to just below the model’s knees, giving the appearance that she is wearing tall boots with fur cuffs.

ISSUE:

Whether the leg coverings are classified as gaiters, leggings and similar articles under heading 6406, HTSUS, or as festive articles under heading 9505, HTSUS.

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 2021 HTSUS provisions under consideration are as follows:

6406	Parts of footwear (including uppers whether or not attached to soles other than outer soles); removable insoles, heel cushions and similar articles; gaiters, leggings and similar articles, and parts thereof: * * *
6406.90	Other: * * *
	Of other materials:
6406.90.15	Of textile materials * * *
9505	Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: * * *
9505.90	Other: * * *
9505.90.60	Other

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 64.06(II) provides as follows:

(II) GAITERS, LEGGINGS, AND SIMILAR ARTICLES, AND PARTS THEREOF

These articles are designed to cover the whole or part of the leg and in some cases part of the foot (e.g., the ankle and instep). They differ from socks and stockings, however, in that they do not cover the entire foot. They may be made of any material (leather, canvas, felt, knitted or crocheted fabrics, etc.) **except** asbestos. They include gaiters, leggings, spats, puttees, “mountain stockings” without feet, leg warmers and similar articles. Certain of these articles may have a retaining strap or elastic

band which fits under the arch of the foot. The heading also covers identifiable parts of the above articles.

The EN to 95.05(A)(3) provides as follows:

This heading covers:

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

* * *

- (3) Articles of fancy dress, e.g., masks, false ears and noses, wigs, false beards and moustaches (**not being** articles of postiche - **heading 67.04**), and paper hats. However, the heading **excludes** fancy dress of textile materials, of **Chapter 61** or **62**.

Heading 6406, HTSUS, provides for gaiters and leggings. The terms “gaiters” and “leggings” are not defined in the HTSUS.¹ Headquarters Ruling Letter (“HQ”) 088454, dated October 11, 1991, defines a gaiter as “1. A leather or heavy cloth covering for the legs extending from the instep to the ankle or knee. 2. An ankle-high shoe with elastic sides. 3. An overshoe with a cloth top.” *Id.* (citing *The American Heritage Dictionary*, (2nd College Ed. 1982)). HQ 088454 provides two definitions for “legging”: 1) “[a] leg covering of material such as canvas or leather” and 2) a “[c]overing for leg and ankle extending to knee or sometimes secured by stirrup strap under arch of foot. Worn in 19th c. by armed services and by civilian men. See PUTTEE and GAITER. Worn by women in suede, patent, and fabric in late 1960s.” *Id.* (citing *The American Heritage Dictionary*, (2nd College Ed. 1982) and *Fairchild’s Dictionary of Fashion*, (2nd Ed. 1988)). See also HQ 089582, dated November 6, 1991 and NY L81551, dated January 4, 2005.

In addition to gaiters and leggings, heading 6406, HTSUS, provides for “similar articles.” To “determine the scope of [a] general . . . phrase”, the United States Court of International Trade has used the rule of *ejusdem generis*. See *A.D. Sutton & Sons v. United States*, 32 C.I.T. 804, 808 (Ct. Int’l Trade 2008) (citing *Aves. in Leather, Inc. v. United States*, 178 F.3d 1241, 1244 (Fed. Cir. 1999)). Under the rule of *ejusdem generis*, “the general word or phrase is held to refer to things of the same kind as those specified.” *Id.* (citing *Sports Graphics, Inc. v. United States*, 24 F.3d 1390, 1392 (Fed. Cir. 1994)). Therefore, “to fall within the scope of the general term, the imported good ‘must possess the same essential characteristics of purposes that unite the listed examples preceding the general term or phrase.’” *Id.* (citing *Aves. in Leather, Inc.*, 178 F.3d at 1244).

Applying the rule of *ejusdem generis*, we note that the definitions of gaiters and leggings provided in HQ 088454 indicate that the articles are both leg coverings. Similarly, EN 64.06(II) describes gaiters, leggings and similar articles as “designed to cover the whole or part of the leg and in some cases part of the foot....Certain of these articles may have a retaining strap or

¹ “When...a tariff term is not defined in either the HTSUS or its legislative history”, its correct meaning is its common or commercial meaning. See *Rocknel Fastener, Inc. v. United States*, 267 F.3d 1354, 1356 (Fed. Cir. 2001). “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.’” *Id.* at 1356–1357 (quoting *C.J. Tower & Sons v. United States*, 69 C.C.P.A. 128, 673 F.2d 1268, 1271 (CCPA 1982); *Simod Am. Corp. v. United States*, 872 F.2d 1572, 1576 (Fed. Cir. 1989)).

elastic band which fits under the arch of the foot.” The EN further states that these articles are different from socks because they do not cover the entire foot.

We find that the Viking leg coverings share the same characteristics as leggings and gaiters of heading 6406, HTSUS. The subject leg coverings provide leg coverage like leggings and gaiters, which provide leg coverage extending to the ankle or to the knee. Like some leggings that are secured to the foot with a strap, these gaiters are secured to the shoe with a strap. Finally, consistent with EN 64.06(II), the subject leg coverings do not cover the entire foot. Accordingly, the subject polyester leg coverings are classifiable under heading 6406, HTSUS, as articles similar to leggings and gaiters, and are specifically classified in subheading 6406.90.15, HTSUS, which provides for “Parts of footwear (including uppers whether or not attached to soles other than outer soles); removable insoles, heel cushions and similar articles; gaiters, leggings and similar articles, and parts thereof. Other: Of other materials: Of textile materials.”

In NY N196588, CBP classified the leg coverings in heading 9505, HTSUS. Heading 9505, HTSUS, provides, in relevant part, for festive articles and “parts and accessories” of festive articles. EN 95.05(A)(3) states that the heading covers costume accessories such as masks, false ears, noses, wigs, false beards, mustaches and paper hats. *See Rubie’s Costume Co. v. United States*, 337 F.3d 1350, 1359 (Fed. Cir. 2003) (stating that the Explanatory Notes do not narrow the scope of heading 9505, HTSUS, to only accessories to costumes). CBP has classified similar costume accessories under heading 9505, HTSUS. *See, e.g.*, NY N245614, dated August 29, 2013 (stretchable sleeves covered in fake tattoos are classifiable in heading 9505, HTSUS) and NY N162276 (butterfly wings and wand are classifiable in heading 9505, HTSUS). Similar to the articles described in the exemplars provided in EN 95.05(A)(3) and the cited rulings, the subject merchandise are costume accessories.

When goods are *prima facie* classifiable under two or more headings, we must proceed to GRI 3. According to GRI 3(a), “[t]he heading which provides the most specific description shall be preferred to headings providing a more general description.” In *Russ Berrie & Co. v. United States*, 381 F.3d 1334 (Fed. Cir. 2004), the U.S. Court of Appeals for the Federal Circuit (“CAFC”) determined that Christmas and Halloween-themed lapel pins and earrings were *prima facie* classifiable as both imitation jewelry of heading 7117, HTSUS, and as festive articles of heading 9505, HTSUS. Applying GRI 3(a), the CAFC reasoned that:

We have recognized that festive articles include such disparate items as ‘placemats, table napkins, table runners, and woven rugs’ depicting ‘Christmas trees, Halloween jack-o-lanterns, [and Easter] bunnies,’ (citation omitted) ‘cast iron stocking hangers[;] ... Christmas water globes; ... [and] Easter water globes,’ (citation omitted) and jack-o-lantern mugs and pitchers (citation omitted).

Because heading 9505 covers a far broader range of items than heading 7117, the latter is more specific than the former. It is also more specific because it describes the item by name (‘imitation jewelry’) rather than by class (‘festive articles’). It therefore follows that the imported merchandise is classifiable under heading 7117 rather than under heading 9505.

Id. at 1338.

In the instant case, the “gaiters, leggings and similar articles” heading is more specific than the “festive articles” heading because “it covers a narrower set of items.” *See id.* The relevant portion of heading 6406, HTSUS, pertains to leg coverings, whereas the relevant portion of heading 9505, HTSUS, specifically “‘festive articles’... need only to be closely associated with and used or displayed during a festive occasion.” *Id.* Accordingly, heading 6406, HTSUS, is more specific than heading 9505, HTSUS, and by application of GRI 3(a), the subject leg coverings are properly classified under heading 6406, HTSUS, and specifically in subheading 6406.90.15, HTSUS, which provides for “Parts of footwear (including uppers whether or not attached to soles other than outer soles); removable insoles, heel cushions and similar articles; gaiters, leggings and similar articles, and parts thereof. Other: Of other materials: Of textile materials.”

HOLDING:

By application of GRI 3(a), the Adult Viking Costume polyester leg coverings are classified under heading 6406, HTSUS, and specifically, in subheading 6406.90.15, HTSUS, which provides for “Parts of footwear (including uppers whether or not attached to soles other than outer soles); removable insoles, heel cushions and similar articles; gaiters, leggings and similar articles, and parts thereof. Other: Of other materials: Of textile materials.” The 2021 column one, general rate of duty is 14.9 percent *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY N196588, dated January 5, 2012, is MODIFIED with regard to the tariff classification of the Adult Viking Costume (item numbers: 5147319, 5147320, 5147321, 5147193, 5147194 and 5147195) “boot covers.”

NY N152983, dated April 4, 2011, is MODIFIED with regard to the tariff classification of the Pulp Vintage Cowgirl costume “boot covers.”

NY N141478, dated February 2, 2011, is MODIFIED with regard to the tariff classification of the “boot covers” for the Pirate (style M-3309-00) and Royal King (style M-3321-00) costumes.

NY N141467, dated February 2, 2011, is MODIFIED with regard to the tariff classification of the Pirate costume (style B-2012-00) “boot covers.”

NY N104375, dated June 3, 2010, is MODIFIED with regard to the tariff classification of the Kid Kiss Destroyer Costume (style HWN10-0008) “boot tops” or “boot covers.”

NY N045816, dated December 15, 2008, is MODIFIED with regard to the tariff classification of the French Kiss Showgirl Costume (item numbers: 6869024 Size XS; 6869025 Size S; 6869026 Size M; 6899027 Size L) “boot covers” or “spats.”

NY N043382, dated December 2, 2008, is MODIFIED with regard to the tariff classification of the Deluxe Pirate Costume (style M-1522-00) “boot covers.”

NY N041398, dated November 5, 2008, is MODIFIED with regard to the tariff classification of the Born to be Wild (style 0113) “boot covers.”

NY N005706, dated February 9, 2007, is MODIFIED with regard to the tariff classification of the Deluxe Pirate Captain (style M-1154-00) “boot covers.”

NY M84821, dated July 31, 2006, is MODIFIED with regard to the tariff classification of the Boney Pirate Costume (style numbers: 48691;10612750, 10612751, 10612752, 400009466737, 400009466812, 40000466997 and 400009467079) “boot covers.”

NY M81135, dated March 27, 2006, is MODIFIED with regard to the tariff classification of the Sexy Captain Black Heart Costume (style 5130) “boot covers” or “boot tops.”

NY L85036, dated June 17, 2005, is MODIFIED with regard to the tariff classification of the “boot covers” for the Boney Pirate Costume – DD (style 410014) and the Deluxe Boney Pirate Costume – DS (style 410013).

NY L82557, dated March 11, 2005, is MODIFIED with regard to the tariff classification of the Moonlight Vixen (style 05095) “leg covers” or “boot covers.”

NY E82340, dated June 3, 1999, is MODIFIED with regard to the tariff classification of the Pirate costume (style # 9942) “boot tops.”

NY E80263, dated May 5, 1999, is MODIFIED with regard to the tariff classification of the Pirate King Outfit (#77054) “boot tops.”

NY B86150, dated August 8, 1997, is MODIFIED with regard to the tariff classification of the style HK989000 “boot covers.”

Sincerely,

CRAIG T. CLARK,

Director

Commercial and Trade Facilitation Division

U.S. Court of International Trade

Slip Op. 21–70

HUSTEEL CO., LTD., Plaintiff, and NEXTEEL CO., LTD. et al., Consolidated Plaintiffs, v. UNITED STATES Defendant, and MAVERICK TUBE CORPORATION et al., Defendant-Intervenors and Consolidated Defendant-Intervenors.

Before: Claire R. Kelly, Judge
Consol. Court No. 19–00112
PUBLIC VERSION

[Sustaining in part and remanding in part the U.S. Department of Commerce’s corrected remand redetermination in the 2016–2017 administrative review of the antidumping duty order on welded line pipe from the Republic of Korea.]

Dated: June 7, 2021

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Robert R. Kiepara, Trial Attorney, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of Washington, DC, for defendant. Also on the brief were *Bryan M. Boynton*, Acting Assistant Attorney General, *Jeanne E. Davidson*, Director, and *L. Misha Preheim*, Assistant Director. Of Counsel was *Reza Karamloo*, Senior Counsel, Office of the Chief Counsel for Trade Enforcement and Compliance, U.S. Department of Commerce, of Washington, DC.

Elizabeth J. Drake, *Roger B. Schagrin*, *Christopher T. Cloutier*, and *Luke A. Meisner*, Schagrin Associates, of Washington, DC, for defendant-intervenors California Steel Industries and Welspun Tubular LLC USA.

Gregory J. Spak, White & Case, LLP, of Washington, DC, for defendant-intervenors Maverick Tube Corporation and IPSCO Tubulars Inc. Also on the briefs were *Frank J. Schweitzer*, *Kristina Zissis*, and *Matthew W. Solomon*.

OPINION AND ORDER

Kelly, Judge:

Before the court is the U.S. Department of Commerce’s (“Commerce”) remand redetermination in the 2016–2017 administrative review of the antidumping duty (“ADD”) order on welded line pipe (“WLP”) from the Republic of Korea (“Korea”) filed pursuant to the court’s remand order in *Husteel Co. v. United States*, as later corrected pursuant to the court’s order granting Commerce’s request for a remand. See 44 CIT __, __, 471 F. Supp. 3d 1349, 1371 (2020)

(“*Husteel*”); Final Results of Redetermination Pursuant to Ct. Remand, Jan. 8, 2021, ECF No. 84 (“*Remand Results*”); *see also* Order, Jan. 15, 2021, ECF No. 87 (“*Remand Order*”) (granting Defendant’s request for an expedited remand to correct a clerical error); Corrected Final Results of Redetermination Pursuant to Ct. Remand, Jan. 22, 2021, ECF No. 88 (“*Corrected Remand Results*”).

In *Husteel*, the court remanded Commerce’s decision to reject SeAH Steel Corporation’s (“SeAH”) third country sales (into Canada) and instead to calculate the normal value of SeAH’s subject WLP based on constructed value. *See* 44 CIT at __, 471 F. Supp. 3d at 1359–61. Moreover, with respect to Commerce’s methodology for calculating the constructed value of SeAH’s and NEXTEEL Co. Ltd.’s (“NEXTEEL”) subject WLP, the court remanded for further explanation or reconsideration: Commerce’s finding that a particular market situation (“PMS”) in Korea distorted the cost of producing WLP during the period of review (“POR”), *see id.* at __, 471 F. Supp. 3d at 1361–64; Commerce’s reliance on Hyundai Steel Company’s (“Hyundai”) constructed value profit ratio (“CV profit ratio”) and selling expenses from the first administrative review to construct profit and selling expenses associated with SeAH’s and NEXTEEL’s foreign market sales during this administrative review, as well as Commerce’s decision to establish Hyundai’s information as the only reasonable profit cap pursuant to section 773(e)(2)(B)(iii) of the Tariff Act of 1930, as amended, 19 U.S.C. § 1677b(e)(2)(B)(iii) (2018),¹ *see Husteel*, 44 CIT at __, 471 F. Supp. 3d at 1364–66; Commerce’s reallocation of costs reported by NEXTEEL associated with the sale of non-prime products and resultant deduction to NEXTEEL’s constructed value, *see id.* at __, 471 F. Supp. 3d at 1366–67; Commerce’s reallocation of costs reported by NEXTEEL associated with the suspension of certain product lines from cost of goods sold assigned to those products specifically to general and administrative (“G&A”) expenses, and resultant adjustment to NEXTEEL’s reported G&A expense ratio for WLP, *see id.* at __, 471 F. Supp. 3d at 1367–68; and Commerce’s decision to use annual weighted-averages for the review period to calculate SeAH’s costs. *See id.* at __, 471 F. Supp. 3d at 1368–69. With respect to its calculation of the export price (here, constructed export price) of SeAH’s U.S. sales, the court remanded for further explanation or reconsideration Commerce’s decision to deduct certain G&A expenses incurred by SeAH’s U.S. sales affiliate Pusan Pipe America (“PPA”). *See id.* at __, 471 F. Supp. 3d at 1369–70. The court instructed Commerce to recalculate the non-examined company’s rate

¹ Further citations to the Tariff Act of 1930, as amended, are to the relevant provisions of Title 19 of the U.S. Code, 2018 edition.

applicable to Husteel Co., Ltd. (“Husteel”) as appropriate to reflect any adjustments to its calculation of NEXTEEL’s and SeAH’s dumping margin. *Id.* at __, 471 F. Supp. 3d at 1370–71.

On remand, Commerce, under respectful protest,² reverses its decision to disregard SeAH’s sales of WLP into Canada and uses those sales to determine the normal value of SeAH’s entries. *See Remand Results* at 2, 22–23. Also under respectful protest, Commerce reverses its finding that a PMS in Korea distorted the cost of producing WLP during the POR, *see id.* at 2, 23–24, and uses SeAH’s sales into Canada as the basis for constructing NEXTEEL’s profit and selling expenses. *See id.* at 2, 24–25. However, Commerce further explains its decision to adjust NEXTEEL’s constructed value to account for losses associated with the sale of non-prime WLP products, as well as its decision to reclassify NEXTEEL’s reported losses relating to the suspension of certain product lines. *See id.* at 2, 9–13, 31–36. Commerce also further explains its decision to use an annual weighted-average of costs during the review period to calculate SeAH’s costs. *See id.* at 13–17, 25–27. Lastly, Commerce further explains its decision to deduct certain G&A expenses incurred by PPA from SeAH’s constructed export price. *See id.* at 17–21. For the following reasons, Commerce’s remand redetermination is sustained in part and remanded in part.

BACKGROUND

The court presumes familiarity with the facts of this case as set out in its previous opinion ordering remand to Commerce, and now recounts those relevant to the court’s review of Commerce’s remand redetermination. *See Husteel*, 44 CIT at __, 471 F. Supp. 3d at 1357–59. On August 10, 2018, Commerce published the amended final results of its 2016–2017 administrative review of the ADD order covering WLP from Korea, spanning a period of review from December 1, 2016 through November 30, 2017. *See Welded Line Pipe From the Republic of Korea*, 84 Fed. Reg. 27,762, 27,762 (Dep’t Commerce June 14, 2019) (final results of [ADD] admin. review and final determination of no shipments; 2016–2017) (“*Final Results*”) as amended by 84 Fed. Reg. 35,371 (Dep’t Commerce July 23, 2019) (amended final results of [ADD] admin. review; 2016–2017) (“*Amended Final Results*”) and accompanying Issues and Decision Memo., A-580–876, (June 7, 2019), ECF No. 36–5 (“*Final Decision Memo*”). Commerce assigned rates of 38.87 percent for NEXTEEL, 22.70 percent for SeAH, and 29.89 percent for non-selected respondents. *See Amended Final Results*, 84 Fed. Reg. at 35,372. Pursuant to U.S. Court of

² By adopting a position “under protest,” Commerce preserves its right to appeal. *See Viraj Grp., Ltd. v. United States*, 343 F.3d 1371, 1376 (Fed. Cir. 2003).

International Trade Rule 56.2, Husteel, SeAH, NEXTEEL, and Hyundai brought this consolidated action challenging various aspects of Commerce's final determination. *See* Pl. [Husteel]'s Mot. J. Agency R., Dec. 18, 2019, ECF No. 46; [Consol. Pl. SeAH]'s Mot. J. Agency R., Dec. 18, 2019, ECF No. 41; Consol. Pl. [NEXTEEL]'s 56.2 Mot. J. Agency R., Dec. 18, 2019, ECF No. 44; Consol. Pl. [Hyundai]'s 56.2 Mot. J. Agency R., Dec. 18, 2019, ECF No. 45.

In *Husteel*, the court remanded Commerce's final determination for further explanation or reconsideration. *See* 44 CIT at __, 471 F. Supp. 3d at 1371. The court held that Commerce's decision to disregard SeAH's sales of WLP into Canada was unsupported by substantial evidence because Commerce relied solely on findings of the Canadian International Trade Tribunal ("CITT") to determine that SeAH's sales into Canada were unrepresentative, without addressing detracting evidence illustrating material differences between antidumping law in the U.S. and Canada. *See id.* at __, 471 F. Supp. 3d at 1359–61. The court also found wanting several aspects of Commerce's methodology for calculating the constructed value of SeAH's and NEXTEEL's entries of subject WLP.

Namely, the court held that Commerce did not support with substantial evidence its determination that global steel overcapacity, domestic subsidies, strategic alliances between manufacturers, and government involvement in the electricity market cumulatively created a PMS that distorted the cost of hot-rolled coil ("HRC")—a primary input in the manufacture of subject WLP—such that Commerce was prevented from conducting a proper comparison between the normal value and U.S. price of respondents' entries of subject WLP during the POR. *See id.* at __, 471 F. Supp. 3d at 1361–64. The court also observed that Commerce's calculation of NEXTEEL's and SeAH's profit and selling expenses erred in two respects. First, the court held that Commerce's invocation of 19 U.S.C. § 1677b(e)(2)(B)(ii) as the basis for resorting to Hyundai's CV profit ratio and selling expense information from the first administrative review of the ADD order on subject WLP is contrary to law because § 1677b(e)(2)(B)(ii) requires Commerce to use a "weighted average of the actual amounts incurred and realized by exporters or producers that are subject to the investigation or review[.]" *Husteel*, 44 CIT at __, 471 F. Supp. 3d at 1365 (quoting 19 U.S.C. § 1677b(e)(2)(B)(ii)). Second, to the extent that Commerce relied on 19 U.S.C. § 1677b(e)(2)(B)(iii) to establish Hyundai's profit and selling expense information as the only reasonable profit cap, the court held that Commerce's determination was unsupported by substantial evidence; given its decision to disregard SeAH's third country sales as unrep-

representative, Commerce's profit cap determination did not contemplate those third country sales as an alternative source of profit and selling expense information. *See Husteel*, 44 CIT at ___, 471 F. Supp. 3d at 1365–66 (citing 19 U.S.C. § 1677b(e)(2)(B)(iii)). Moreover, the court deemed inadequate Commerce's explanation as to how its decision to reallocate costs reported by NEXTEEL to reflect losses realized on the sale of non-prime WLP products comports with agency practice, and how that practice was reasonable under the statute. *See id.* at ___, 471 F. Supp. 3d at 1366–67. Finally, the court observed that it was unclear whether Commerce's justification for using weighted-average costs spanning the review period (i.e., annual costs) to calculate SeAH's costs during the POR in light of purported cost-fluctuations, instead of its quarterly pricing methodology, took into account the apparent correlation in SeAH's prices and costs between the first and second quarters—the period during which SeAH purportedly experienced significant cost-fluctuations. *See id.* at ___, 471 F. Supp. 3d at 1368–69.

Regarding calculation of SeAH's constructed export price, the court held that Commerce's final determination neither clarified why Commerce is treating PPA's G&A expenses as indirect selling expenses, nor explained why doing so is reasonable such that Commerce may deduct the expense under 19 U.S.C. § 1677a(d)(1)(D). *See Husteel*, 44 CIT at ___, 471 F. Supp. 3d at 1369–70. The court instructed Commerce to "recalculate the non-examined company's rate as appropriate to reflect any adjustments to its calculation of the dumping margins for NEXTEEL and SeAH." *Id.* at ___, 471 F. Supp. 3d at 1370–71.

On December 7, 2020, NEXTEEL filed a notice of supplemental authority, apprising the court and the parties of the Court of Appeals for the Federal Circuit's ("Court of Appeals") decision in *Dillinger France S.A. v. United States*, 981 F.3d 1318 (Fed. Cir. 2020) ("*Dillinger*"). On January 8, 2021, Commerce filed the final results of its remand redetermination. *See generally Remand Results*. On January 14, 2021, Defendant moved for a remand in order to correct a clerical error resulting from Commerce's inadvertent failure to update NEXTEEL's constructed value selling expense and profit calculations. *See* Def.'s Mot. for Expedited Remand, Jan. 14, 2021, ECF No. 85. Notwithstanding SeAH's objection to the amount of time requested by counsel for Defendant, *see* Resp. to Def.'s Mot. for Remand, Jan. 15, 2021, ECF No. 86, the court granted the motion. *See generally* Remand Order. On January 22, 2021, Commerce filed the final results of its second remand redetermination, stating that it corrected

NEXTEEL's margin calculation to reflect its decision to use SeAH's third country sales as the basis for NEXTEEL's profit and selling expenses. *See generally Corrected Remand Results*.

On February 22, 2021, the parties submitted their comments on the final results of Commerce's corrected remand redetermination. *See* [SeAH's] Cmts. [on *Remand Results*] Confidential Version, Feb. 22, 2021, ECF No. 91 ("SeAH's Br."); Maverick Tube Corporation & IPSCO Tubulars Inc.'s Cmts. on [*Remand Results*], Feb. 22, 2021, ECF No. 93 ("Def-Intervenors' Br."); [NEXTEEL's] Remand Cmts., Feb. 22, 2021, ECF No. 94 ("NEXTEEL's Br."). On March 24, 2021, the parties filed their respective replies to comments submitted on Commerce's remand redetermination. Reply Cmts. of [SeAH] to [Def-Intervenors' Br.], Mar. 24, 2021, ECF No. 97 ("SeAH's Reply Br."); NEXTEEL's Reply to [Def-Intervenors' Br.], Mar. 24, 2021, ECF No. 99 ("NEXTEEL's Reply Br."); Maverick Tube Corporation & ISPCO Tubulars, Inc.'s Reply Cmts. on [*Remand Results*], Mar. 24, 2021, ECF No. 100; Def.'s Resp. to Cmts. on [*Remand Results*], Mar. 24, 2021, ECF No. 98 ("Def.'s Resp. Br.").

JURISDICTION AND STANDARD OF REVIEW

The court has jurisdiction pursuant to 19 U.S.C. § 1516a(a)(2)(B)(iii) and 28 U.S.C. § 1581(c) (2018), which grant the court authority to review actions contesting the final determination in an administrative review of an ADD order. The court will uphold Commerce's determination unless it is "unsupported by substantial evidence on the record, or otherwise not in accordance with law." 19 U.S.C. § 1516a(b)(1)(B)(i). "The results of a redetermination pursuant to court remand are also reviewed 'for compliance with the court's remand order.'" *Xinjiamei Furniture (Zhangzhou) Co. v. United States*, 38 CIT __, __, 968 F. Supp. 2d 1255, 1259 (2014) (quoting *Nakornthai Strip Mill Public Co. v. United States*, 32 CIT 1272, 1274, 587 F. Supp. 2d 1303, 1306 (2008)).

DISCUSSION

I. SeAH's Third Country Sales

Defendant-Intervenors Maverick Tube Corporation and ISPCO Tubulars, Inc. (collectively, "Tenaris USA") contend that Commerce's reversal of its finding that SeAH's third country sales into Canada are unrepresentative is unreasonable. *See* Def-Intervenors' Br. at 3–9. In Tenaris USA's view, Commerce should have further explained its prior finding that SeAH's third country sales are unrepresentative in light of the court's remand order in *Husteel*. *See id.* Defendant and SeAH counter that Commerce reasonably explained that there was

no record evidence that would allow it to address detracting evidence regarding material inconsistencies between U.S. and Canadian anti-dumping law. *See* Def.’s Resp. Br. at 4–6; SeAH’s Reply Br. at 3–4. For the following reasons, Commerce’s determination is sustained.

Where Commerce finds that home market sales are an inappropriate basis for determining normal value, it may instead use third country sales. *See* 19 U.S.C. § 1677b(a)(1). Commerce may only rely on third country sales where the “prices [for those sales are] representative,” where the aggregate quantity of sales are at a sufficient level, and where Commerce does not determine that a PMS prevents a proper comparison between the export price, or constructed export price, and the third country price. *See* 19 U.S.C. § 1677b(a)(1)(B)(ii). The statute does not define what it means for prices to be representative, but Commerce’s regulations and regulatory history reveal that where the aggregate quantity of third country sales are at a sufficient level, those sales are presumptively representative unless demonstrated otherwise. *See* 19 C.F.R. § 351.404(b)–(c) (2018)³ (providing that Commerce shall consider a third country market viable if the aggregate quantity of sales are at a sufficient level, but setting forth an exception where it is established, to the satisfaction of Commerce, that, *inter alia*, the prices are not representative); *Antidumping Duties; Countervailing Duties*, 62 Fed. Reg. 27,296, 27,357 (Dep’t Commerce May 19, 1997);⁴ *see also Alloy Piping Prods. v. United States*, 26 CIT 360, 339–340 & n.7, 201 F. Supp. 2d 1267, 1276–77 & n.7 (2002) (citations omitted). Commerce’s determination that sales into a third country comparator market are not representative must be supported by substantial evidence. *See, e.g., Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 48–49 (1983). “The substantiality of evidence must take into account whatever in the record fairly detracts from its weight.” *CS Wind Vietnam Co. v. United States*, 832 F.3d 1367, 1373 (Fed. Cir. 2016) (quoting *Gerald Metals, Inc. v. United States*, 132 F.3d 716, 720 (Fed. Cir. 1997)).

³ Unless otherwise indicated, further citations to Title 19 of the Code of Federal Regulations are to the 2018 edition.

⁴ The regulatory history to 19 C.F.R. § 351.404 provides, in pertinent part, that:

In the Department’s view, the criteria of a “particular market situation” and the “representativeness” of prices fall into the category of issues that the Department need not, and should not, routinely consider . . . the [Statement of Administrative Action] at 821 recognizes that the Department must inform exporters at an early stage of a proceeding as to which sales they must report. This objective would be frustrated if the Department routinely analyzed the existence of a “particular market situation” or the “representativeness” of third country sales . . . the party alleging . . . that sales are not “representative” has the burden of demonstrating that there is a reasonable basis for believing that a “particular market situation” exists or that sales are not “representative.”

Antidumping Duties; Countervailing Duties, 62 Fed. Reg. at 27,357; *see also* Uruguay Round Agreements Act, Statement of Administrative Action, H.R. DOC. NO. 103–826, vol. 1, at 821 (1994), *reprinted in* 1994 U.S.C.C.A.N. 4040, 4162.

Here, Commerce acknowledges that the CITT's finding that SeAH's sales into Canada were dumped is the only record evidence supporting its prior determination that those sales are unrepresentative. *See Remand Results* at 22–23. Although Tenaris USA believes that Commerce could have reasonably addressed detracting evidence that Canada's dumping law is materially inconsistent with U.S. dumping law, *see* Def-Intervenors' Br. at 7–9, Commerce observes that none of the parties point to record evidence that would allow it to substantiate such an analysis. *See Remand Results* at 22–23. Given that third country sales at a sufficient aggregate level are presumptively representative, *see* 19 C.F.R. § 351.404(b)–(c), and that record evidence detracts from the evidentiary weight that Commerce assigned to the CITT's findings when determining that SeAH's Canadian sales were unrepresentative, Commerce's determination is reasonable. Commerce's reliance on SeAH's third country sales to determine normal value is sustained.

II. Commerce's CV Calculation

1. Particular Market Situation

Although Commerce respectfully disagrees with the court's holding that its PMS determination was unsupported by substantial evidence, *see Husteel*, 44 CIT at ___, 471 F. Supp. 3d at 1361–64, Commerce indicates that it is unable to point to additional record evidence to overcome the court's objections. *See Remand Results* at 6–7. None of the parties challenged Commerce's reversal. *See id.* at 23–24. Commerce's decision to reverse its determination that a PMS in Korea distorted the cost of producing WLP during the POR under respectful protest is sustained.

2. Profit and Selling Expense Information

As explained, Commerce respectfully disagrees with the court's holding that its decision to disregard SeAH's third country sales is unsupported by substantial evidence. *See, e.g., Remand Results* at 24. However, since it now “rel[ies] on SeAH's third country sales as the CV profit and selling expenses for NEXTEEL, rather than data from [Hyundai],” Commerce concludes that whether its decision to use Hyundai's information from the first administrative review is supported by substantial evidence or otherwise in accordance with law is moot. *Remand Results* at 7, 24–25. Although Tenaris USA submits that Commerce should use Hyundai's CV profit and selling expense rate information, Tenaris USA's position is dependent on Commerce

deciding to disregard SeAH's third country sales. *See* Def-Intervenors' Br. at 9–13. Commerce otherwise observes that none of the parties point to “any record evidence that would allow Commerce to overcome the Court’s objections[.]” *Remand Results* at 24–25. Commerce’s decision to use SeAH’s third country sales to determine CV profit and selling expenses for NEXTEEL under respectful protest is sustained.

3. Reclassification of NEXTEEL’s Suspended Production Losses

NEXTEEL contends that Commerce fails to explain why its decision to reclassify losses reported by NEXTEEL relating to the suspended production of certain product lines is consistent with 19 U.S.C. § 1677b(f)(1)(A). *See* NEXTEEL’s Br. at 11–14. Defendant and Tenaris USA submit that Commerce reasonably explains that its determination comports with its practice of adjusting costs where a company’s normal books and records do not reasonably reflect production costs. *See* Def.’s Resp. Br. at 12–15; Def-Intervenors’ Br. at 19–22. According to Defendant, NEXTEEL’s objections amount to a mere disagreement with Commerce’s evidentiary conclusion that the length of the suspension of NEXTEEL’s product lines indicate that the costs incurred are necessarily borne by NEXTEEL’s subject products. *See* Def.’s Resp. Br. at 12–15. For the following reasons, Commerce’s determination is sustained.

When determining constructed value of subject merchandise, Commerce normally calculates costs and expenses “based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles [(“GAAP”)] of the exporting country (or the producing country, where appropriate)[.]” 19 U.S.C. § 1677b(f)(1)(A). However, even if a respondent’s normal books and records are GAAP-compliant, the statute affords Commerce some discretion to depart from those records if it determines that they do not “reasonably reflect the costs associated with the production and sale of the merchandise.” *See* 19 U.S.C. § 1677b(f)(1)(A); *see also Remand Results* at 9.

According to Commerce, its “normal practice in determining whether particular items should be included in G&A is to review the nature of the item and its relation to the general operations of the company as a whole.” *Remand Results* at 29 (citing *Magnesium Metal from the Russian Federation*, 70 Fed. Reg. 9,041 (Dep’t Commerce Feb. 24, 2005) (notice of final determination of sales at less than fair value) and accompanying Issues and Decision Memo. at Cmt. 10, A-821–819, (Feb. 24, 2005) *available at* <https://enforcement.trade.gov/frn/summary/russia/E5-765-1.pdf> (last visited May 25, 2021)). Commerce’s position is that expenses owing to

extended (as opposed to routine or maintenance-related) suspension of specific product lines no longer relate to ongoing production of those specific products. *See Remand Results* at 8–9. Thus, it appears to be Commerce’s practice to “associate[] these costs with the general operations of the company as a whole (i.e., with general expenses), and not . . . to products associated with that production line (i.e., [cost of goods sold]).” *See id.* at 9. Pointing to 19 U.S.C. § 1677b(b)(3)(B), Commerce reasons that the statute directs it to include, as part of its calculation of the COP for the subject merchandise, “costs associated with the general operations of the company (i.e., normal costs that are not directly associated with a product).” *Remand Results* at 30 (citing 19 U.S.C. § 1677b(b)(3)(B)).

Reasonably discernible from its observation that,⁵ because “[n]o revenue from any products normally produced on [the suspended] lines was generated for the period . . . the costs associated with the suspended production lines were necessarily covered by all the other products NEXTEEL produced[.]” *see id.* at 30, is Commerce’s supposition that costs should generally relate to a benefit during the period of review, that costs associated with extended suspension of production of non-subject merchandise no longer relate to the benefit of ongoing production and revenue generation from those products during the period of review, *see, e.g., id.* at 8, and that, as a consequence, those costs more reasonably relate to the general operations of the company. The court cannot say that it is unreasonable for Commerce, in its expertise, to determine that a company’s attribution of costs relating to the extended suspension of certain non-subject product lines as costs of goods sold results in an inaccurate reflection of the general expenses incurred in the production of subject merchandise.

⁵ Commerce’s explanation as to how its methodology comports with the requirements of 19 U.S.C. § 1677b(f)(1)(A) is less than ideal. Commerce states that 19 U.S.C. § 1677b(b)(3)(B) directs it to include “as part of [costs of production] costs associated with the general operations of the company (i.e., normal costs that are not directly associated with a product)[.]” *Remand Results* at 30, but § 1677b(b)(3)(B) directs Commerce to determine G&A expenses “based on actual data pertaining to production and sales of the foreign like product[.]” *Id.* Commerce admits that it seeks to include “non-product costs as G&A expenses,” then summarily concludes that this “does not contravene the statute.” *Remand Results* at 29. As NEXTEEL submits, left unstated by Commerce’s analysis is whether, why, and to what extent losses associated with the suspension of product lines for the production of non-subject merchandise relate to G&A expenses incurred in the production of subject merchandise, such that NEXTEEL’s GAAP-compliant accounting does not reasonably reflect costs. *See, e.g., NEXTEEL’s Br.* at 12–13. Nonetheless, the court can discern from Commerce’s analysis its view that an expense should relate to a benefit, and that in this instance it makes more sense to account for an expense that is incurred over an extended period of time where there is no related benefit (in this case, no ongoing production and revenue generation) as an expense incurred by the general operations of a company. *Cf., e.g., Saha Thai Steel Pipe (Public) Co. v. United States*, 635 F.3d 1335, 1341–43 (Fed. Cir. 2011); *see also Remand Results* at 8. For the reasons stated above, Commerce’s approach is reasonable under 19 U.S.C. § 1677b(f)(1)(A).

Although a company may shut down product lines from time to time for various intervals, at some point an extended shutdown suggests that the costs of that product line are more akin to expenses borne by the company in its general operations.⁶ Therefore, Commerce's determination is sustained.

4. NEXTEEL's Non-Prime WLP Products

NEXTEEL argues that Commerce erred in continuing to reallocate the cost of production of its non-prime products and that Commerce's decision is inconsistent with the Court of Appeals' decision in *Dillinger*. See NEXTEEL's Br. at 2–10 (citing, *inter alia*, *Dillinger*, 981 F.3d 1318). Defendant counters that Commerce complied with the court's remand order by clarifying its practice and explaining why its practice is reasonable. See Def.'s Resp. Br. at 15–18. Moreover, Defendant submits that Commerce's determination is consistent with the Court of Appeals' decision. See *id.* at 18–19 (citing, *inter alia*, *Dillinger*, 981 F.3d 1318). For the following reasons, Commerce's determination is remanded.

As explained, Commerce normally calculates costs “based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the [GAAP]” of the exporting or producing country. 19 U.S.C. § 1677b(f)(1)(A). However, even if a respondent's records are kept in accordance with the GAAP of the exporting or producing country, Commerce departs from those records where it determines that a respondent's records do not fairly reflect the costs associated with the production and sale of the merchandise. See *Remand Results* at 10; see also 19 U.S.C. § 1677b(f)(1)(A).

In this case, NEXTEEL's books and records allocated the costs of prime and non-prime products based on costs incurred in the production of each. Commerce reallocated the costs as identified in the NEXTEEL's books and records. See, e.g., Final Decision Memo at 42–43. Namely, Commerce shifted non-prime costs, which it perceived could not be recovered from sales of non-prime product, to prime product. See, e.g., *id.*; Memo. Re: NEXTEEL's Cost of Production & Constructed Value Calculation Adjustments for the Final Determination at Attach. 2B, PD 327, CD 371, bar codes 3847069–01,

⁶ According to NEXTEEL, “Commerce has still not provided clarity to respondents as to which production suspensions” may be considered temporary as opposed to prolonged. NEXTEEL's Br. at 13. However, NEXTEEL cites no authority to support the position that Commerce may not assess the length of a shutdown on a case-by-case basis. Here, Commerce explains that “[t]he production shutdown started before the POR and continued after the POR, establishing that it was not a routine shutdown but a prolonged shutdown[.]” *Remand Results* at 30. Commerce adds that although “no specific time is associated with a routine shutdown, normally the shutdown is short-term.” *Id.* at 31. It is enough that Commerce reasonably explains its determination in this instance.

3847068–01 (June 11, 2019).⁷ This reallocation resulted in a higher per unit cost for prime products. *See, e.g.*, Oral Arg. at 01:20:00–01:21:22, June 25, 2020, ECF No. 79.

In making its reallocation, Commerce explains its practice:

is to analyze the products sold as non-prime to determine whether they are truly the production of “good” product or if they are more akin to yield loss and the sale of the scrapped “bad” product in an attempt to recover whatever value they can get. Our analysis looked at several factors including: (1) how such products are treated in the respondent’s normal books and records; (2) whether they remain in scope; and (3) whether they can still be used in the same applications as the prime subject merchandise.

Remand Results at 34. Although an explanation of how Commerce applies these criteria is lacking, it is reasonably discernible that Commerce considers the three criteria as part of a broader examination into the totality of the circumstances to ascertain whether non-prime products should be regarded as scrap or yield loss under the statute, such that costs of those products (less any offset recovered by their sale)⁸ is a cost of the prime product. *See id.* at 9–10, 29 (citing, *inter alia*, [WLP] *From [Korea]*, 80 Fed. Reg. 61,366 (Dep’t Commerce Oct. 13, 2015) (final determination of sales at less than fair value) and accompanying Issues and Decision Memo. at Cmt. 9, A-580–876, (Oct. 5, 2015), *available at* <https://enforcement.trade.gov/frn/summary/korea-south/2015–25980–1.pdf> (last visited May 25, 2021) (“WLP from Korea IDM”); *Steel Concrete Reinforcing Bar From Mexico*, 82 Fed. Reg. 27,233 (Dep’t Commerce June 14, 2017) (final results of [ADD] administrative review; 2014–2015) and accompanying Issues and Decision Memo. at Cmt. 3, A-201–844 (June 7, 2017), *available at* <https://enforcement.trade.gov/frn/summary/mexico/2017–12304–1.pdf> (last visited May 25, 2021)); *see also* Final Decision Memo at 42.

More problematic, however, is Commerce’s explanation of how a methodology that calculates costs of non-prime products based on its resale value and reallocates the difference between the resale value and actual costs of producing non-prime products to the costs of prime

⁷ On August 22, 2019, Defendant submitted indices to the confidential and public administrative records underlying Commerce’s final determination. These indices are located on the docket at ECF No. 36–1 and 36–2, respectively. All references in this opinion to documents from the administrative record underlying Commerce’s final determination are identified by the numbers assigned by Commerce in those indices and preceded by “PD” and “CD” to denote public or confidential documents.

⁸ According to Commerce, the latter category of “bad” non-prime products “should not be allocated a cost akin to good production.” *Remand Results* at 36. “Instead, the non-prime product should be given credit for whatever salvage value it can command.” *Id.* (citation omitted).

products accords with the Court of Appeals’ instruction to use actual costs when calculating constructed value. *See Dillinger*, 981 F.3d at 1321–24. *Dillinger* holds that Commerce must calculate constructed value based on the actual costs incurred in the production of prime and non-prime products. *See* 981 F.3d at 1321–24 & n.1. The Court of Appeals explained that the legislative history to § 1677b(f) demonstrates Congress’ clear intent that costs used to construct the value of subject merchandise “accurately reflect the resources actually used in the production of the merchandise in question[.]” *Id.* at 1322 (quoting S. REP. NO. 103–412, at 75 (1994)); *see also id.* at 1321 n.1. Since Commerce’s methodology involves using likely sales value for non-prime products instead of actual costs as reported by NEXTEEL, *Dillinger* calls into question whether or not Commerce’s treatment of NEXTEEL’s non-prime WLP products complies with the statute. Commerce’s explanation of its practice is inadequate in light of Court of Appeals’ precedent. *See Hyundai Elecs. Indus. v. United States*, 30 CIT 63, 65–66, 414 F. Supp. 2d 1289, 1291–92 (2006). Therefore, the court must remand for further explanation or reconsideration.

III. Use of SeAH’s Average Costs for the Review Period

SeAH asserts Commerce’s refusal to use quarterly-average costs to calculate SeAH’s normal value is not supported by substantial evidence.⁹ *See* SeAH’s Br. at 3–11.¹⁰ Defendant argues that Commerce reasonably determined that its quarterly cost methodology was not warranted. *See* Def.’s Resp. Br. at 9–12. For the following reasons, Commerce’s determination is sustained.

When determining normal value based on home market or third country sales, 19 U.S.C. § 1677b(b) requires that Commerce disregard sales that are made below the cost of production. Commerce usually compares prices to a weighted-average of costs incurred throughout the entire POR (i.e., annual costs). *See Remand Results* at 15; *see also id.* 13 & n.52 (citing, *inter alia*, *Carbon and Certain Alloy Steel Wire*

⁹ SeAH submits that, consonant with Commerce’s position that it must “find correlation between the sales and cost throughout the entire POR (or at least the majority of the quarters),” an analysis of:

the quarterly costs and sales prices from one quarter to the next for the control numbers (“CONNUMs”) that had cost and sales data for all or most of the quarters of the review period demonstrates that SeAH’s prices and costs were [] throughout the entire review period and not just between two quarters.

See SeAH’s Br. at 5. Moreover, SeAH argues that Commerce’s analysis of cost and price data for quarters not subject to significant cost-fluctuations is unreasonable. *See id.* at 7–11.

¹⁰ Although the heading to SeAH’s argument states that Commerce’s calculation of SeAH’s constructed value is unreasonable, *see* SeAH’s Br. at 3, the court understands—from SeAH’s references to Commerce’s below cost sales analysis, *see, e.g.*, SeAH’s Br. at 8, and the fact that Commerce used SeAH’s third country sales to determine SeAH’s normal value, *see* *Remand Results* at 6—that the reference to constructed value is unintentional.

Rod from Canada, 71 Fed. Reg. 3,822 (Dep't Commerce Jan. 24, 2006) (notice of final results of antidumping duty administrative review) and accompanying Issues and Decisions Memo. at Cmt. 5, A-112–840, (Jan. 24, 2006) available at <https://enforcement.trade.gov/frn/summary/canada/E6-823-1.pdf> (last visited May, 25, 2021)); *Anti-dumping Methodologies for Proceedings that Involve Significant Cost Changes Throughout the Period of Investigation (POI)/[POR] that May Require Using Shorter Cost Averaging Periods*, 73 Fed. Reg. 26,364, 26,365 (Dep't Commerce May 9, 2008) (request for comment) (“*Cost Averaging Methodology*”). According to Commerce, “[r]elying on an annual average cost tends to smooth out . . . short-term per-unit cost fluctuations resulting in a normalized average production cost to be compared to sales prices over the same extended period of time.” *Id.*, 73 Fed. Reg. at 26,365 (citations omitted).

Nonetheless, Commerce deviates from its standard methodology when it determines that there are significant changes in costs during the POR. See generally *id.*, 73 Fed. Reg. 26,364; see also Final Decision Memo at 55 (citing *Steel Concrete Reinforcing Bar From Taiwan*, 82 Fed. Reg. 34,925 (Dep't Commerce July 27, 2017) (final determination of sales at less than fair value) and accompanying Issues and Decision Memo. at Cmt. 2, A-583–859, (July 20, 2017)), available at <https://enforcement.trade.gov/frn/summary/taiwan/2017-15840-1.pdf> (last visited May 25, 2021) (“*Rebar from Taiwan IDM*”). In such instances, Commerce instead relies on quarterly-average costs, provided that there is a linkage (i.e., reasonable correlation) between costs and sales information during the shorter averaging periods. See *Rebar from Taiwan IDM* at Cmt. 2; see also Final Decision Memo at 55.

Husteel concluded that it was not discernible from Commerce’s analysis in its final determination whether and to what extent Commerce considered the correlation between SeAH’s prices and costs between the first and second quarters. See 44 CIT at __, 471 F. Supp. 3d at 1368–69. On remand, Commerce acknowledges that record evidence shows SeAH’s “prices and costs are correlated between the first and second quarter of the POR[,]” but nonetheless clarifies that departure to its quarterly pricing methodology requires linkage between prices and costs throughout the entire POR because relying on cost-averages during shorter review periods where prices “have not been set in reaction to the changing costs . . . is no more accurate than [Commerce’s] normal annual average cost and price comparison methodology.” *Remand Results* at 15–16; see also *Husteel*, 44 CIT at __, 471 F. Supp. 3d at 1369. Commerce’s judgment, in light of record evidence showing that prices did not react to cost-fluctuations, that

comparing prices to cost-averages for shorter periods would not further its goal of calculating a dumping margin that accurately reflects a company's normal selling practices, and thus would not justify departure from Commerce's standard methodology, is reasonable. *See Remand Results* at 15–16; *see also, e.g., Cost Averaging Methodology*, 73 Fed. Reg. at 26,365 (citing, *inter alia*, 19 C.F.R. § 351.102 (2008)). Even if a company experienced a significant cost-fluctuations during a portion of the POR, evidence that the company's prices do not react to cost-fluctuations during the rest of the POR logically suggests that the cost-fluctuations did not impact the company's pricing practices. Thus, it is reasonable to infer that the cost-fluctuations are not germane to Commerce's inquiry into whether, and to what extent, the company engaged in underselling during the POR. At the very least, it is reasonable for Commerce to find, based on such inferences, that the circumstances do not provide a compelling enough reason to justify departure from its standard practice, which helps Commerce calculate an accurate dumping margin by normalizing prices across the POR.¹¹ Therefore, SeAH's attempt to demonstrate that prices are reasonably correlated throughout the POR by pointing to evidence that "prices for subject merchandise were substantially above unit costs during every quarter of the review" is unavailing. *See SeAH's Br.* at 4–7.

For its part, SeAH submits that Commerce's analysis is unreasonable under the particular circumstances of this case because "the use of a single review-period average cost will overstate the cost used to test sales during the first quarter, and thus incorrectly and unfairly find that sales prices during the first quarter were below cost, even though those sales were above costs at the time they were made." *SeAH's Br.* at 10; *see also id.* at 7–11 (citing, *inter alia*, *Nucor Corp. v. United States*, 33 CIT 207, 287, 612 F. Supp. 2d 1264, 1332 (2009)). Moreover, according to SeAH, since changes in unit costs and unit prices were negligible, Commerce's methodology effectively requires that SeAH's prices be highly sensitive to changes in costs, as opposed to just reasonably correlated. *SeAH's Br.* at 8 & n.12.¹² *SeAH's argu-*

¹¹ According to Commerce, requiring that "changes in selling prices reasonably correlate to changes in unit costs" also promotes a more "reasonable and predictable criteria" because "[o]therwise[,] in every case there can be outliers and differing facts that are only argued by interested parties if it is beneficial." *Remand Results* at 26. To the extent that Commerce furthers its over arching obligation to calculate an accurate dumping margin, it is not unreasonable to take into account such practical constraints when developing its methodology.

¹² SeAH points to Table 2 in its brief, *see SeAH's Br.* at 7, which, as described by SeAH, indicates that "cost changes between the second and third quarter were between [[]] and [[]] percent, and the cost changes between the third and fourth quarters were between [[]] and [[]] percent." *See SeAH's Br.* at 8 n.12.

ments do not persuade. Even if SeAH offers another reasonable interpretation of the evidence, that alone is insufficient to demonstrate that Commerce's determination that SeAH's costs and prices were not linked throughout the POR—based on record evidence showing that SeAH's prices and costs trended in the opposite direction—is unreasonable. The court cannot reweigh the evidence. *See Downhole Pipe & Equipment, L.P. v. United States*, 776 F.3d 1369, 1376 (Fed. Cir. 2015).

IV. Allocation of G&A Expenses when Calculating Constructed Export Price

SeAH argues that Commerce's continued treatment of G&A expenses incurred by its U.S. sales affiliate, PPA, as indirect selling expenses, and resultant decision to deduct those expenses from SeAH's constructed export price pursuant to 19 U.S.C. § 1677a(d)(1)(D), is not supported by substantial evidence and otherwise not in accordance with law. *See* SeAH's Br. at 11–16. According to SeAH, the statute does not authorize Commerce to deduct non-selling expenses when calculating constructed export price, and Commerce's classification of PPA's G&A expenses as indirect selling expenses is unreasonable given the fact that PPA performs both manufacturing and selling functions. *See id.* Defendant counters that Commerce reasonably determined that PPA predominantly performs selling functions for SeAH, and thus, with respect to calculation of SeAH's constructed export price, PPA's G&A expenses are reasonably regarded as indirect selling expenses. *See* Def.'s Resp. Br. at 6–9. For the following reasons, Commerce's determination is sustained.

As explained, when reviewing an ADD order, Commerce calculates dumping margins by comparing the normal value of the merchandise to its export price—here, constructed export price. *See* 19 U.S.C. §§ 1673, 1675(a)(2)(A), (C); *see also id.* at §§ 1677(35), 1677a. Commerce uses constructed export price to determine the dumping margin when the producer or exporter of the subject merchandise sells to an affiliated buyer. *See* 19 U.S.C. § 1677a(b). The constructed export price is the price at which the subject merchandise is first sold to the affiliated buyer as adjusted under subsections (c) and (d). *See id.* Relevant here, subsection (d)(1) requires Commerce to deduct various selling expenses from the constructed export price, and subsection (d)(2) requires Commerce to deduct costs of further manufacture or assembly from the constructed export price. *See id.* at § 1677a(d). Pursuant to 19 U.S.C. § 1677a(d)(1)(D), Commerce normally calculates, and deducts from the constructed export price, indirect selling expenses.

In *Husteel*, the court concluded that Commerce did not explain why its treatment of PPA's G&A expenses as indirect selling expenses of

SeAH was reasonable and authorized under the statute. *See* 44 CIT at ___, 471 F. Supp. 3d at 1370. Here, Commerce explains that it treats PPA's G&A expenses as indirect selling expenses because "PPA's primary function is to facilitate SeAH's U.S. sales[.]" *Remand Results* at 18, and PPA's "G&A activities support those selling operations." *Id.* at 20; *see also id.* at 38 ("PPA is predominantly a selling entity and, thus, it is reasonable to treat its G&A expenses as selling expenses."). Commerce adds that "it is not disputed that PPA has no production capabilities of its own[.]" *Id.* at 18. Given that 19 U.S.C. § 1677a(d)(1)(D) instructs Commerce to include in its deductions from the constructed export price "any selling expenses not deducted" under the other subparagraphs, Commerce explains that, where a "U.S. affiliated selling entity provides no further-manufacturing services," its policy is to regard "everything that the entity does" as "part of its selling activities." *Remand Results* at 20.

Commerce's determination to treat PPA's G&A expenses as indirect selling expenses for purposes of calculating SeAH's constructed export price is reasonable. As Commerce explains, the statute does not explicitly instruct Commerce as to how it should treat G&A expenses incurred by a U.S. sales affiliate. *See id.* at 19–20. It stands to reason that, under 19 U.S.C. § 1677a(d)(1)(D), Commerce would regard expenses incurred pursuant to general operations of a company that mainly exists to facilitate SeAH's U.S. sales as "indirect selling expenses" because the benefits derived from those expenses predominantly further SeAH's selling activities in the United States (as opposed, for example, to SeAH's ability to produce merchandise). *See Remand Results* at 20 ("The G&A expenses of the U.S. affiliated selling entity are associated with supporting and accomplishing the greater selling function of the entity, which is to advance sales in the U.S. market for the respondent, SeAH."); *see also id.* at 38–41.

SeAH criticizes Commerce for "simply re-defining the nature of PPA's operation for the purposes of the [r]edetermination, despite the fact that no new information concerning PPA's operations has been placed on the record." SeAH's Br. at 12–14.¹³ However, Commerce may reassess the record and its findings on remand so long as it reasonably explains its redetermination, *see SEC v. Chenery Corp.*, 332 U.S. 194, 199–201 (1947), and SeAH does not point to detracting record evidence that impugns the reasonableness of Commerce's rationale. Commerce's determination is sustained.

¹³ In disputing the proper classification of G&A expenses under the statute more generally, SeAH appears to misapprehend Commerce's inquiry and construction of the statute. *See* SeAH's Br. at 14–16. Here, Commerce seeks to determine how to classify PPA's G&A expenses as they relate to SeAH's operations in the United States. *See Remand Results* at 17–21, 38–41.

V. Ministerial Errors in Recalculating SeAH's Margins

Defendant-Intervenor Tenaris USA requests that the court sustain a correction Commerce made to its calculation of SeAH's dumping margin on remand, where Commerce inadvertently converted Korean Won values to U.S. dollars twice in its margin calculation program. Def-Intervenors' Br. at 9 (citation omitted). The parties do not contest Tenaris USA's request. Since the court is sustaining Commerce's remand redetermination with respect to its calculation of SeAH's dumping margin, the court also sustains Commerce's ministerial correction.

CONCLUSION

For the foregoing reasons, it is

ORDERED that Commerce's reliance on SeAH's third country sales into Canada to determine the normal value of its subject merchandise is sustained; and it is further

ORDERED that Commerce's decision to reverse its PMS determination is sustained; and it is further

ORDERED that Commerce's decision to use SeAH's third country sales to calculate NEXTEEL's CV profit and selling expenses is sustained; and it is further

ORDERED that Commerce's reclassification of NEXTEEL's suspended production losses is sustained; and it is further

ORDERED that Commerce's reliance on SeAH's annual weighted-average costs is sustained; and it is further

ORDERED that Commerce's treatment of PPA's G&A expenses for purposes of calculating SeAH's constructed export price is sustained; and it is further

ORDERED that Commerce's ministerial correction to its calculation of SeAH's dumping margin is sustained; and it is further

ORDERED that Commerce's decision to adjust NEXTEEL's prime and non-prime costs is remanded for further explanation or reconsideration consistent with this opinion; and it is further

ORDERED that Commerce shall file its remand redetermination with the court within 90 days of this date; and it is further

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

ORDERED that the parties shall have 30 days to file their 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: June 7, 2021
New York, New York

/s/ Claire R. Kelly
CLAIRE R. KELLY, JUDGE

Slip Op. 21–72

OMAN FASTENERS, LLC, et al., Plaintiffs, v. UNITED STATES, et al.,
Defendants.

Before: Jennifer Choe-Groves, Judge
M. Miller Baker, Judge
Timothy C. Stanceu, Judge
Consolidated Court No. 20–00037

[Denying defendants’ motion to dismiss, awarding summary judgment to plaintiffs on Count I of their respective complaints, and dismissing the remaining counts of each of plaintiffs’ complaints. Judge Baker files a separate opinion concurring in part and dissenting in part.]

Dated: June 10, 2021

Michael P. House, Perkins Coie, LLP, of Washington, D.C., for plaintiffs Oman Fasteners LLC and Huttig, Inc., and Huttig Building Products, Inc. With him on the submissions were *Andrew Caridas* and *Shuaiqi Yuan*.

Tara K. Hogan, Assistant Director, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of Washington, D.C., for defendants. With her on the submissions were *Brian M. Boynton*, Acting Assistant Attorney General, *Jeanne E. Davidson*, Director, *Aimee Lee*, Assistant Director, and *Meen Geu Oh*, Senior Trial Counsel, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, Washington, D.C.

OPINION

Stanceu, Judge:

Plaintiffs Oman Fasteners LLC (“Oman”), Huttig Building Products, Inc., and Huttig Inc. (collectively, “Huttig”), U.S. importers of steel fasteners, brought actions, now consolidated, to contest a proclamation issued by the President of the United States (“Proclamation 9980”) in January 2020. *Adjusting Imports of Derivative Aluminum Articles and Derivative Steel Articles Into the United States*, 85 Fed. Reg. 5,281 (Exec. Office of the President Jan. 29, 2020).

Before the court is a Joint Status Report, submitted by all parties, responding to a request by the court. Also before the court is a motion by plaintiffs for entry of final judgment, which defendants do not oppose, subject to their right to appeal. In response to statements of the parties in the Joint Status Report and the unopposed motion, and for the reasons discussed herein, the court denies a motion by defendants to dismiss Count I of each plaintiff’s complaint, enters sum-

mary judgment in favor of each plaintiff on their respective Count I claims, and dismisses the remaining counts in each plaintiff's complaint without prejudice.

I. BACKGROUND

A. Proclamation 9980

On January 24, 2020, President Donald Trump issued Proclamation 9980, which imposed a 25% duty on certain imported articles made of steel, including nails and other fasteners, and a 10% duty on certain imported articles made of aluminum. As authority for its imposition of duties on the articles, identified as “derivative aluminum articles” and “derivative steel articles,” Proclamation 9980 cited Section 232 of the Trade Expansion Act of 1962, 19 U.S.C. § 1862 (“Section 232”).¹

B. Procedural History of this Consolidated Action

On February 7, 2020, Oman commenced an action to contest Proclamation 9980, naming the United States, et al., as defendants and asserting claims in three counts. Summons, ECF No. 1; Compl., ECF No. 2. Huttig commenced its action on February 18, 2020, on a complaint consisting of the same three counts. Summons, ECF No. 1 (Ct. No. 20–00045); Compl., ECF No. 5 (Ct. No. 20–00045).

On joint motions, the court consolidated the two actions, with Court Number 20–00037 serving as the lead case. Order (Mar. 16, 2020), ECF No. 54. In the same order, the court, again with the consent of the parties, stayed Counts II and III of each of the two complaints pending the court's decision on Count I of those complaints. *Id.* Stated in brief summary, Count I of each complaint claimed that Proclamation 9980 was invalid because it was not based on a determination the President made within the 90-day period provided in Section 232(c)(1)(A) and was not implemented within the 15-day period set forth in Section 232(c)(1)(B). Compl. ¶¶ 86–106.²

Defendants moved under USCIT Rule 12(b)(6) to dismiss Count I of each of the plaintiffs' complaints on March 20, 2020, for failure to state a claim on which relief can be granted. Mot. to Dismiss Count I for Failure to State a Claim, ECF No. 57. On April 14, 2020, plaintiffs opposed the motion to dismiss and moved for summary judgment on Count I of each complaint. Mot. for Summ. J. with Respect to Count I of Pls.' Compl., ECF No. 65. Defendants opposed plaintiffs' motion for summary judgment and replied in support of their motion to

¹ All citations to the United States Code are to the 2012 edition.

² For convenience of reference, citations are made to the complaint in Court No. 20–00037. The complaint in Court No. 20–00045 contains the same claims in the corresponding paragraphs.

dismiss Count I on May 15, 2020. Defs.' Reply in Supp. of Mot. to Dismiss and Resp. to Pls.' Mot. for Summ. J., ECF No. 78. Plaintiffs replied in support of their summary judgment motion on June 1, 2020. Reply Mem. in Supp. of Pls.' Mot. for Summ. J., ECF No. 79.

Defendants' motion to dismiss Count I of each of the two complaints and plaintiffs' motion for summary judgment are pending before the court, as is the Joint Status Report and plaintiffs' motion for entry of final judgment.

II. DISCUSSION

A. Jurisdiction and Standards of Review

The court exercises subject matter jurisdiction according to section 201 of the Customs Courts Act of 1980, 28 U.S.C. § 1581(i)(1)(B), which grants this Court exclusive jurisdiction of a civil action commenced against the United States "that arises out of any law of the United States providing for . . . tariffs, duties, fees, or other taxes on the importation of merchandise for reasons other than the raising of revenue."

In deciding a motion to dismiss for failure to state a claim upon which relief can be granted, the court assumes all factual allegations in the complaint to be true (even if doubtful in fact) and draws all reasonable inferences in a plaintiff's favor. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A complaint does not need to contain detailed factual allegations, but it must state enough facts "to raise a right to relief above the speculative level." *Id.* Rule 8(a)(2) of this Court requires a complaint to contain "a short and plain statement of the claim showing that the pleader is entitled to relief."

"The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." USCIT R. 56(a).

B. Plaintiffs' Challenges to Proclamation 9980

In Count I of each of their respective complaints, plaintiffs claim that Proclamation 9980 was untimely issued because: (1) it was not issued within 90 days of the date the President received a report from the Secretary of Commerce meeting the requirements of Section 232(b)(3)(A), as required by Section 232(c)(1)(A), Compl. ¶ 103; and (2) it was not implemented within 15 days of a timely decision by the President under Section 232(c)(1)(A), as required by Section 232(c)(1)(B), Compl. ¶ 105.

In Count II, plaintiffs assert that Proclamation 9980 also is invalid because Section 232 is an unconstitutional delegation of power from the Congress to the President that is "devoid of an intelligible principle." Compl. ¶¶ 120, 121. In Count III, plaintiffs argue that Procla-

mation 9980 violates the constitutional guarantee of equal protection by imposing additional tariffs on some derivative articles of steel and not others, and by excluding from those tariffs identical derivative articles manufactured in some foreign countries but not others, without a legitimate government purpose for the disparate treatment. Compl. ¶¶ 127–131.

C. Our Decision in *PrimeSource I*

In *PrimeSource Bldg. Prods., Inc. v. United States*, 45 CIT __, 497 F. Supp. 3d 1333 (2021) (“*PrimeSource I*”), we dismissed under USCIT Rule 12(b)(6) all claims of plaintiff PrimeSource Building Products, Inc. (“PrimeSource”) except the claim that Proclamation 9980 was untimely because it was issued beyond the 90-day and 15-day time limitations set forth in Section 232(c)(1)(A) and (B), respectively. *PrimeSource I*, 45 CIT at __, 497 F. Supp. 3d at 1361. As do the plaintiffs in this consolidated case, the plaintiff in *PrimeSource* argued that Proclamation 9980 was issued after the expiration of the combined 105-day time period of Section 232(c)(1). See *id.* at __, 497 F. Supp. 3d at 1344; Compl. ¶ 105. PrimeSource argued that the only report that could have qualified as a predicate for Proclamation 9980, and issued under Section 232(b)(3)(A), was one the Secretary of Commerce issued in January 2018 on the effect of certain steel articles on the national security of the United States (the “2018 Steel Report”). *PrimeSource I*, 45 CIT at __, 497 F. Supp. 3d at 1341. That report culminated in the President’s issuance of Proclamation 9705 in March 2018, which imposed 25% duties on various steel articles, see *Adjusting Imports of Steel Into the United States* ¶¶ 1–2, 83 Fed. Reg. 11,625 (Exec. Office of the President Mar. 15, 2018), but not on the “derivative” articles of steel affected by Proclamation 9980 in January 2020.

We stated in *PrimeSource I* that “[d]efendants do not dispute that the 2018 Steel Report is, for purposes of Section 232(c), 19 U.S.C. § 1862(c), the report issued according to Section 232(b)(3)(A), 19 U.S.C. § 1862(b)(3)(A), upon which the President based his adjustment to imports of steel derivatives, including steel nails.” *PrimeSource I*, 45 CIT at __, 497 F. Supp. 3d at 1345 (citing Defs.’ Mot. 24–29). In denying defendants’ motion to dismiss PrimeSource’s “untimeliness” claim, we concluded that Proclamation 9980 does not comply with the limitations on the President’s authority imposed by the 90- and 15-day time limitations of Section 232(c)(1) if the combined 105-day time period is considered to have commenced upon the President’s receipt of the 2018 Steel Report. *Id.* at __, 497 F. Supp. 3d at 1356. We held that in this circumstance PrimeSource had stated a plausible claim

for relief, and therefore we declined to dismiss it. *Id.* at ___, 497 F. Supp. 3d at 1359.

After denying defendants' motion to dismiss as to PrimeSource's timeliness claim, we denied the motion of plaintiff PrimeSource for summary judgment on that claim, determining that there existed one or more genuine issues of material fact. *Id.* at ___, 497 F. Supp. 3d at 1361. Although concluding that Proclamation 9980 was untimely under Section 232(c)(1) when viewed solely as an action taken in response to the 2018 Steel Report, we also concluded that there were genuine issues of material fact that bore on the extent to which the subsequent "assessment" or "assessments" of the Commerce Secretary, as identified in Proclamation 9980, validly could be held to have served a function analogous to that of a Section 232(b)(3)(A) report. *Id.* at ___, 497 F. Supp. 3d at 1360–61. We also noted that we did not know what form of inquiry or investigation the Commerce Secretary conducted prior to his submission of these communications to the President and whether, or to what extent, that inquiry or investigation satisfied the essential requirements of Section 232(b)(2)(A), 19 U.S.C. § 1862(b)(2)(A). *Id.* at ___, 497 F. Supp. 3d at 1360–61.

In summary, we concluded in *PrimeSource I* that factual information pertaining to the Secretary's inquiry on, and his reporting to the President on, the derivative articles would be required in order for us to examine whether and to what extent there was compliance by the President with the procedural requirements of Section 232 and whether any noncompliance that occurred was a "significant procedural violation." *Id.* at ___, 497 F. Supp. 3d at 1361 (quoting *Maple Leaf Fish Co. v. United States*, 762 F.2d 86, 89 (Fed. Cir. 1985) (requiring that a procedural violation be "significant" in order to serve as a ground for judicial invalidation of a Presidential action)). We added that "at this early stage of the litigation, we lack a basis to presume that these unresolved factual issues are unrelated to the issue of whether the President clearly misconstrued the statute or the issue of whether the President took action outside of his delegated authority." *Id.* at ___, 497 F. Supp. 3d at 1361. We noted that the "filing of a complete administrative record could be a means of resolving, or helping to resolve, these factual issues" and directed the parties to consult on this matter and file a scheduling order to govern the subsequent litigation. *Id.* at ___, 497 F. Supp. 3d at 1361.

D. Our Decision in *PrimeSource II*

On March 5, 2021, the parties in the *PrimeSource* litigation submitted a joint status report in lieu of a scheduling order. In it, defendants expressly waived "the opportunity to provide additional factual

information that might show that the ‘essential requirements of Section 232(b)(2)(A), 19 U.S.C. § 1862(b)(2)(A)’ were met,” adding that “[d]efendants do not intend to pursue that argument.” Joint Status Rep. 2, ECF No. 108 (Ct. No. 20–00032) (quoting *PrimeSource I*, 45 CIT at __, 497 F. Supp. 3d at 1361). Defendants informed the court that their “position continues to be that procedural preconditions for the issuance of Proclamation 9980 were met by the Secretary’s 2018 Steel Report and the timely issuance of Proclamation 9705, a position that the majority has already rejected.” *Id.* at 2–3. The *PrimeSource*-joint status report concluded by stating that “the parties agree and respectfully submit that there is no reason for this Court to delay entry of final judgment. In so representing, the parties fully reserve all rights to appeal any adverse judgment.” *Id.* at 3.

In *PrimeSource Bldg. Prods., Inc. v. United States*, 45 CIT __, Slip Op. 21–36 (Apr. 5, 2021) (“*PrimeSource II*”), we concluded that defendants, through their statements in the parties’ joint status report, had waived “any defense that the assessments of the Commerce Secretary, as described in Proclamation 9980, were the functional equivalent of a Section 232(b)(3)(A) report.” 45 CIT __, Slip Op. 21–36 at 8. “In particular, defendants have waived any defense grounded in a factual circumstance other than one in which the 2018 Steel Report is the only submission made by the Commerce Secretary that could satisfy the requirements of Section 232(b)(3)(A) and upon which Proclamation 9980 could have been based.” *Id.* at __, Slip Op. 21–36 at 9–10. We concluded that “*PrimeSource* is now entitled to judgment as a matter of law,” *id.* at __, Slip Op. 21–36 at 10, and we entered summary judgment in favor of plaintiff *PrimeSource* on its remaining claim.

E. The Joint Status Report and Unopposed Motion for Entry of Judgment

The Joint Status Report (Apr. 30, 2021), ECF No. 105 (“Joint Status Report”), submitted by counsel for all parties in this case, states, *inter alia*, that “the parties agree that, in light of *PrimeSource I and II*, there is no reason for this Court not to grant Plaintiffs’ Motion for Summary Judgment on Count I of the Complaints, ECF No. 65, and deny Defendant’s Motion to Dismiss Count I of Plaintiffs’ Complaints.” Joint Status Report 1–2. The Joint Status Report states further:

As was true in the *PrimeSource* litigation prior to the Court’s entry of judgment, Defendants in this case do not intend to introduce any additional evidence related to potential factual disputes or additional factual information showing that Procla-

mation 9980 satisfied the requirements of 19 U.S.C. § 1862(b)(2)(A). Defendants’ position remains that the procedural preconditions for the issuance of Proclamation 9980 were met by the Secretary’s 2018 Steel Report and the timely issuance of Proclamation 9705, but this Court has already rejected that position. . . . Defendants fully reserve all rights to appeal any adverse judgment.

Id. at 2.

In an unopposed motion for entry of final judgment, “[p]laintiffs respectfully move the Court for entry of an order fully adjudicating the claims alleged in Count I of Plaintiffs’ Complaints” and “move the Court to dismiss Counts II and III of Plaintiffs’ Complaints, without prejudice, resulting in a complete and final adjudication of this action.” Unopposed Mot. for Entry of Final J. and Disposition of this Action 1 (Apr. 30, 2021), ECF No. 106. The motion states that counsel for plaintiffs consulted with counsel for defendants, who indicated that defendants do not oppose this motion. Plaintiffs accompany their unopposed motion with a draft order that, *inter alia*, denies defendants’ motion to dismiss Count I of plaintiffs’ complaints and awards summary judgment to plaintiffs on their Count I claims. *See* [Proposed] Order (Apr. 30, 2021), ECF No. 106–1.

F. Award of Summary Judgment in Favor of Plaintiffs on Count I

As discussed above, each plaintiff’s Count I claim is that Proclamation 9980 is invalid as untimely because it neither was issued within the 90-day time period allowed by Section 232(c)(1)(A) nor implemented within the 15-day time period allowed by Section 232(c)(1)(B).³ Compl. ¶¶ 102–106. This claim is indistinguishable from the claim upon which this Court granted summary judgment in favor of the plaintiff in *PrimeSource II*, as the parties to this case acknowledge. Joint Status Report 1 (“The parties have conferred and now agree that the Court’s decisions in *Primesource I* and *Primesource II* are decisive as to Count I of Plaintiffs’ Complaints.”).

We conclude that, as to Count I of plaintiffs’ complaints, there is no longer a genuine issue of material fact as a result of the representations the parties have made in the Joint Status Report and in plaintiffs’ unopposed motion for entry of judgment. In particular, defendants have waived any defense grounded in a factual circumstance other than one in which the 2018 Steel Report is the only submission

³ Although both complaints, in their Count I titles, refer to “*ultra vires*” acts of the Secretary of Commerce, Compl. 23 (Feb. 7, 2020), ECF No. 2, no claim against a decision of the Commerce Department actually is stated, and therefore we interpret each plaintiff’s Count I claim as a challenge to Proclamation 9980 and not as a challenge to an agency action.

made by the Commerce Secretary that could satisfy the requirements of Section 232(b)(3)(A) and upon which Proclamation 9980 could have been based.

As we concluded in *PrimeSource I*, “the action taken by Proclamation 9980 to adjust imports of derivatives was not implemented during the 105-day time period set forth in § 1862(c)(1), if that time period is considered to have commenced upon the President’s receipt of the Steel Report.” 45 CIT at __, 497 F. Supp. 3d at 1356. Due to the parties’ joint and unopposed representations, there is no genuine issue of material fact as to when that time period began, and defendants have waived any defense based on a contention that the time period began on any date other than the President’s receipt of the 2018 Steel Report.

To declare Proclamation 9980 invalid, we must find “a clear misconstruction of the governing statute, a significant procedural violation, or action outside delegated authority.” *Maple Leaf Fish Co.*, 762 F.2d at 89. Because the President issued Proclamation 9980 after the congressionally-delegated authority to adjust imports of the products addressed in that proclamation had expired, Proclamation 9980 was action outside of delegated authority. For the reasons we stated in *PrimeSource I*, 45 CIT at __, 497 F. Supp. 3d at 1356–58, we find in the untimeliness of Proclamation 9980 a significant procedural violation. Plaintiffs, therefore, are now entitled to judgment as a matter of law on their motions for summary judgment on the claims stated in Count I of their respective complaints.

III. CONCLUSION

In summary, defendants have waived any defense that the procedural requirements of Section 232 were met based on a procedure other than one reliant upon the 2018 Steel Report. Summary judgment in favor of plaintiffs on Count I of their respective complaints therefore is warranted, Proclamation 9980 having been issued after the President’s delegated authority to impose duties on derivatives of steel products had expired.

Further to the parties’ Joint Status Report and plaintiffs’ unopposed motion for entry of judgment, we deny defendants’ motion to dismiss the claims stated in Count I of plaintiffs’ respective complaints, grant plaintiffs’ motions for summary judgment on the claims stated in Count I of their complaints, dismiss without prejudice Counts II and III of their complaints, and order certain other relief as requested in the unopposed draft order accompanying plaintiffs’ mo-

tion for entry of final judgment. We will enter judgment in substantially the form as set forth in plaintiffs' unopposed draft order.⁴

Dated: June 10, 2021

New York, New York

/s/ Jennifer Choe-Groves

JENNIFER CHOE-GROVES, JUDGE

/s/ Timothy C. Stanceu

TIMOTHY C. STANCEU, JUDGE

Baker, Judge, concurring in part and dissenting in part:

For the reasons explained in *PrimeSource Building Products, Inc. v. United States*, 497 F. Supp. 3d 1333, 1361 (CIT 2021) (*Baker*, J., dissenting), I respectfully dissent from our exercise of subject-matter jurisdiction as to Plaintiffs' claims against the President, the entry of summary judgment in favor of Plaintiffs as to Count I of their respective complaints, and the denial of the government's motion to dismiss Count I of those complaints.

I concur in our dismissal of Counts II and III without prejudice as requested by the parties, but I write separately to explain that in so doing we are not impermissibly "manufacturing" finality for the purpose of securing—if not manipulating—appellate jurisdiction, a controversial practice that is the subject of a long-festering circuit split. *See generally* Mayer Brown LLP, *Federal Appellate Practice* § 2.2(b)(1) (3d ed. 2018); *see also Doe v. United States*, 513 F.3d 1348, 1352–55 (Fed. Cir. 2008).¹

Although Plaintiffs' materially identical complaints nominally allege three separate counts, for purposes of Federal Rule of Civil Procedure 54(b)—and by extension our own Rule 54(b), *see* USCIT R. 54(b)—all three counts are, in substance, simply alternative legal theories asserted to support "one claim for relief." USCIT R. 54(b) (emphasis added). Count I alleges that the President violated Section

⁴ Further to the agreement of all parties, we are dismissing Counts II and III of plaintiffs' respective complaints "without prejudice." Even had the parties not requested dismissal, we would not have reached the issues raised in these two counts. Reaching those issues would not have been necessary because of our entry of summary judgment on Count I of the complaints (which also would have lifted the stay of Counts II and III). In acceding to the request of the parties that we dismiss Counts II and III without prejudice, we do not opine on the question of whether or not either plaintiff would be in a position to bring a future action that could reach the merits of any argument against Proclamation 9980 that is made in Count II or Count III of plaintiffs' complaints.

¹ Because the majority grants equitable relief in its entry of judgment accompanying today's decision, the existence of finality here for purposes of 28 U.S.C. § 1295(a)(5)(conferring appellate jurisdiction in the Federal Circuit over "final decision[s]" of the CIT) may be academic. The equitable relief granted by the majority today—ordering the refund of duties previously paid—arguably constitutes an injunction for purposes of 28 U.S.C. § 1292(c)(1) & (a)(1), which together confer appellate jurisdiction in the Federal Circuit over interlocutory orders of the CIT granting injunctions (whether preliminary or, as here, permanent).

232's procedural requirements in issuing Proclamation 9980, *see* Case 20–37, ECF 2, ¶¶ 95–106, and Case 20–45, ECF 5, ¶¶ 95–106; Count II alleges that Proclamation 9980 was unlawful because Section 232 represents an unconstitutional delegation of power by Congress to the Executive, *see* Case 20–37, ECF 2, ¶¶ 117–121, and Case 20–45, ECF 5, ¶¶ 177–121; and Count III alleges that Proclamation 9980 violated the equal protection component of the Due Process Clause of the Constitution's Fifth Amendment by imposing tariffs on steel derivative imports from some countries but not others, *see* Case 20–37, ECF 2, ¶¶ 128–131, and Case 20–45, ECF 5, ¶¶ 126–129.

For all three counts, Plaintiffs seek the same relief: a judgment declaring Proclamation 9980 void and an injunction restraining its enforcement and compelling refunds of Section 232 duties previously collected. *See* Case 20–37, ECF 2, at 31; Case 20–45, ECF 5, at 30. Because Plaintiffs could—and with the majority's decision today, do—obtain only one recovery, their separate counts are but variations on legal theories supporting one claim. *See Local P-171, Amalgamated Meat Cutters & Butcher Workmen of N. Am. v. Thompson Farms Co.*, 642 F.2d 1065, 1070–71 (7th Cir. 1981) (Wisdom, J.) (“At a minimum, claims cannot be separate unless separate recovery is possible on each. Hence, mere variations of legal theory do not constitute separate claims.”) (cleaned up). Therefore, in dismissing Counts II and III without prejudice, we do not improperly manufacture finality by dismissing nonfinal separate claims.

Nevertheless, even where, as here, a plaintiff only asserts one claim for Rule 54(b) purposes, a district court or the CIT impermissibly “homebrews” appellate jurisdiction when it rejects one legal theory in support of that claim and thereafter dismisses the plaintiff's remaining theories without prejudice to facilitate an immediate appeal of what the parties agree is the most important theory. *See, e.g., First Health Grp. Corp. v. BCE Emergis Corp.*, 269 F.3d 800, 801 (7th Cir. 2001) (Easterbrook, J.). In such a situation, the case is nonfinal because the trial court has not finally adjudicated the plaintiff's claim for relief.

But where, as here, a plaintiff asserts multiple theories in support of only a single claim for relief and the district court or the CIT *grants* all the requested relief based on only one of the plaintiff's asserted theories, attaining finality does not require the court to *also* adjudicate the plaintiff's alternative theories for recovery on the same claim. By granting the plaintiff all the relief that it could possibly obtain in this action, the majority “ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.” *Weed v. Soc. Sec. Admin.*, 571 F.3d 1359, 1361 (Fed. Cir. 2009) (cleaned up and

quoting *Cabot Corp. v. United States*, 788 F.2d 1539, 1542 (Fed. Cir. 1986)); see also *Electro-Methods, Inc. v. United States*, 728 F.2d 1471, 1474 (Fed. Cir. 1984) (decision granting “the most important relief [plaintiff] sought” and “address[ing] (by denying) the other relief [plaintiff] sought” was a “final decision . . . for all practical purposes”); cf. *Ind. Harbor Belt R.R. Co. v. Am. Cyanamid Co.*, 860 F.2d 1441, 1446 (7th Cir. 1988) (Cudahy, J., dissenting) (in a case with only a single claim for purposes of Rule 54(b), “to ‘win’ a plaintiff need prevail on only one theory, while to ‘win’ a defendant must prevail on all the theories proposed by the plaintiff”).²

For purposes of 28 U.S.C. § 1291—and by extension 28 U.S.C. § 1295(a)(5)—“[f]inality is to be given a practical rather than a technical construction.” *Keith Mfg. Co. v. Butterfield*, 955 F.3d 936, 939 (Fed. Cir. 2020) (quoting *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 171 (1974)). There is no practical reason to “impose totally redundant and indefensible burdens on . . . trial courts” by requiring them to adjudicate “multiple theories . . . where one would suffice.” *Am. Cyanamid*, 860 F.2d at 1448 (Cudahy, J., dissenting). Like Judge Cudahy, I see no practical purpose in construing the finality requirement to require “the plaintiff to fire additional bullets into the corpse of a defendant he has already killed.” *Id.*

/s/ M. Miller Baker
M. MILLER BAKER, JUDGE

Slip Op. 21–73

ARP MATERIALS, INC., Plaintiff, v. UNITED STATES, Defendant.

Court No. 20–00144

THE HARRISON STEEL CASTINGS CO., Plaintiff, v. UNITED STATES, Defendant.

Court No. 20–00147

Before: M. Miller Baker, Judge

[Defendant’s motion to dismiss for lack of subject-matter jurisdiction is granted.]

² I note that the majority’s decision granting Plaintiffs’ motion for summary judgment as to Count I does not moot Counts II and III. This is because “cases rather than reasons . . . become moot.” *Air Line Pilots Ass’n, Int’l v. UAL Corp.*, 897 F.2d 1394, 1397 (7th Cir. 1990) (Posner, J.). And of course, if a case consists of multiple claims for Rule 54(b) purposes, one or more of such claims might become moot, even if other claims in the case do not. But this case consists of only one claim—Plaintiffs’ challenge to Proclamation 9980 based on three alternative legal theories—and the majority’s decision in favor of Plaintiffs as to one of their theories (Count I) does not render the other two theories (Counts II and III) moot, but rather simply unnecessary to decide as a matter of judicial discretion. If Counts II and III were moot, we would not have Article III jurisdiction to decide them.

Dated: June 11, 2021

Jamie L. Shookman, Trial Attorney, Commercial Litigation Branch, *Jeffrey Bossert Clark*, Acting Assistant Attorney General, *Jeanne E. Davidson*, Director, and *L. Misha Preheim*, Civil Division, U.S. Department of Justice of New York, NY, on the briefs for Defendant. Of counsel on the briefs were *Philip Butler*, Associate General Counsel, Office of General Counsel, Office of the U.S. Trade Representative of Washington, DC, and *Paula Smith*, Assistant Chief Counsel, *Edward Maurer*, Deputy Assistant Chief Counsel, and *Valerie Sorensen-Clark*, Attorney, Office of the Assistant Chief Counsel, International Trade Litigation, U.S. Customs and Border Protection of New York, NY.

Christopher M. Kane, *Daniel J. Gluck*, and *Mariana del Rio Kostenwein*, Simon Gluck & Kane LLP of New York, NY, on the brief for Plaintiffs.

OPINION

Baker, Judge:

In these cases, two importers invoke 28 U.S.C. § 1581(i)—a jurisdictional grant of last resort—seeking to compel refunds of retaliatory tariffs that the U.S. Trade Representative imposed on their goods from China and then later rescinded. The USTR’s rescission of the tariffs rendered U.S. Customs and Border Protection’s classification of these goods (as subject to the tariffs) erroneous.

Based on the USTR’s rescission of the retaliatory tariffs, one of the importers timely protested Customs’ classification decision as to certain of the goods in question. Customs duly reclassified the goods as exempt from the tariffs and the importer received a refund after this litigation began. As to those goods, the importer’s refund claim is moot and the court lacks constitutional subject-matter jurisdiction.

As to the remaining goods at issue in these suits, the importers could have timely protested Customs’ classification decisions. If Customs had denied such protests, the importers then could have sought relief in this court by invoking its jurisdiction under § 1581(a). The importers, however, failed to timely protest Customs’ classification decisions. Because jurisdiction would have existed under § 1581(a) had the importers timely protested, the court lacks statutory subject-matter jurisdiction under § 1581(i). The court therefore grants the government’s motion to dismiss.

Statutory and Regulatory Background

A. The classification of imported goods

Goods imported into the United States are subject to a process known as “classification.” This statutorily-mandated process requires Customs to determine where such goods fit into the Harmonized Tariff Schedule of the United States (HTSUS), 19 U.S.C. § 1202. *See* 19 U.S.C. § 1500(b) (requiring Customs to “fix the final classification and rate of duty applicable to [imported] merchandise”).

The HTSUS is a systematic organizational code of headings and subheadings: “[T]he headings set forth general categories of merchandise, and the subheadings provide a more particularized segregation of the goods within each category.” *Wilton Indus., Inc. v. United States*, 741 F.3d 1263, 1266 (Fed. Cir. 2013). In effect, the HTSUS is for imported goods what the Dewey Decimal System is for library books.

In classifying imported goods for tariff purposes, Customs assigns them to an HTSUS subheading code, which determines the applicable duty rate. *See* Alexander W. Koff, Tina Potuto Kimble, & Gus Coritidis, “International Trade Disputes,” in *International Aspects of U.S. Litigation, A Practitioner’s Deskbook* 934 (2017). Customs’ determination of which HTSUS subheading to assign is critical because the applicable duty, or tariff, can vary considerably depending on which HTSUS subheading applies. *See id.* at 934 n.66. Customs assigns the HTSUS code applicable to the import on the date of entry. 19 C.F.R. § 141.69.¹

By statute, “decisions of [Customs], including the legality of all orders and findings entering into the same,” as to, *inter alia*, “the classification and rate and amount of duties chargeable,” even if that decision is erroneous, “shall be final and conclusive upon all persons . . . unless a protest is filed in accordance with this section, or unless a civil action contesting the denial of a protest, in whole or in part, is commenced in the United States Court of International Trade” in a timely fashion. 19 U.S.C. § 1514(a)(2). A protest, including a protest challenging a classification, *see* 19 C.F.R. § 174.11 (permitting protests as to “[t]he classification and rate and amount of duties chargeable”), “shall be filed with [Customs] within 180 days after but not before—(A) date of liquidation or reliquidation.” 19 U.S.C. § 1514(c)(3)(A).

“Liquidation” refers to the process by which an importer’s liability is fixed based on duties owed upon the date of entry. Upon entry of goods, the importer must deposit estimated duties and fees with Customs. Subsequently, Customs “liquidates” the entry to make a “final computation or ascertainment of duties owed” on that entry of merchandise. 19 C.F.R. § 159.1; *see also* 19 U.S.C. § 1500.

Liquidation also necessarily includes Customs’ final determination regarding classification of that entry of merchandise. *See Corporate Counsel’s Guide to Importation Under the U.S. Customs Law* § 1:112

¹ “Within 15 days of arrival in the United States, foreign merchandise is ‘entered,’ meaning that documentation of the importation is filed with Customs.” *Thyssenkrupp Steel N. Am., Inc. v. United States*, 886 F.3d 1215, 1218 (Fed. Cir. 2018) (citing 19 U.S.C. § 1484(a); 19 C.F.R. §§ 141.0a(a), 141.4(a), 141.5, 141.11(b)).

(2020); *see also Chemsol, LLC v. United States*, 755 F.3d 1345, 1350 (Fed. Cir. 2014) (“This court has confirmed that liquidation is the final challengeable event and findings related to liquidation . . . merge with the liquidation.”) (cleaned up); *Volkswagen of Am., Inc. v. United States*, 532 F.3d 1365, 1370 (Fed. Cir. 2008) (characterizing circuit precedent as standing for the proposition that “all aspects of entry [are] merged in the liquidation”) (citing *United States v. Utex Int’l, Inc.*, 857 F.2d 1408, 1409–10, 1412 (Fed. Cir. 1988)). Liquidation normally occurs within one year of entry, though it may occur later under certain circumstances. 19 C.F.R. § 159.12.

Following liquidation, Customs either collects any additional amounts due, with interest, if the importer’s deposit was lower than the final assessment or refunds any excess deposit, with interest, if the deposit was higher than the final assessment. 19 U.S.C. § 1505(b). Thus, the protest statute requires that if an importer believes Customs made a mistake by classifying its goods under the wrong HTSUS code, the importer must file a protest within 180 days after Customs liquidates the entry (thus fixing the final amount due) or else lose the right to challenge the classification. *See* 19 U.S.C. § 1514(a)(2).

A protest challenging classification may lead to “reliquidation.” As the term implies, reliquidation means Customs re-assesses the duties and fees due. If Customs grants the protest and reclassifies the entry under an HTSUS code subject to a lower rate of duty, Customs must recalculate the amount due—hence, “reliquidation.”

B. The USTR’s imposition of Section 301 duties

Section 301 of the Trade Act of 1974 authorizes the USTR to take various actions to protect U.S. interests when foreign trade partners violate trade agreements or otherwise take actions adverse to U.S. trade interests. *See* 19 U.S.C. § 2411(a)(1). Pursuant to this authority, in 2017 the USTR undertook a Section 301 investigation of Chinese trade practices. *Initiation of Section 301 Investigation; Hearing; and Request for Public Comments: China’s Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation*, 82 Fed. Reg. 40,213, 40,213 (USTR Aug. 24, 2017).

After finding that China’s conduct was actionable under the statute, the USTR proposed an additional 25 percent *ad valorem* duty on various products imported from that country. *Notice of Determination and Request for Public Comment Concerning Proposed Determination of Action Pursuant to Section 301: China’s Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation*, 83 Fed. Reg. 14,906, 14,907 (USTR Apr. 6, 2018).

The USTR later imposed Section 301 tariffs on goods from China via a series of “tranches,” or “lists,” referred to as List 1 through List 4B. The USTR imposed the tariffs by inserting new subheadings into the HTSUS to encompass the articles on the lists. *See, e.g., Notice of Action Pursuant to Section 301: China’s Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation*, 83 Fed. Reg. 40,823, 40,825 (USTR Aug. 16, 2018) (inserting subheading 9903.88.02 as part of the List 2 process). These cases involve Lists 2² and 3.³

The USTR’s imposition of Section 301 duties was not self-executing, however. To effectuate these duties as to any given entry of imports, Customs first had to classify the entries under the applicable HTSUS subheadings. Any importer that contended Customs erroneously classified its imports under the subheadings subject to Section 301 tariffs could, after the entries liquidated, protest such classification as discussed above.

C. The USTR’s retroactive exclusions from Section 301 duties

The USTR’s notices of Section 301 duties also stated that importers could request that specific products classified within an affected tariff heading be excluded (that is, exempted) from such duties. *See* 83 Fed. Reg. at 40,824 (List 2),⁴ 84 Fed. Reg. at 20,460 (List 3).⁵

The notices directed importers seeking exclusions to identify “the particular product in terms of the physical characteristics . . . that distinguish it from other products within the covered 8-digit subheading,” and noted that the USTR would “not consider [exclusion] requests that identif[ied] the product at issue in terms of the identity of the producer, importer, ultimate consumer, actual use or chief use, or trademark or trade-names.” 83 Fed. Reg. at 47,236–37.

² *See id.* at 40,823–24 (giving notice of List 2 action).

³ *See Notice of Modification of Section 301 Action: China’s Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation*, 83 Fed. Reg. 47,974, 47,974 (USTR Sept. 21, 2018) (giving notice of List 3 action and imposition of 10 percent duties); *see also Notice of Modification of Section 301 Action: China’s Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation*, 84 Fed. Reg. 20,459,20,459 (USTR May 9, 2019) (announcing that duties on List 3 articles would be increased to 25 percent beginning the following day).

⁴ For List 2, the USTR announced that any granted exclusion requests would be retroactive to August 23, 2018, the effective date of the List 2 tariffs. *Procedures to Consider Requests for Exclusion of Particular Products from the Additional Action Pursuant to Section 301: China’s Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation*, 83 Fed. Reg. 47,236, 47,236 (USTR Sept. 18, 2018).

⁵ For List 3, the USTR announced that any granted exclusion requests would be retroactive to September 24, 2018, the effective date of the List 3 tariffs. *Procedures for Requests to Exclude Particular Products from the September 2018 Action Pursuant to Section 301: China’s Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation*, 84 Fed. Reg. 29,576, 29,576 (USTR June 24, 2019).

For both the List 2 and List 3 processes, the USTR posted web pages further notifying importers that “[a]n exclusion, if granted, will apply to the particular product covered by the exclusion, and will not be tied to particular producers or exporters.” List 2 FAQs at 4;⁶ List 3 FAQs at 5 (same).⁷

Thus, because exclusions were “product-specific,” the grant of an exclusion in response to one importer’s application could apply to like products imported by other entities. The USTR implemented exclusions by inserting new subheadings into the HTSUS to encompass the articles covered by granted exclusions. *See, e.g., Notice of Product Exclusions: China’s Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation*, 84 Fed. Reg. 37,381, 37,382 (USTR July 31, 2019) (creating such a new subheading).

Just as the USTR’s initial imposition of Section 301 duties was not self-executing as to any entry of goods and instead depended upon Customs’ classification of the entry as subject to such duties, the USTR’s retroactive exclusions were not self-executing as to the eligible goods. *See id.* at 37,381 (“[T]he exclusions *are available* for any product that meets the description in the Annex, regardless of whether the importer filed an exclusion request.”) (emphasis added). The USTR stated that Customs “will issue instructions on entry guidance and implementation.” *Id.*

Customs in turn issued instructions for obtaining refunds of Section 301 duties as to eligible imports:

To request a refund of Section 301 duties paid on previous imports of duty-excluded products granted by the USTR, importers . . . may protest the liquidation.

U.S. Customs and Border Protection, Cargo Systems Messaging Service, *CSMS #39169565—GUIDANCE: Seventh Round of Products Excluded from Section 301 Duties (Tranche 2)*;⁸ *see also* U.S. Customs and Border Protection, Cargo Systems Messaging Service, *CSMS #42181055—GUIDANCE: Section 301 Tranche 3—\$200B Eleventh Round of Product Exclusions from China* (substantively identical instructions).⁹ That is, an importer wishing to seek a refund of Sec-

⁶ <https://ustr.gov/sites/default/files/enforcement/301Investigations/Additional%20%2416%20Billion%20Trade%20Action%20Exclusion%20Process%20FAQs.pdf> (accessed June 9, 2021).

⁷ https://ustr.gov/sites/default/files/enforcement/301Investigations/%24200_Billion_Trade_Action_Exclusion_Process_FAQs.pdf (accessed June 9, 2021).

⁸ https://content.govdelivery.com/bulletins/gd/USDHSCBP-255ae1d?wgt_ref=USDHSCBP_WIDGET_2 (accessed June 9, 2021).

⁹ <https://content.govdelivery.com/accounts/USDHSCBP/bulletins/283a1bf> (accessed June 9, 2021).

tion 301 duties had to protest Customs' liquidation classifying the imports as subject to those duties.

Customs also stated that it would postpone ruling on any protests that included claims based on *pending* product exclusions until after the USTR ruled on the exclusion requests, at which time Customs would process the protests pursuant to the USTR's decision. "That is, [Customs] will refrain from denying or granting a party's protest before the importer receives a final determination from [the] USTR regarding its product exclusion request." U.S. Customs and Border Protection, Cargo Systems Messaging Service, CSMS #19-000260—*Section 301 Products Excluded from Duties—Liquidation Extension Request*.¹⁰ This allowed importers confronting a looming protest deadline to file a protective protest to obtain the benefit of a pending exclusion request that the USTR might grant *after* the deadline had passed.

In short, the USTR and Customs established a system under which parties could apply for exclusions and could benefit from other parties' exclusion requests granted by the USTR. Insofar as the exclusions applied retroactively to entries for which importers had previously paid Section 301 tariffs, Customs would effectuate the exclusions by reclassifying imports to Section 301-duty-free HTSUS subheadings upon an importer's timely protest of the entry's original liquidation.

Factual and Procedural Background¹¹

A. Facts relating to ARP

ARP Materials, Inc., alleges that it made five entries (importations) of merchandise under HTSUS subheading 3901.90.1000¹² that were subject to Section 301 tariffs on the dates of entry. Case 20-144, ECF 14, ¶¶ 11-13 & Exhibit. That is, Customs' classification of the merchandise under that subheading rendered the entries liable for Section 301 duties.

On July 31, 2019—after ARP's five entries at issue—the USTR granted exclusion requests submitted by other importers that covered the same category of products (as well as other products). *Notice of Product Exclusions*, 84 Fed. Reg. at 37,382. The USTR's notice cre-

¹⁰ <https://content.govdelivery.com/accounts/USDHSCBP/bulletins/246a1d3> (accessed June 9, 2021).

¹¹ These facts are derived from the allegations of Plaintiffs' complaints and extrinsic evidence submitted by the government in form of a declaration by a Customs official. See Case 20-144, ECF 21-1 (Declaration of Mary Pugh) ("Pugh Decl."); Case 20-147, ECF 20-1 (same).

¹² HTSUS 3901.90.1000 refers to "[p]olymers of ethylene, in primary forms: Other: Elastomeric."

ated a new HTSUS tariff schedule subheading, 9903.88.12,¹³ applicable to articles covered by the exclusion and exempted that new heading from the Section 301 duties. 84 Fed. Reg. at 37,382. The exclusions were retroactive to August 23, 2018—prior to ARP's entries—and were to remain effective until July 31, 2020, i.e., one year after the date on which the notice of exclusions was published in the Federal Register. *Id.* at 37,381.

As noted above, the USTR's exclusions were not self-executing.¹⁴ To take advantage of them, ARP needed to file protests within 180 days of the various liquidation dates of these five entries.¹⁵ ARP did exactly that as to entry '7552-2, as it filed a protest less than 180 days after that entry's liquidation. Customs granted the protest, reclassified the entry, and ARP received a refund of Section 301 duties for that entry. Case 20-144, ECF 21-1, Pugh Decl. ¶ 12; Case 20-144, ECF 23, at 18 (Plaintiffs conceding the government's factual chronology).

As to its four remaining entries, ARP took untimely action or no action. ARP protested Customs' assessment of Section 301 duties on entries '4968-3 and '5369-3, but it did so more than 180 days after those entries' liquidation. Customs denied the protest as untimely. Case 20-144, ECF 21-1, Pugh Decl. ¶ 9;¹⁶ Case 20-144, ECF 23, at 18

¹³ Subheading 9903.88.12 refers to “[a]rticles the product of China, as provided for in U.S. note 20(o) to this subchapter, each covered by an exclusion granted by the U.S. Trade Representative.” The referenced U.S. note 20(o) contains a list of specific products for which the USTR granted exclusions. Among those products is “[c]hlorinated polyethyleneelastomer, in white or pale yellow powder form, containing 28 to 44 percent by weight of chlorine (described in statistical reporting number 3901.90.1000).” HTSUS Chapter 99, Subchapter III, U.S. note 20(o)(1). This description is the same one cited in ARP's complaint. *See* Case 20-144, ECF 14, ¶¶ 9, 11. In short, the products covered by subheading 9903.88.12 (subject to an exclusion) were a narrow carve-out from the broader category of products subject to Section 301 duties under subheading 3901.90.1000.

¹⁴ The exclusions were limited exclusions—Section 301 tariffs still applied generally, meaning that ARP needed to demonstrate to Customs that its entries fell under the applicable HTSUS subheading carved out as exempt from Section 301 duties. *See, e.g.*, 83 Fed. Reg. at 47,236-37 (requiring importers seeking exclusions to identify their product in terms of particular characteristics distinguishing it from other products within the same 8-digit HTSUS subheading); 84 Fed. Reg. at 37,381 (stating that “exclusions [were] available for any product that meets the description in the Annex”); *compare also above* note 12 (citing broad HTSUS subheading subject to Section 301 tariffs that ARP's entries were classified under) *with above* note 13 (citing narrower exclusion with HTSUS subheading applicable to specific products, including ARP's entries).

¹⁵ The USTR published its exclusion notice only five days after the liquidation of one of ARP's entries (leaving ARP 175 days to protest as to that entry) and before liquidation of ARP's four remaining entries (leaving ARP a full 180 days to protest as to those entries).

¹⁶ Plaintiffs' amended complaints list only the entry numbers and the entry dates. They do not refer to the liquidation dates, the dates on which Plaintiffs filed protests, or the dates on which Customs decided the protests. For that matter, the amended complaints do not even mention the protests—nowhere do they say anything whatsoever about Plaintiffs having filed protests, much less Customs' rulings on those protests. This information was placed in the record by the government through the Pugh declaration. *See* Case 20-144, ECF 21-1.

(Plaintiffs conceding the government’s factual chronology). ARP did not file protests for entries ’5259–6 and ’5611–8. *See* Case 20–144, ECF 21–1, Pugh Decl. ¶¶ 10–11 (citing these entries and not discussing any protests, unlike the other entries for which the declaration cites protest dates and outcomes); Case 20–144, ECF 23, at 18 (Plaintiffs conceding that ARP did not file protests for these two entries).

The following chart¹⁷ summarizes ARP’s entries at issue here that were eligible for reclassification based on the USTR’s July 31, 2019, exclusion notice:

Entry #	Entry date	Liquidation date	Protest status
F57–4005259–6	Aug. 30, 2018	July 26, 2019	None filed
F57–4004968–3	Sept. 21, 2018	Aug. 16, 2019	Filed March 2, 2020; denied as untimely
F57–4005369-3	Sept. 24, 2018	Aug. 16, 2019	Filed March 2, 2020; denied as untimely
F57–4005611–8	Sept. 27, 2018	Aug. 23, 2019	None filed
F57–4007552–2	July 17, 2019	June 12, 2020	Filed June 27, 2020; granted

B. Facts relating to Harrison

Harrison Steel Castings Co. alleges that it made two entries of merchandise under HTSUS subheading 8302.30.3060¹⁸ that were subject to Section 301 tariffs. Case 20–147, ECF 14, ¶¶ 11–13 & Exhibit. That is, Customs’ classification of the merchandise under that subheading rendered the entries liable for Section 301 duties.

After the two entries in question, Customs granted exclusion requests submitted by other importers that covered the same category of products as Harrison’s (as well as other products). *Notice of Product Exclusions: China’s Acts, Policies, and Practices Related to Technol-*

¹⁷ Case 20–144, ECF 21–1, Pugh Decl. ¶¶ 7–12; Case 20–144, ECF 21, at 12 (government motion summarizing Pugh declaration); Case 20–144, ECF 23, at 16, 18 (ARP response summarizing same dates). There was a discrepancy between the entry dates found in the exhibit to ARP’s amended complaint and the dates found in the government’s motion and attached Pugh declaration. *See* Case 20–144, ECF 14, Exhibit; Case 20–144, ECF 21, at 12; *see generally* Case 20–144, ECF 21–1 (Pugh declaration setting forth entry, liquidation, and protest dates, as well as protest outcomes). The dates in Plaintiffs’ response to the government’s motion match the dates the government supplied. *See* Case 20–144, ECF 23, at 16. The court, therefore, presumes that ARP concedes the accuracy of the chronology described in the Pugh declaration submitted by the government.

¹⁸ HTSUS 8302.30.3060 refers to “[b]ase metal mountings, fittings and similar articles suitable for furniture, doors, staircases, windows, blinds, coachwork, saddlery, trunks, chests, caskets or the like; base metal hat racks, hat-pegs, brackets and similar fixtures; castors with mountings of base metal; automatic door closers of base metal; and base metal parts thereof. Other mountings, fittings and similar articles suitable for motor vehicles, and parts thereof. Other.”

ogy Transfer, Intellectual Property, and Innovation, 85 Fed. Reg. 17,158 (USTR Mar. 26, 2020). The notice created a new HTSUS tariff schedule subheading, 9903.88.43,¹⁹ applicable to articles covered by the exclusions and exempted that new heading from the Section 301 duties. 85 Fed. Reg. at 17,160. The exclusions were retroactive to September 24, 2018—prior to Harrison’s entries—and were to remain effective until August 7, 2020. *Id.* at 17,158.

The USTR published its exclusion notice on March 26, 2020, more than 180 days after the liquidation of Harrison’s entries. To protect its right to take advantage of these exclusions, which as noted above were not self-executing,²⁰ Harrison needed to file protective protests based on the then-pending exclusion requests prior to the 180-day protest deadline. As such exclusion requests were filed and pending prior to liquidation of Harrison’s entries, Harrison had the full 180 days to file protective protests as to the classification of both of its entries.²¹

On March 31, 2020—five days after Customs published notice of the relevant exclusion but more than 180 days after the liquidation dates of the two entries at issue—Harrison filed a protest challenging Customs’ assessment of Section 301 duties on these entries *and* two other entries not included in Harrison’s complaint. Case 20–147, ECF 20–1, Pugh Decl. ¶¶ 4–6; Case 20–147, ECF 22, at 25 (Harrison conceding accuracy of dates stated in Pugh declaration). Customs denied the protest as untimely as to the two entries at issue but

¹⁹ HTSUS 9903.88.43 applies to “[a]rticles the product of China, as provided for in U.S. note 20(vv) to this subchapter, each covered by an exclusion granted by the U.S. Trade Representative.” The referenced U.S. note 20(vv) contains a list of specific products for which the USTR granted exclusions. Among those products are “[m]ountings and fittings suitable for motor vehicles of iron or steel, of aluminum or of zinc, other than pneumatic cylinders (described in statistical reporting number 8302.30.3060).” HTSUS Chapter 99, Subchapter III, U.S. note 20(vv)(96). This description is the same one cited in Harrison’s complaint. See Case 20–147, ECF 14, ¶ 9. In short, the products covered by subheading 9903.88.43 (subject to an exclusion) were a narrow carve-out from the broader category of products subject to Section 301 duties under subheading 8302.30.3060.

²⁰ See *above* note 14; compare *also above* note 18 (citing broad HTSUS subheading subject to Section 301 tariffs that Harrison’s entries were classified under) with *above* note 19 (citing narrower exclusion with HTSUS subheading applicable to specific products, including Harrison’s entries).

²¹ Both the government and Plaintiffs agree that another importer filed the relevant exclusion requests on August 12, 2019, that the USTR granted them on March 21, 2020, and that they were published in the Federal Register on March 26, 2020. Case 20–147, ECF 20, at 16–17; Case 20–147, ECF 22, at 22. The government also notes that these exclusion requests were publicly available via the USTR’s website, which would have allowed Harrison to learn of the requests. Case 20–147, ECF 20, at 16. The exclusion requests were filed *prior* to the liquidation date for either of Harrison’s entries, meaning Harrison had the full 180 days available to file protective protests as to both entries.

granted the protest as to the other two entries.²² Case 20–147, ECF 20–1, Pugh Decl. ¶ 6; Case 20–147, ECF 22, at 26.

The following chart²³ summarizes Harrison’s entries at issue here that would have been eligible for reclassification based on the USTR’s March 26, 2020, exclusion notice had Harrison filed protective protests to preserve its rights pending the USTR’s consideration of the relevant exclusion requests:

Entry #	Entry date	Liquidation date	Protest status
555–0666283–6	Sept. 27, 2018	Aug. 23, 2019	Filed March 31, 2020; denied as untimely
555–0666818–9	Oct. 12, 2018	Sept. 6, 2019	Filed March 31, 2020; denied as untimely

C. These suits

After Customs denied their protests, ARP and Harrison brought these suits. As amended, their substantially identical complaints allege that they were the importers of record for the merchandise identified in the charts above and that they paid Section 301 duties on such merchandise. ECF 14, ¶¶ 4, 8, 11, 12.²⁴ Without articulating any legal theory or cause of action, they assert in their cryptic complaints that the U.S. government is “in wrongful possession of the [S]ection 301 duties on [the relevant] merchandise as the USTR has determined that no such duties apply *ab initio* to the date of implementation of 301 duties on [Lists 2 and 3] of the affected items previously announced by the USTR.” *Id.* ¶ 13. Plaintiffs seek a refund of “monies

²² Harrison’s protest as to the two entries not at issue here was successful because it was timely. Case 20–147, ECF 201, Pugh Decl. ¶ 6 (“[Customs] accepted Protest No. 390120–109473 as timely with respect to the two other entries, which are not at issue here, and for which Harrison Steel received a refund.”); Case 20–147, ECF 22, at 26 (Harrison conceding that Customs “granted the protest with respect to the other two entries that are not at issue”).

²³ Harrison’s amended complaint alleges an entry date of October 15, 2020, for entry ‘6818–9, Case 20–147, ECF 14, Exhibit, but its opposition to the government’s motion states—consistent with the Pugh declaration—that October 12 was the entry date. Case 20–147, ECF 22, at 25.

²⁴ Because the two amended complaints are substantively identical aside from references to the plaintiffs’ names and a few minor wording differences, the paragraph numbering is the same in both amended complaints, and both appear at CM/ECF docket entry 14 in their respective cases, citations herein to the amended complaints refer simply to ECF 14.

originally collected beginning on August 23, 2018 pursuant to the authority of [Section 301].” *Id.* ¶ 5.²⁵

The government moves to dismiss both cases under Rule 12(b)(1) for lack of subject-matter jurisdiction and, alternatively, under Rule 12(b)(6) for failure to state a claim. Case 20–144, ECF 21, at 4 (citing USCIT R. 12(b)(1) and 12(b)(6)); Case 20–147, ECF 20 (same). Plaintiffs oppose. Case 20–144, ECF 23; Case 20–147, ECF 22.²⁶ As no party has requested oral argument, the court decides the motion on the papers.

Standard of Review

A Rule 12(b)(1) motion to dismiss for lack of subject-matter jurisdiction may take either of two general forms—it may present a “facial” attack on the pleading or a challenge to the “factual” basis for the court’s jurisdiction. *Cedars-Sinai Med. Ctr. v. Watkins*, 11 F.3d 1573, 1583 (Fed. Cir. 1993). In either situation, the plaintiff has the burden of establishing jurisdiction. *Id.*

A “facial” challenge is one in which the movant “simply challenges the court’s subject matter jurisdiction based on the sufficiency of the pleading’s allegations,” in which case the allegations are accepted as true and construed in a light most favorable to the complainant. *Id.* (citing *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974)). The same standard governs a Rule 12(b)(6) motion to dismiss for failure to state a claim. *SAP Am., Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1166 (Fed. Cir. 2018) (describing Rule 12(b)(6) standard as requiring the court to accept all well-pleaded facts as true and view them in the light most favorable to the plaintiff, who must plead sufficient facts to state a claim to relief that is plausible on its face).

A “factual” challenge, in contrast, is one in which the movant “denies or controverts the pleader’s allegations of jurisdiction,” and in those cases “the movant is deemed to be challenging the factual basis for the court’s subject matter jurisdiction.” *Id.* In cases involving “factual” challenges, “the allegations in the complaint are not controlling and only uncontroverted factual allegations are accepted as true

²⁵ ARP’s amended complaint includes entry 7552–2 as among those entries for which it is entitled to a refund. After ARP filed its amended complaint, as discussed above Customs granted ARP’s protest and refunded Section 301 duties for that entry. ARP acknowledges this fact. See ECF 23, at 18. Therefore, as to that entry, ARP’s suit is moot, and the court lacks constitutional subject-matter jurisdiction. Cf. *Umanzor v. Lambert*, 782 F.2d 1299, 1301 n.2 (5th Cir. 1986) (Gee, J.) (“Whether there exists an Article III case or controversy, and thus Constitutional subject-matter jurisdiction, is analytically distinct from whether the pertinent . . . statutes confer statutory subject-matter jurisdiction.”).

²⁶ The government’s motion and the plaintiffs’ response thereto are identical in both cases. Accordingly, citations to the parties’ briefing from this point forward in this opinion are to the filings in Case 20–144, ECF 21 (government’s motion) and ECF 23 (plaintiffs’ response).

for purposes of the motion.” *Id.* (cleaned up) (citing, *inter alia*, *Gibbs v. Buck*, 307 U.S. 66, 72 (1939)); *see also Aerolineas Argentinas v. United States*, 77 F.3d 1564, 1572 (Fed. Cir. 1996) (“A party may challenge the court’s jurisdictional authority by denying or controverting necessary jurisdictional allegations. When such challenge is made the court may consider evidence outside the pleadings to resolve the issue.” (cleaned up and citing, *inter alia*, *KVOS, Inc. v. Associated Press*, 299 U.S. 269, 278 (1936))).

Discussion

Plaintiffs’ amended complaints invoke 28 U.S.C. § 1581(i)²⁷ as the basis for subject-matter jurisdiction. ECF 14, ¶ 2. This provision facially confers jurisdiction, as both complaints assert claims that arise from Section 301 duties that the USTR imposed “on the importation of merchandise for reasons other than the raising of revenue.” 28 U.S.C. § 1581(i)(1)(B).

In its motion to dismiss for lack of subject-matter jurisdiction, the government argues that Plaintiffs challenge “the tariff classification and applicable duty rate that [Customs] applied to these entries at liquidation.” ECF 21, at 28. The government further argues that Customs’ classification of these entries was a protestable decision by Customs, meaning that Plaintiffs could have protested Customs’ classification decisions and then brought this suit under jurisdiction conferred by § 1581(a). *Id.* Therefore, according to the government, because jurisdiction would have existed under § 1581(a) had Plaintiffs timely protested,²⁸ jurisdiction is absent under § 1581(i). ECF 21, at 22–23.²⁹

As a preliminary matter, Plaintiffs acknowledge that § 1581(i) is a jurisdictional grant of last resort. *See* ECF 23, at 2 (“The Federal

²⁷ Section 1581(i) provides in relevant part:

(1) In addition to the jurisdiction conferred upon the [CIT] by subsections (a)–(h) of this section and subject to the exception set forth in subsection (j) of this section, the [CIT] shall have exclusive jurisdiction of any civil action commenced against the United States, its agencies, or its officers, that arises out of any law of the United States providing for—

(A) revenue from imports or tonnage;
 (B) tariffs, duties, fees, or other taxes on the importation of merchandise for reasons other than the raising of revenue;
 (C) embargoes or other quantitative restrictions on the importation of merchandise for reasons other than the protection of the public health or safety; or
 (D) administration and enforcement with respect to the matters referred to in subparagraphs (A) through (C) of this paragraph and subsections (a)–(h) of this section.

²⁸ “Section 1515 requires an aggrieved party to file a protest under section 1514, which Customs must either grant or deny, before the party may sue under section 1581(a).” *Mitsubishi Elecs. Am., Inc. v. United States*, 44 F.3d 973, 976 (Fed. Cir. 1994).

²⁹ As the government’s motion relies on extrinsic evidence, it constitutes a factual challenge to subject-matter jurisdiction.

Circuit’s ‘unambiguous precedents . . . make clear that [§ 1581(i)’s] scope is strictly limited,’ and that statutory procedures ‘cannot be easily circumvented.’ ” (alterations Plaintiffs’) (quoting *Int’l Custom Prods., Inc. v. United States*, 467 F.3d 1324, 1327 (Fed. Cir. 2006))). It is well established that “[w]hen relief is prospectively and realistically available under another subsection of 1581, invocation of subsection (i) is incorrect. Where another remedy is or could have been available, the party asserting § 1581(i) jurisdiction has the burden to show that the remedy would be manifestly inadequate.” *Sunpreme Inc. v. United States*, 892 F.3d 1186, 1191 (Fed. Cir. 2018) (cleaned up).

Without this limiting interpretation, the court’s residual jurisdiction under § 1581(i) “‘would threaten to swallow the specific grants of jurisdiction contained within the other subsections and their corresponding requirements.’ ” *Chemsol, LLC v. United States*, 755 F.3d 1345, 1349 (Fed. Cir. 2014) (quoting *Norman G. Jensen, Inc. v. United States*, 687 F.3d 1325, 1329 (Fed. Cir. 2012)).

Thus, determining whether jurisdiction exists under § 1581(i) involves two questions. First, the court must “consider whether jurisdiction under a subsection other than § 1581(i) was available.” *Erwin Hymer Group N. Am., Inc. v. United States*, 930 F.3d 1370, 1375 (Fed. Cir. 2019) (cleaned up). “Second, if jurisdiction was available under a different subsection of § 1581, [the court must] examine whether the remedy provided under that subsection is ‘manifestly inadequate.’ If the remedy is not manifestly inadequate, then jurisdiction under § 1581(i) is not proper.” *Id.* (cleaned up).

The court therefore considers whether § 1581(a) conferred jurisdiction over Plaintiffs’ claims as the government contends, and if so whether it provided an adequate remedy.

I.

Section 1581(a) provides that the CIT shall have “exclusive jurisdiction of any civil action commenced to contest the denial of a protest, in whole or in part, under section 515 of the Tariff Act of 1930.” 28 U.S.C. § 1581(a). Section 515 of the Tariff Act in turn establishes procedures for Customs to allow or deny a protest filed in accordance with 19 U.S.C. § 1514 and authorizes suing in the CIT to challenge a denial of any such protest. *See* 19 U.S.C. § 1515; *see also* 28 U.S.C. § 2631(a) (authorizing suit in the CIT to contest Customs’ denial of a protest filed under 19 U.S.C. § 1514).

The government argues that Plaintiffs’ challenge is to Customs’ “liquidation of their entries in a manner that did not account for the product exclusions granted by the USTR.” ECF 21, at 25. Specifically,

the government contends that Plaintiffs' challenge is to Customs' liquidation of their entries based on the wrong HTSUS tariff classification. *Id.* at 28. Thus, according to the government, "this process involved a protestable decision by [Customs]," *id.* at 25, meaning that § 1581(a) provides the applicable jurisdictional grant. In support of this argument, the government cites authority for the proposition that Customs "may make protestable decisions in the process of implementing another agency's instructions or orders." See ECF 21, at 26–27 (citing *Xerox Corp. v. United States*, 289 F.3d 792, 795 (Fed. Cir. 2002), *overruled on other grounds by Sunpreme Inc. v. United States*, 946 F.3d 1300 (Fed. Cir. 2020); *Belgium v. United States*, 551 F.3d 1339, 1347 (Fed. Cir. 2009)).

Plaintiffs do not dispute the principle that Customs can make protestable decisions while implementing another agency's instructions. Instead, they retort that their mere filing—and Customs' entertaining—of protests as to some of the entries at issue in this suit (and others) does not foreclose jurisdiction under § 1581(i) if Customs' role in implementing Section 301 tariffs and exclusions was ministerial rather than substantive for § 1581(a) purposes. ECF 23, at 41–46. They characterize Customs' role as ministerial because the USTR first imposed and then later rescinded the Section 301 tariffs, and "there is no reason to require exhaustion of [Customs'] administrative procedures when a party challenges a decision in which [Customs] played no part and over which [Customs] ha[d] no control." *Id.* at 45. In support of these arguments, Plaintiffs cite *United States v. U.S. Shoe Corp.*, 523 U.S. 360 (1998); *Gilda Industries, Inc. v. United States*, 446 F.3d 1271 (Fed. Cir. 2006); *Industrial Chemicals, Inc. v. United States*, 941 F.3d 1368 (Fed. Cir. 2019); and *Mitsubishi Electronics America, Inc. v. United States*, 44 F.3d 973 (Fed. Cir. 1994).

In *U.S. Shoe*, an exporter brought an action in the CIT under § 1581(i) challenging the constitutionality of a harbor maintenance tax after Customs denied its protest. The Supreme Court held that § 1581(i), rather than § 1581(a), conferred jurisdiction, reasoning that while "[a] protest [under § 1514] is an essential prerequisite when one challenges an *actual* Customs decision," the exporter challenged no such decision. 523 U.S. at 365 (emphasis added). In collecting the harbor maintenance tax, Customs "perform[ed] no active role, . . . undert[ook] no analysis or adjudication, issue[d] no directives," and "impose[d] no liabilities." *Id.* (cleaned up). "[I]nstead, Customs merely passively collect[ed]" the tax payments. *Id.* Thus, Customs' essentially ministerial function in collecting tax payments was not an "actual" Customs decision for § 1514 purposes.

In *Gilda*, an importer brought an action in the CIT under § 1581(i) after Customs denied its protest of Section 301 retaliatory duties imposed at the direction of the USTR. The importer's suit challenged the USTR's authority to impose the duties and sought refunds as to the protested entries as well as prospective relief as to future entries (by removal of its products from the USTR's retaliatory list).

On appeal, the Federal Circuit held that § 1581(i) rather than § 1581(a) conferred jurisdiction. The court reasoned that because Customs played no role in the USTR's issuance of the retaliatory list, there was no reason "to require exhaustion of Customs' administrative procedures" as Customs had no authority to overturn the USTR's decision and to "grant [retrospective] relief in a protest action challenging imposition of the duty." 446 F.3d at 1276. Put another way, the importer's protest did not challenge Customs' classification of its entries per se or any other decision within Customs' purview, but rather the USTR's authority to impose the Section 301 duties in the first instance, which Customs had no authority to overturn. Moreover, insofar as the importer sought prospective relief in the form of termination of the USTR's retaliatory list or removal of its goods from that list, such relief was "beyond the scope of issues that could be protested under 19 U.S.C. § 1514(a)." *Id.* at 1277.

In *Industrial Chemicals*, retroactive legislation exempted an importer's entries from duties but imposed a deadline to request a refund. The importer unsuccessfully requested refunds from Customs after the statutory deadline, and thereafter protested. After Customs denied the protest, the importer brought an action under § 1581(a) in the CIT, which dismissed the case for lack of jurisdiction. The Federal Circuit affirmed, holding that § 1581(a) did not supply jurisdiction because Customs' denial of the protests was a ministerial decision mandated by statute—Customs lacked authority to extend the deadline to seek a refund. *See* 941 F.3d at 1372.³⁰

In *Mitsubishi*, an importer brought an action in the CIT challenging Customs' denial of its protest of its antidumping duty rate and invoked § 1581(a) jurisdiction. The Federal Circuit held that because the Commerce Department determined antidumping duty rates, Customs' role in collecting those duties was "ministerial" rather than "a decision under section 1514(a)," and § 1581(a) did not confer jurisdiction. 44 F.3d at 977.

³⁰ The importer did not invoke § 1581(i) as an alternative basis for subject-matter jurisdiction in the CIT and unsuccessfully attempted to do so on appeal. *See* 941 F.3d at 1373 n.3. *But cf.* 28 U.S.C. § 1631 (providing that when a federal court lacks jurisdiction, "the court shall, if it is in the interest of justice, transfer such action or appeal to any other such court . . . in which the action or appeal could have been brought at the time it was filed or noticed").

Given the teaching of *U.S. Shoe, Gilda, Industrial Chemicals*, and *Mitsubishi*, jurisdiction under § 1581(a) turns on whether Plaintiffs challenge an “actual Customs decision” for purposes of 19 U.S.C. § 1514(a)(2), *U.S. Shoe*, 523 U.S. at 365, or instead challenge a decision of the USTR (or something else). To answer that, the court must determine the “true nature of the action,” *Hutchison Quality Furniture, Inc. v. United States*, 827 F.3d 1355, 1360 (Fed. Cir. 2016), “to discern *the particular agency action* that is the source of the alleged harm so that [a court] may identify which subsection of § 1581 provides the appropriate vehicle for judicial review.” *Id.* (emphasis added). This determination “depend[s] upon the attendant facts asserted in the pleadings.” *Id.*

ARP’s complaint³¹ alleges in relevant part:

4. Plaintiff, ARP, is the importer of record of the merchandise upon which the retaliatory duties that are the subject of this action were assessed and paid.

5. This case is brought to compel the Defendant United States to refund monies originally collected beginning on August 23, 2018 pursuant to the authority of 19 U.S.C. § 2411.

6. Subsequently on July 31, 2019 (84 Fed. Reg. 37381 et seq.) the USTR announced certain retroactive exclusions from the effects of retaliatory duties under USTR Docket 2018–0018, including *products imported under subheading 3901.90.1000, Harmonized Tariff of the United States* [sic] (“HTSUS”).

* * *

11. The imported merchandise involved in this claim consists of the items entered through the Ports of the United States on or after August 23, 2018 *under subheading 3901.90.1000, HTSUS*. See Exhibit.

12. The regular duties, taxes and fees plus USTR applied duties under section 301 of the Trade Act of 1974 have been paid.

13. The United States remains in wrongful possession of the section 301 duties on ARP’s entries of *3901.90.1000, HTSUS, merchandise* as the USTR has determined that no such duties apply *ab initio* to the date of implementation of 301 duties on “List 2” of the affected items previously announced by the USTR.

Case 20–144, ECF 14, ¶¶ 4–6, 11–13 (emphasis added).

³¹ Harrison’s complaint is identical in all material respects except as to the applicable merchandise, HTSUS subheading (8302.30.3060), USTR list, and dates. See Case 20–147, ECF 14, ¶¶ 4–6, 11–13.

On the face of Plaintiffs' complaints, "the particular agency action that is the source of the alleged harm" is the entry of the merchandise under the HTSUS subheadings subject to Section 301 duties. That is, Plaintiffs challenge Customs' classification of the merchandise under HTSUS subheadings 3901.90.1000 (in the case of ARP) and 8302.30.3060 (as to Harrison). According to Plaintiffs, the USTR's retroactive exclusions rendered Customs' classification of their merchandise under those subheadings "wrongful."

Plaintiffs' response to the government's motion confirms this reading of their complaints. They repeatedly emphasize that they seek to "enforce" the USTR's Section 301 exclusions. *See* ECF 23, at 18 (stating that in filing its protests, "ARP was seeking to enforce the USTR's retroactive exclusion decision"); at 42 ("Plaintiffs here seek enforcement of the USTR's decisions to retroactively rescind 301 duties that the USTR determined never should have been assessed and collected in the first instance"); at 44 ("[I]t is the USTR's decisions that Plaintiffs seek to enforce in their cases"); at 46 ("Defendant's motion, if granted, would deny Plaintiffs access to the Court to *enforce the USTR's decisions* relative to their imports of goods retroactively excluded from . . . 301 duties, and make the decisions of the USTR *subject to an absurd interpretation by [Customs].*" (emphasis added)).

Unlike the importer in *Gilda*, Plaintiffs do not challenge the USTR's authority to impose retaliatory tariffs; instead, they seek to enforce the USTR's exclusion decisions. Their quarrel is with what they characterize as Customs' "absurd interpretation" of the USTR's retaliatory list, i.e., classification of their entries, given the exclusions. Thus, unlike *Gilda* where the challenged source of the harm to the importer was the USTR's retaliatory list, "the particular agency action that is the source of" Plaintiffs' harm here is Customs' classifications of their entries under HTSUS subheadings tagged with Section 301 duties—classifications that the USTR's retroactive exclusions rendered erroneous. In "seeking to enforce" the USTR's retroactive exclusions, Plaintiffs challenge Customs' classification decisions.

But Customs' classifications of Plaintiffs' entries were protestable "decisions" of that agency by statutory definition. *See* 19 U.S.C. § 1514(a)(2) (Customs' "decisions" as to "classification . . . shall be final and conclusive upon all persons . . . unless a protest is filed in accordance with this section"); *see also Xerox Corp. v. United States*, 289 F.3d 792, 794 (Fed. Cir. 2002) ("[F]indings of Customs as to 'the classification and rate and amount of duties chargeable' are protest-

able to Customs under 19 U.S.C. § 1514(a)(2).”), *overruled on other grounds by Sunpreme Inc. v. United States*, 946 F.3d 1300 (Fed. Cir. 2020).

Customs’ classification determinations as to Plaintiffs’ entries were necessarily protestable “decisions” because the agency had to “[f]irst, ascertain[] the meaning of specific terms in the [HTSUS] provision[,] and second, determin[e] whether the goods come within the description of those terms.” *StoreWALL, LLC v. United States*, 644 F.3d 1358, 1361–62 (Fed. Cir. 2011) (noting that “[p]roper classification of goods under the HTSUS entails a two step process”). The former determination was a question of law, *Baxter Healthcare Corp. of P.R. v. United States*, 182 F.3d 1333, 1337 (Fed. Cir. 1999), while the latter was a question of fact, *see id.* (“Determining whether a particular imported item falls within the scope of the various classifications as properly construed is a question of fact.” (quoting *Bauerhin Techs. Ltd. P’ship v. United States*, 110 F.3d 774, 776 (Fed. Cir. 1997))).

Unlike in *U.S. Shoe* or *Mitsubishi*, Customs here performed more than a passive or ministerial function; in classifying Plaintiffs’ entries under HTSUS subheadings subject to Section 301 duties, it made substantive legal (interpreting the HTSUS subheadings) and factual (determining whether the entries fell within those subheadings) determinations that it had the authority to make. These determinations required Customs to exercise “genuine interpretive or comparable judgments.” *Thyssenkrupp*, 886 F.3d at 1225.

Accordingly, this case “presents exactly the scenario in which § 1514’s protest provisions can be invoked because Customs engaged in some sort of decision-making process.” *Chemsol, LLC v. United States*, 755 F.3d 1345, 1351 (Fed. Cir. 2014) (cleaned up).

And unlike in *Gilda* and *Industrial Chemicals*, Customs indisputably had the authority to grant Plaintiffs their requested relief in these protest actions—reclassification of their entries under different subheadings that were not subject to the retaliatory duties, resulting in the refund of the previously paid duties. Indeed, precisely because Customs had *and* exercised such authority after ARP timely protested as to one entry, *see above* note 25, this suit is partially moot.

Because Plaintiffs contend that the USTR’s exclusions rendered Customs’ classification of their entries erroneous, they were statutorily obligated to timely protest under 19 U.S.C. § 1514(a)(2). That Customs’ classification decisions became retroactively erroneous due to the USTR’s exclusions rather than some other reason is immaterial; the obligation to protest a Customs classification error does not turn on whether it was erroneous *ab initio* or later became erroneous due to retroactive legislation or (as here) administrative action.

Therefore, as to Plaintiffs' claims for refunds of Section 301 duties that are not moot, jurisdiction would have existed here under § 1581(a) had Plaintiffs timely protested Customs' classification decisions that resulted in their erroneous liability for Section 301 duties.

II.

Even if jurisdiction otherwise exists under another subsection of § 1581, subject-matter jurisdiction will nevertheless attach under subsection (i) if "the remedy provided under that other subsection would be manifestly inadequate." *Int'l Custom Prods., Inc. v. United States*, 467 F.3d 1324, 1327 (Fed. Cir. 2006) (quoting *Norcal / Crosetti Foods, Inc. v. United States*, 963 F.2d 356, 359 (Fed. Cir. 1992)).

"[T]o be manifestly inadequate, the protest must be an exercise in futility, or incapable of producing any result; failing utterly of the desired end through intrinsic defect; useless, ineffectual, vain." *Sunpreme Inc. v. United States*, 892 F.3d 1186, 1193–94 (Fed. Cir. 2018) (cleaned up and quoting *Hartford Fire Ins. Co. v. United States*, 544 F.3d 1289, 1294 (Fed. Cir. 2008)). It is axiomatic that a party's failure to timely invoke a remedy does not make it inadequate. *Juice Farms, Inc. v. United States*, 68 F.3d 1344, 1346 (Fed. Cir. 1995) (citing *Omni U.S.A., Inc. v. United States*, 840 F.2d 912, 915 (Fed. Cir. 1988)).

ARP's moot claim (due to its successful protest) as to entry '7552–2 and Harrison's successful protests as to two entries not included in its complaint amply demonstrate that far from being exercises in futility, timely protests on their part as to the remaining entries at issue in these suits were opportunities for picking low-hanging fruit. *Cf. Carbon Activated Corp. v. United States*, 6 F. Supp. 3d 1378, 1380 (CIT 2014) (finding the remedy adequate where §1581(a) "would have been available to Plaintiff" if it had filed a protest within 180 days of liquidation, but Plaintiff filed a protest "three years after the alleged erroneous liquidation"), *aff'd*, 791 F.3d 1312 (Fed. Cir. 2015). Here, as in *Carbon Activated*, "Plaintiff[s] had an adequate remedy for [their] alleged erroneous liquidation[s], but [they] lost that remedy because [their] protest[s] w[ere] untimely" or not made at all, "not because the remedy was inadequate." *Id.*

Juice Farms is also instructive. In that case, Commerce suspended liquidation of an importer's entries pending completion of an anti-dumping investigation, but Customs mistakenly liquidated 20 entries while the suspension orders remained in effect and issued "bulletin notices" advising of the liquidations. The importer, however, did not diligently check for bulletin notices and learned of the liquidations only after the protest period had expired. 68 F.3d at 1345.

The Federal Circuit observed that by statute, “all liquidations, whether legal or not, are subject to the timely protest requirement” and found that the bulletin notices constituted adequate notice to the importer to trigger the protest period. *Id.* at 1346. Notably, the court also explained that “the importer[] bears the burden to check for posted notices of liquidation and to protest timely. Juice Farms cannot circumvent the timely protest requirement by claiming that its own lack of diligence requires equitable relief under 28 U.S.C. § 1581(i).” *Id.* (cleaned up).

The same is true here—Plaintiffs had adequate notice of the procedures they were to follow to correct Customs’ erroneous classification decisions, and the record shows that they did follow those procedures to receive refunds as to certain entries, thus partially mooted this litigation. As to the entries remaining at issue here, however, Plaintiffs regrettably dropped the ball. *Cf. Degussa Canada Ltd. v. U.S.*, 87 F.3d 1301, 1304 (Fed. Cir. 1996) (“Degussa’s unfortunate situation of having paid a duty that, it subsequently turned out, it should not have paid, is of its own making. Degussa could have avoided the problem if it had filed a timely protest to the . . . classification [of its entry].”).

Conclusion

For the reasons explained above, the court lacks constitutional subject-matter jurisdiction as to one of ARP’s entries and statutory subject-matter jurisdiction as to the remainder of its and Harrison’s entries.³² The court therefore grants the government’s Rule 12(b)(1) motions to dismiss and will enter judgment dismissing these cases. *See* USCIT R. 58(a).

Dated: June 11, 2021
New York, NY

M. Miller Baker

M. MILLER BAKER, JUDGE

³² Because subject-matter jurisdiction is absent here, the court lacks authority to address the government’s alternative Rule 12(b)(6) grounds for dismissal on the merits. *See Friends of the Everglades v. U.S. E.P.A.*, 699 F.3d 1280, 1288 (11th Cir. 2012) (Pryor, J.) (“[A]n inferior court must have both statutory and constitutional jurisdiction before it may decide a case on the merits”) (citing *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 101–02 (1998)).

Slip Op. 21–74

MID CONTINENT STEEL & WIRE, INC., Plaintiff, v. UNITED STATES,
Defendant, and OMAN FASTENERS, LLC, Defendant-Intervenor.

Before: Richard K. Eaton, Judge
Consol. Court No. 18–00235

[U.S. Department of Commerce’s final results are sustained.]

Dated: June 14, 2021

Adam H. Gordon, The Bristol Group PLLC of Washington, DC, argued for Plaintiff. With him on the brief was *Ping Gong*.

Sosun Bae, Trial Attorney, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of Washington, DC, argued for Defendant. With her on the brief were *Joseph H. Hunt*, Assistant Attorney General, *Jeanne E. Davidson*, Director, and *Patricia M. McCarthy*, Assistant Director. Of Counsel on the brief was *Ian A. McInerney*, Attorney, Office of the Chief Counsel for Trade Enforcement & Compliance, U.S. Department of Commerce, of Washington, DC.

Andrew Caridas, Perkins Coie LLP of Washington, DC, argued for Defendant-Intervenor. With him on the brief were *Michael P. House* and *Shuaiqi Yuan*.

OPINION

Eaton, Judge:

This consolidated case involves a challenge to the final results of the United States Department of Commerce’s (“Commerce” or the “Department”) second administrative review of the antidumping duty order on steel nails from the Sultanate of Oman (“Oman”), covering the period of July 1, 2016, through June 30, 2017.¹ See *Certain Steel Nails From the Sultanate of Oman*, 83 Fed. Reg. 58,231 (Dep’t Commerce Nov. 19, 2018) (“Final Results”), and accompanying Issues and Decision Mem. (Nov. 9, 2018), P.R. 98 (“Final IDM”). Jurisdiction is found under 28 U.S.C. § 1581(c) (2018) and 19 U.S.C. § 1516a(a)(2)(B)(iii) (2018).

By its motion for judgment on the agency record, Plaintiff Mid Continent Steel & Wire, Inc. (“Plaintiff” or “Mid Continent”), a U.S. producer of steel nails and the petitioner in the underlying proceeding, argues that substantial evidence does not support Commerce’s decision to use the financial statement of Amatei Incorporated (“Amatei”), a Japanese nail manufacturer, to construct value for the profit and indirect selling expenses of Oman Fasteners, LLC (“Oman

¹ *Oman Fasteners, LLC v. United States*, No. 18–00244 is consolidated under the lead case, *Mid Continent Steel & Wire, Inc. v. United States*, No. 18–00235. See Order dated Aug. 8, 2019, ECF No. 39; see also *Oman Fasteners, LLC v. United States*, No. 18–00244, 43 CIT ___, 2019 WL 3763952 (Aug. 8, 2019) (denying government’s motion to dismiss for lack of subject matter jurisdiction).

Fasteners”), a mandatory respondent in the review. For Plaintiff, Commerce should have used the financial statement of Astrotech Steels Private Limited (“Astrotech”), an Indian nail manufacturer. *See* Pl.’s Mem. Supp. Mot. J. Agency R., ECF No. 50–1 (“Pl.’s Br.”); Pl.’s Reply, ECF No. 57. Plaintiff asks the court to remand the Final Results to Commerce “to reconsider its determination to rely on Amatei’s financial statements to calculate [constructed value] profit and selling expenses.”² Pl.’s Br. 14.

Defendant the United States (“Defendant”), on behalf of Commerce, opposes Mid Continent’s motion, and asks the court to sustain the Final Results. *See* Def.’s Opp’n Pls.’ Mots. J. Agency R., ECF No. 55 (“Def.’s Br.”). For its part, Oman Fasteners—which received a zero percent weighted-average dumping margin—also asks the court to sustain the Final Results.³ *See* Def.-Int.’s Opp’n Pl.’s Mot. J. Agency R., ECF No. 56.

Because substantial evidence supports Commerce’s use of Amatei’s financial statement to determine constructed value profit and indirect selling expenses, the court denies Plaintiff’s motion and sustains the Final Results.⁴

BACKGROUND

On July 3, 2017, Commerce published a notice of opportunity to request administrative review of the antidumping duty order on steel

² Plaintiff uses “selling expenses” and “indirect selling expenses” interchangeably in its brief. *Compare, e.g.*, Pl.’s Br. 14 (emphasis added) (asking that the court remand for Commerce “to calculate [constructed value] profit and *selling expenses*”), *with* Pl.’s Br. 1 (emphasis added) (“Commerce’s determination to rely on Amatei’s financial statements to calculate [constructed value] profit and *indirect selling expenses* was not supported by substantial evidence . . .”). For purposes of analyzing the sole issue in this case, *i.e.*, whether substantial evidence supports Commerce’s choice of financial statement as the source of data to construct value for the selling/indirect selling expenses, the direct or indirect nature of selling expenses does not seem to matter, and no party raises it as an issue. The court shall refer to “indirect selling expenses” as that is the term Commerce consistently uses in the Final IDM.

³ In this consolidated action, Oman Fasteners intervened on the side of Defendant to ask the court to sustain the Final Results. It is also the Consolidated Plaintiff. *See* Order dated Aug. 8, 2019. As Consolidated Plaintiff, Oman Fasteners has filed a motion for judgment on the agency record that challenges certain of Commerce’s findings. *See* Consol. Pl.’s Mem. Supp. Mot. J. Agency R., ECF No. 51–1; Consol. Pl.’s Reply, ECF No. 58. At oral argument, the court clarified, and the parties agreed, that if the court were to remand the Final Results, thus, theoretically placing in jeopardy Oman Fasteners’ zero percent margin, it would schedule another oral argument to hear Oman Fasteners’ claims. *See* Oral Argument at 18:44, *Mid Continent Steel & Wire, Inc. v. United States*, Consol. Ct. No. 18–00235, <https://www.cit.uscourts.gov/audio-recordings-select-publiccourt-proceedings>. If, on the other hand, the court sustained the Final Results, there would be no need to address those claims, as they would be moot. As discussed *infra*, because the court sustains the Final Results, the court denies Oman Fasteners’ motion, as moot.

⁴ This is the only issue that remains after the court granted the consent motion of Plaintiff Mid Continent to dismiss Counts I and II of its complaint. *See* Order dated Dec. 19, 2019, ECF No. 45.

nails from Oman. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Admin. Rev.*, 82 Fed. Reg. 30,833 (Dep't Commerce July 3, 2017). After receiving requests from Mid Continent and Oman Fasteners, Commerce initiated an administrative review covering the period of July 1, 2016, through June 30, 2017. *See Initiation of Antidumping and Countervailing Duty Admin. Revs.*, 82 Fed. Reg. 42,974 (Dep't Commerce Sept. 13, 2017). Oman Fasteners was a mandatory respondent, along with one other company.⁵

Commerce issued to Oman Fasteners an initial antidumping questionnaire and several supplemental questionnaires, asking for, *inter alia*, the company's cost and sales data for the period of review. *See Commerce's Initial Quest. Oman Fasteners* (Sept. 28, 2017), P.R. 10. Oman Fasteners timely responded to these questionnaires. *See Preliminary Decision Mem.* (May 7, 2018), P.R. 81 ("PDM") at 3.

Based on Oman Fasteners' reported sales data, Commerce determined that the company's sales in Oman did not provide a viable basis for calculating the normal value of its merchandise. Rather, Commerce found that the aggregate quantity of Oman Fasteners' sales in its home market during the period of review, or its sales in a third-country market, did not meet the statutory threshold for viability—*i.e.*, five percent of its U.S. sales during the same period. *See PDM* at 11. That is, the aggregate quantity of Oman Fasteners' sales in Oman was below the statutory minimum for Commerce to use the company's actual data to calculate the normal value of its merchandise. *See* 19 U.S.C. § 1677b(a)(1)(B)(ii)(II), (1)(C)(ii). Thus, the Department determined it would construct a value for normal value, pursuant to 19 U.S.C. § 1677b(e).⁶ *See id.* § 1677b(a)(4).

⁵ The other mandatory respondent, a collapsed entity comprised of the Overseas International Steel Industry LLC and Overseas Distribution Services Inc., is not a party to this action.

⁶ The "constructed value of imported merchandise shall be an amount equal to the sum of":

(1) the cost of materials and fabrication or other processing of any kind employed in producing the merchandise, during a period which would ordinarily permit the production of the merchandise in the ordinary course of trade;

(2)(A) the actual amounts incurred and realized by the specific exporter or producer being examined in the investigation or review for selling, general, and administrative expenses, and for profits, in connection with the production and sale of a foreign like product, in the ordinary course of trade, for consumption in the foreign country, or

(B) if actual data are not available with respect to the amounts described in subparagraph (A), then—

(i) the actual amounts incurred and realized by the specific exporter or producer being examined in the investigation or review for selling, general, and administrative expenses, and for profits, in connection with the production and sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise,

Constructed value is based on the sum of “the cost of manufacture, selling general and administrative expenses, and profit.” 19 C.F.R. § 351.405(a) (2018). For the “cost of manufacture” component of constructed value, Commerce used Oman Fasteners’ submitted data. *See* PDM at 12 (“We relied on Oman Fasteners’ submitted materials and fabrication costs, G&A, interest expenses, and U.S. packing costs, except in instances where we determined that the information was not valued correctly”). This is in keeping with the statutory preference to use the producer’s actual cost data, where possible, as provided in § 1677b(f).⁷ *See* 19 U.S.C. § 1677b(f)(1)(A) (“Costs shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles of the exporting country (or the producing country, where appropriate) and reasonably reflect the costs associated with the production and sale of the merchandise.”).

For profit and indirect selling expenses, however, Commerce determined it would construct value based on information found in a proxy or surrogate company’s financial statement. *See* PDM at 12. Commerce considered nine companies’ statements, including those of Astrotech, an Indian producer of steel nails favored by Mid Continent, and Amatei, a Japanese steel nail manufacturer that Commerce ultimately selected as the surrogate company.⁸

When selecting from among the available surrogate companies’ financial statements, Commerce applied a judicially approved framework, consisting of four criteria:

(1) the similarity between a potential surrogate’s business operations and products and the products and operations of the respondent; (2) the extent to which a potential surrogate has

(ii) the weighted average of the actual amounts incurred and realized by exporters or producers that are subject to the investigation or review (other than the exporter or producer described in clause (i)) for selling, general, and administrative expenses, and for profits, in connection with the production and sale of a foreign like product, in the ordinary course of trade, for consumption in the foreign country, or

(iii) the amounts incurred and realized for selling, general, and administrative expenses, and for profits, based on any other reasonable method, except that the amount allowed for profit may not exceed the amount normally realized by exporters or producers (other than the exporter or producer described in clause (i)) in connection with the sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise; and

(3) the cost of all containers and coverings of whatever nature, and all other expenses incidental to placing the subject merchandise in condition packed ready for shipment to the United States.

¹⁹ U.S.C. § 1677b(e).

⁷ Commerce’s valuation of manufacturing costs is not contested.

⁸ None of the other companies’ financial statements are at issue.

sales in the United States and the home market; (3) the contemporaneity of the surrogate data; and (4) the similarity of the customer base between a potential surrogate and the respondent.

PDM at 13; Final IDM at 6; *see also* *Mid Continent Steel & Wire, Inc. v. United States*, 941 F.3d 530, 542–43 (Fed. Cir. 2019) (upholding as a reasonable interpretation of the statute Commerce’s analysis applying the four criteria framework). These criteria are designed to aid Commerce in selecting surrogate financial statements that will reasonably approximate the exporter’s or producer’s sales experience *in the home market*. *See* *Mid Continent*, 941 F.3d at 542 (citing *SKF USA Inc. v. United States*, 263 F.3d 1369, 1373 (Fed. Cir. 2001) for the proposition that “constructed value serves as a proxy for a sales price of the subject merchandise in the home market”); *see also* Statement of Administrative Action,⁹ H.R. Doc. 103–316, at 839 (1994), *reprinted in* 1994 U.S.C.C.A.N. 3773, 4175.

With respect to Astrotech, Commerce found that these criteria—especially the second criterion—weighed against using the company’s financial statement. It found that “approximately 80 percent of the value of Astrotech’s revenue for 2016 [was] from sales of nails to the United States.” PDM at 14. Because Astrotech’s financial data reflected predominantly U.S. sales, Commerce found that “Astrotech’s profit and indirect selling expenses do not reflect the home market . . . sales necessary to construct [normal value].” PDM at 14. In other words, since the objective under § 1677b(e)(2)(B) is to approximate the profit experience of a respondent in the home market, a company whose sales are exclusively or predominantly exports to the United States would not serve as a reasonable proxy. *See, e.g.*, 19 U.S.C. § 1677b(e)(2)(B)(iii) (emphasis added) (“[T]he amount allowed for profit may not exceed the amount *normally realized by exporters or producers* . . . in connection with the sale, for consumption *in the foreign country*, of merchandise that is in the same general category of products as the subject merchandise.”).

In contrast to Astrotech’s business, Commerce found that “over 90 percent of Amatei’s sales are made to its home market of Japan.” PDM at 15. Further, based on Amatei’s financial statement, Commerce found that the company’s

production and sales are almost exclusively of steel nails. As such, we find that Amatei represents the business operations, production processes, and products most similar to Oman Fas-

⁹ The Statement of Administrative Action is “an authoritative expression” of legislative intent when interpreting and applying the Uruguay Round Agreements Act. *See* 19 U.S.C. § 3512(d).

teners. Further, because the vast majority of Amatei's production is nails, we find that its customer base is also most similar to Oman Fasteners.

PDM at 15. Thus, while "acknowledg[ing] that each of these options [*i.e.*, the financial statements of Astrotech and Amatei] has certain limitations," Commerce determined Amatei's financial statement was the best source of data, under the four criteria, to calculate constructed value profit and indirect selling expenses. *See* PDM at 13, 14–15; *see also* Final IDM at 8 ("[F]or the final results, we continue to find that Amatei's [financial statement] is the best source for [constructed value] profit and [indirect selling expenses].").

Commerce thus calculated the constructed value of Oman Fasteners' merchandise, using profit and indirect selling expense data from Amatei's financial statement. Commerce then compared constructed value with the export price of the subject merchandise to determine if Oman Fasteners dumped the subject merchandise (*i.e.*, sold it at less than fair value) during the period of review, and, if so, by what margin. Ultimately, Commerce determined a zero percent weighted-average dumping margin for Oman Fasteners. *See* Final Results, 83 Fed. Reg. at 58,232.

Plaintiff Mid Continent's substantial evidence objections to Commerce's selection of Amatei's financial statement, and its rejection of Astrotech's, are now before the court.

LEGAL FRAMEWORK

The legal background below is provided for context. There are no legal challenges to Commerce's determinations in the Final IDM, only factual ones.

In an antidumping administrative review, Commerce determines whether dumping has occurred during the period of review by making a comparison between the price at which subject merchandise¹⁰ was sold in the United States (*i.e.*, the export price) and the normal value¹¹ of the foreign like product¹² sold in the exporting country. *See* 19 U.S.C. § 1677b(a); *see also id.* § 1675(a)(2)(A) (administrative reviews). The antidumping statute provides that Commerce may,

¹⁰ "Subject merchandise" is "the class or kind of merchandise that is within the scope of" an investigation or administrative review. *See* 19 U.S.C. § 1677(25).

¹¹ "Normal value" is "the price at which the foreign like product is first sold . . . for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade." 19 U.S.C. § 1677b(a)(1)(A), (B)(i).

¹² "Foreign like product" is "[t]he subject merchandise and other merchandise which is identical in physical characteristics with, and was produced in the same country by the same person as, that merchandise." 19 U.S.C. § 1677(16)(A); *see also id.* § 1677(16)(B), (C).

under certain circumstances, use a constructed value as a basis for determining normal value, when comparing U.S. and home market prices. See 19 U.S.C. § 1677b(a)(1)(B)(ii)(II), (1)(C)(ii), (4). Commerce's regulations provide that it may use a constructed value where, for example, "neither the home market nor a third country market is viable," as Commerce found here.¹³ 19 C.F.R. § 351.405(a).

Section 1677b(e) defines constructed value as the sum of amounts for (1) the cost of manufacture of subject merchandise, (2) selling, general, and administrative expenses, and (3) profit. See 19 U.S.C. § 1677b(e)(1), (2)(A)-(B).

With respect to selling, general, and administrative expenses and profit, the statute "identifies four methods for calculating constructed value: one preferred method and three alternative methods among which there is no hierarchy of preference." *Mid Continent*, 941 F.3d at 535 (citing *SKF USA*, 263 F.3d at 1374). The preferred method directs Commerce to look at the company's "actual amounts" of profits, and selling, general, and administrative expenses, "in connection with the production and sale of a foreign like product, in the ordinary course of trade, for consumption in" the company's home market. 19 U.S.C. § 1677b(e)(2)(A). If "actual data are not available with respect to the[se] amounts," however, Commerce may select one of the three alternative methods in § 1677b(e)(2)(B):

Each of the three alternative methods, like the preferred method, calls for consideration of profits and [selling, general, and administrative expenses]—though each method specifies a different source for that data. The first alternative method focuses on the data associated with the respondent company's other products "in the same general category of products as the subject merchandise." [19 U.S.C.] § 1677b(e)(2)(B)(i). The second focuses on the data of other respondents to the investigation. *Id.* § 1677b(e)(2)(B)(ii). The third allows Commerce to use "any other reasonable method," subject to . . . a "profit cap": the amount allowed for profit may not exceed the amount normally realized by exporters or producers (other than the [specific respondent at issue]) in connection with the sale, for consumption in [the specific respondent's home market], of merchandise that is in the same general category of products as the subject merchandise. *Id.* § 1677b(e)(2)(B)(iii).

¹³ Other circumstances in which constructed value may be used include where Commerce disregards sales below the cost of production, sales outside the ordinary course of trade (or sales the prices of which are otherwise unrepresentative), or sales used to establish a fictitious market; where no contemporaneous sales of comparable merchandise are available; or in other circumstances where Commerce determines that home market or third-country prices are inappropriate. 19 C.F.R. § 351.405(a).

Mid Continent, 941 F.3d at 535 (citing *SKF USA*, 263 F.3d at 1372–74).

The third alternative method is the broadest option. “Unlike the first alternative, there is no limitation that data be for the specific exporter or producer, and, unlike the second alternative, there is no limitation that the data relate to foreign like products.” *Thai I–Mei Frozen Foods Co. v. United States*, 616 F.3d 1300, 1308 (Fed. Cir. 2010). “Nevertheless, Commerce’s choices must be reasonable ones within the dual constraints of the statute and the record.” *Mid Continent*, 941 F.3d at 542.

The aim of the third alternative is to approximate, without exceeding, the amount of profit realized from the sale of subject merchandise in the foreign country “that the respondent can fairly be expected to build into a fair sales price for the particular merchandise.” *Mid Continent*, 941 F.3d at 542 (citing *SKF USA*, 263 F.3d at 1373). “[A]ccuracy and fairness must be Commerce’s primary objectives.” *Albemarle Corp. & Subsidiaries v. United States*, 821 F.3d 1345, 1354 (Fed. Cir. 2016) (citations omitted); see *Yangzhou Bestpak Gifts & Crafts Co. v. United States*, 716 F.3d 1370, 1379 (Fed. Cir. 2013) (citation omitted) (“An overriding purpose of Commerce’s administration of antidumping laws is to calculate dumping margins as accurately as possible.”); *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1191 (Fed. Cir. 1990) (“[The] basic purpose of the statute [is to] determin[e] current margins as accurately as possible.”). As shall be seen, to select a surrogate company Commerce used four criteria previously found reasonable by the Federal Circuit. See *Mid Continent*, 941 F.3d at 542–43 (concluding that Commerce’s application of the four criteria was supported by substantial evidence on the record and noting that the Court saw “no legal error”).

STANDARD OF REVIEW

The court will sustain a determination by Commerce unless it is “unsupported by substantial evidence on the record, or otherwise not in accordance with law.” 19 U.S.C. § 1516a(b)(1)(B)(i).

DISCUSSION

This is a substantial evidence case. Plaintiff does not challenge the statutory method Commerce employed to construct profit and indirect selling expenses (*i.e.*, the third alternative, “any other reasonable method,” under 19 U.S.C. § 1677b(e)(2)(B)(iii)). Nor does it question the four criteria Commerce considered in making its choice from among the financial statements on the record. Rather, the sole question for the court to decide is a factual one: whether substantial

evidence on the record supports the Department's decision to use Amatei's financial statement. Plaintiff argues that Commerce's decision to rely on Amatei's statement lacks such support, and that Astrotech's statement is a better choice. It asks the court to remand this matter so that Commerce may reconsider its selection.

"Substantial evidence is 'such relevant evidence as a reasonable mind might accept to support a conclusion' considering the record as a whole." *Mid Continent*, 941 F.3d at 537 (first quoting *Novartis AG v. Torrent Pharm. Ltd.*, 853 F.3d 1316, 1324 (Fed. Cir. 2017); and then citing *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 487–88 (1951)). Under this standard, "[e]ven if it is possible to draw two inconsistent conclusions from evidence in the record, such a possibility does not prevent Commerce's determination from being supported by substantial evidence." *Am. Silicon Techs. v. United States*, 261 F.3d 1371, 1376 (Fed. Cir. 2001) (citation omitted). Thus, "[e]ven if [Mid Continent] can identify financial statements that would be reasonable alternatives for Commerce to select, it is not this court's role to identify the most suitable choice." *Shenzhen Xinboda Indus. Co. v. United States*, 45 CIT __, __, 494 F. Supp. 3d 1347, 1355 (2021) (citing *King Supply Co. v. United States*, 674 F.3d 1343, 1348 (Fed. Cir. 2012)) (upholding Commerce's selection of a surrogate financial statement when constructing normal value in a nonmarket economy case).

Based on the record, Commerce's selection of Amatei's financial statement to construct value for profit and indirect selling expenses was reasonable. In the Final Results, Commerce set out the four criteria approved by the *Mid Continent* Court for selecting a surrogate to construct value for profit and selling expense ratios: (1) the similarity between a potential surrogate's business operations and products and the products and operations of the respondent; (2) the extent to which a potential surrogate has sales in the United States and the home market; (3) the contemporaneity of the surrogate data; and (4) the similarity of the customer base between a potential surrogate and the respondent. See *Mid Continent*, 941 F.3d at 542–43; see also Final IDM at 6.

Taking each criterion in turn, Commerce first found that Amatei's business operations and products were most similar to Oman Fasteners', for "[a]s explained in the *Preliminary Results* and as demonstrated by record evidence, Amatei predominantly produces and sells steel nails." Final IDM at 5. Commerce observed that, according to Amatei's 2017 financial statement, Amatei's nails sales comprised eighty percent of the company's total sales. See Final IDM at 6. Though its subsidiary sold screws, the statement distinguished par-

ent and subsidiary sales, which made it possible to calculate a constructed value based solely on the company's sales of nails:

Amatei's [financial statement] separates sales for Amatei, which is focused on steel nail production and sales, and Amatei's subsidiary, Natec Co., Inc., (Natec), which is focused on producing and selling screws. Amatei's 2017 [financial statement] separately provides net sales value for both Amatei and Natec, with *Amatei's sales comprising over 80% of the total sales of both companies.* Hence, *Commerce was able to calculate a [constructed value] profit amount based on sales of steel nails exclusive of the other products that Natec produced.* Amatei's 2017 [financial statement] also reports "improved operating income as a result of decreased manufacturing costs, increased productivity, low material costs and mass production of domestic products." Amatei reports its most significant fixed asset is "machine and devices" that are used in manufacturing operations, and the company lists work-in-progress, finished goods inventory and salaries associated with this production. Further, Amatei's 2017 [financial statement] make[s] clear that *its main business is "manufacturing, purchasing, and selling ordinary nails, specialty nails . . ." and that its main raw material is wire.* All of this demonstrates that Amatei is focused on steel nails production and sales.

Final IDM at 6 (emphasis added); *see also* PDM at 15 (finding that, because Amatei's "production and sales are almost exclusively of steel nails," Amatei "represents the business operations, production processes, and products most similar to Oman Fasteners."). Thus, the first criterion weighed in favor of using Amatei's financial statement.

As to the second criterion, "the extent to which a potential surrogate has sales in the United States and the home market," Commerce found that "over 90 percent of Amatei's sales are made to its home market of Japan." PDM at 15. In contrast, Commerce noted, approximately eighty percent of the value of Astrotech's revenue for 2016 was from sales of nails to the United States, according to third-party export data on the record. *See* PDM at 14. Commerce found the second criterion to weigh in favor of Amatei because, with most of its sales being made to its home market, its data better approximated the home market profit experience of Oman Fasteners.

The third criterion, the contemporaneity of the surrogate data, weighed equally as between Amatei and Astrotech. Both companies' audited financial statements for fiscal year 2016 overlapped with the period of review—July 1, 2016, through June 30, 2017. *See* PDM at 12–13.

Finally, as to the fourth criterion—“the similarity of the customer base between a potential surrogate and the respondent”—the similarity of Amatei’s and Oman Fasteners’ businesses, in terms of nail production, weighed in favor of choosing Amatei as the proxy. Commerce found that “because the vast majority of Amatei’s production is nails, we find that its customer base is also most similar to Oman Fasteners.” PDM at 15.

Having determined that Amatei’s financial statement was “the best source” for constructed value profit, Commerce further found that it was the best source for indirect selling expenses. *See* Final IDM at 8 (“For the above reasons, for the final results, we continue to find that Amatei’s [financial statement] is the best source for [constructed value] profit and [indirect selling expenses].”); *see also* PDM at 16 (“[W]ith respect to indirect selling expenses, because Oman Fasteners does not have a viable home market or third-country market, Commerce does not have comparison market selling expenses to use in its calculations, as directed by [19 U.S.C. § 1677b(e)]. As an alternative, to calculate selling expenses, for the preliminary results, Commerce has used the same financial statement that it used to calculate [constructed value] profit (*i.e.*, Amatei’s), in accordance with [19 U.S.C. § 1677b(e)(2)(B)(iii)].”).

Plaintiff argues that the record does not support Commerce’s choice of Amatei’s financial statement but rather supports the use of Astrotech’s financial statement. For Mid Continent:

Commerce’s determination to rely on Amatei’s financial statements to calculate [constructed value] profit and indirect selling expenses was not supported by substantial evidence, because the record evidence shows that Amatei is not *a pure producer* of steel nails. Rather, it also produces and sells screws, building materials, nailing machines, and provides testing services. More importantly, more than half of the steel nails sold by Amatei are produced for it by foreign [original equipment manufacturer] producers – in other words, Amatei resells more nails produced by foreign suppliers than it sells of its own manufactured nails.

Pl.’s Br. 1 (emphasis added). To support its argument, Plaintiff points to language in Amatei’s statement concerning the company’s “mid-to-long-term management strategy” stating: “[O]ver the past few years, the company has . . . sold larger volumes of [original equipment manufacturer] nails than of nails it produces itself domestically.” Pl.’s Br. 8 (record citations omitted). Based on this increase in resales, Plaintiff argues that instead of Amatei’s financial statement, Commerce should have used Astrotech’s:

In contrast [to Amatei's financial statement], [Astrotech] is predominantly a producer of steel nails, and more importantly, like Oman Fasteners LLC and unlike Amatei, it sells self-produced nails. In addition, Astrotech sells nails to many countries in addition to the United States, such as South Korea, Sri Lanka, Europe, and Australia. Therefore, Astrotech's financial statements are the best source for calculating [constructed value] profit and indirect selling expenses.

Pl.'s Br. 2. Thus, for Plaintiff, Astrotech's financial statement was the best source of constructed value data.

Plaintiff's arguments against Commerce's choice of financial statement are unconvincing because Mid Continent "has not identified any evidence that undermines the reasonableness of Commerce's choice." *Shenzhen*, 494 F. Supp. 3d at 1355. First, in the Final Results, Commerce acknowledged, as Plaintiff points out, that Amatei is not a "pure producer" of steel nails. It recognized that Amatei's subsidiary produced screws. Commerce found, however, that Amatei's nails sales comprised the majority of the total sales of both companies, and that the company's financial statement adequately distinguished between nail and screw sales, so that it was possible to construct profit based exclusively on sales of nails. *See* Final IDM at 6 (emphasis added) ("Amatei's 2017 [financial statement] separately provides net sales value for both Amatei and Natec, with *Amatei's sales comprising over 80% of the total sales of both companies*. Hence, *Commerce was able to calculate a [constructed value] profit amount based on sales of steel nails exclusive of the other products that Natec produced.*").

Next, Mid Continent's argument that Amatei is not the best proxy because of its resale of original equipment manufacturer nails does not persuade the court that Commerce's choice was unreasonable. Plaintiff characterizes Amatei's resales of original equipment manufacturer nails as a "disqualifying circumstance," which makes the company a *de facto* unreasonable choice for proxy. *See* Pl.'s Br. 7–8. For Mid Continent, Amatei's resale activities make it more of a nail distributor than a nail producer. *See* Pl.'s Br. 9. As Commerce noted in the Final Results, however, Mid Continent "does not claim that Amatei is *only* a reseller of steel nails or that it sells its own nails *in such small quantities* as to render Amatei's 2017 [financial statement] unreliable." Final IDM at 8 (emphasis added). Indeed, the Department points to representations in Amatei's financial statement that it realized increased profits due to a "drop in manufacturing cost unit price and reduced manufacturing costs thanks to stable materials prices and productivity improvements." Final IDM at 7–8 (citation to record omitted). For Commerce, Amatei's statements "demonstrate[]

that while resales of steel nails are a part of Amatei's selling experience, sales of steel nails that it manufactur[es] itself also [a]ffect Amatei's net sales." Final IDM at 8.

Plaintiff has pointed out a potential limitation in the financial statement, but it does not undermine the reasonableness of Commerce's choice, for none of the available financial statements were without their own flaws—including Astrotech's financial statement. In the Final Results, Commerce stated its reasons for finding that Astrotech's financial statement was not the "best" source on the record for constructed value:

Astrotech predominantly sells to the United States. As such, Astrotech's 2017 [financial statement is] unsuitable in the calculation of a normal value based on [constructed value]. Because Commerce seeks to compare U.S. sales to normal value from the home or a third-country market, we have stated that we do not want to construct a normal value based on financial data that contain exclusively or predominantly U.S. sales. Further, in accordance with [19 U.S.C. § 1677b(e)(2)(B)], generally, we seek a home market profit experience to the extent possible. With regard to the petitioner's claims that Astrotech made sales to markets other than the United States, we do not dispute this argument. However, while Astrotech may make sales to markets other than the United States, record evidence demonstrates that the majority of Astrotech's sales are to the United States. Further, apart from questions about [certain third-party data], the petitioner does not refute Commerce's finding in the *Preliminary [Results]* that Astrotech sold a majority of its steel nails to the United States, only that Astrotech sells to a "diversified customer base" (other than the United States). Selling to a diverse customer base does not equate to finding that Astrotech sold less than the majority of its steel nails to the United States, as determined at the *Preliminary Results*.

Final IDM at 6–7. Thus, Astrotech did not have home market sales sufficient to satisfy the statutory direction to approximate, without exceeding, "the amount normally realized by exporters or producers . . . in connection with the sale, for consumption *in the foreign country*, of merchandise that is in the same general category of products as the subject merchandise." 19 U.S.C. § 1677b(e)(2)(B)(iii) (emphasis added).

As Commerce acknowledged, "each of the[financial statement] options has certain limitations." PDM at 13. Mid Continent, however, has not shown a lack of substantial evidence for the factual determinations under the four criteria that the Department considered in its

analysis. *See Mid Continent*, 941 F.3d at 542–43. Rather, it maintains that Astrotech’s financial statement would have been a better choice, inviting the court to reweigh the evidence. This the court may not do. *See Downhole Pipe & Equip., L.P. v. United States*, 776 F.3d 1369, 1376–77 (Fed. Cir. 2015). Because the record supports Commerce’s determination that Amatei’s financial statement was a reasonable proxy to calculate constructed value profit and indirect selling expenses, it is sustained.

Finally, the court’s decision to sustain the Final Results renders moot the motion for judgment on the agency record that Oman Fasteners filed in its capacity as Consolidated Plaintiff. As agreed at oral argument, Defendant-Intervenor Oman Fasteners asks the court to sustain the Final Results, and would seek to be heard on its motion (as Consolidated Plaintiff) only in the event the court remanded the Final Results (thus, potentially placing in jeopardy Oman Fasteners’ zero percent margin). *See Oral Argument at 18:44, Mid Continent Steel & Wire, Inc. v. United States*, Consol. Ct. No. 18–00235, <https://www.cit.uscourts.gov/audio-recordings-select-public-court-proceedings>. Thus, because the court sustains the Final Results, Oman Fasteners’ motion is denied as moot.

CONCLUSION

Based on the foregoing, the Final Results are sustained. Mid Continent’s motion for judgment on the agency record is denied, as is Oman Fasteners’ motion for judgment on the agency record. Judgment shall be entered accordingly.

Dated: June 14, 2021

New York, New York

/s/ Richard K. Eaton
RICHARD K. EATON, JUDGE

Slip Op. 21–75

BORUSAN MANNESMANN BORU SANAYI VE TICARET A.Ş. and BORUSAN MANNESMANN PIPE U.S. INC., Plaintiffs v. UNITED STATES, Defendant, and, Wheatland Tube And Nucor Tubular Products Inc., Defendant-Intervenors.

Before: Jane A. Restani, Judge
Court No. 20–00015

JUDGMENT

Before the court are the Final Results of Redetermination Pursuant to Court Remand in *Borusan Mannesmann Boru Sanayi Ve Ticaret A.S. v. United States*, Court No. 20–00015, ECF No. 51 (Apr. 19, 2021)

(“Remand Results”), which the United States Department of Commerce, filed in response to the court’s Order (Feb. 17, 2021), ECF No. 49. Having received no objections to the Order of Remand and the Remand Results it is hereby

ORDERED, ADJUDGED, and DECREED that the Remand Results are **SUSTAINED** and it is further

ORDERED that the entries at issue in this litigation shall be liquidated in accordance with the final court decision in this action, including all appeals and remand proceedings, as provided in 19 U.S.C. § 1516a(e) and in accordance with the statutory injunction heretofore entered.

Dated: June 16, 2021

New York, New York

/s/ Jane A. Restani

JANE A. RESTANI, JUDGE

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