

U.S. Customs and Border Protection



CUSTOMS-TRADE PARTNERSHIP AGAINST TERRORISM (CTPAT) AND CTPAT TRADE COMPLIANCE PROGRAM; CORRECTION

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

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

SUMMARY: On February 18, 2022, U.S. Customs and Border Protection (CBP) published a document in the **Federal Register** requesting comments from the public and affected agencies on revisions to the information collection, in accordance with the Paperwork Reduction Act of 1995 (PRA), that is part of Customs-Trade Partnership Against Terrorism (CTPAT) and the CTPAT Trade Compliance Program. The document contained information about the CTPAT Portal that was in the process of being updated to meet current modern computing standards and to allow for updates to the minimum-security criteria. Due to unforeseen developmental delays, CBP is pausing proposed updates to these internal systems. This document corrects the February 18, 2022 document to remove inaccurate references in light of the paused updates, and to add certain types of CTPAT program participants that were inadvertently omitted from the list in the Abstract.

FOR FURTHER INFORMATION CONTACT: 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: On February 18, 2022, U.S. Customs and Border Protection (CBP) published in the **Federal Register** (87 FR 9371) a document requesting comments from the public and affected agencies on revisions to the information collection,

in accordance with the Paperwork Reduction Act of 1995 (PRA), that is part of Customs-Trade Partnership Against Terrorism (CTPAT) and the CTPAT Trade Compliance Program. The document contained information about the CTPAT Portal that was in the process of being updated to meet current modern computing standards and to allow for updates to the minimum-security criteria. Those updates would enhance operational efforts and allow for the expansion of new features not possible in the current version of the Portal's platform. Due to unforeseen developmental delays, CBP is pausing the proposed update of these internal systems. As a result, certain parts of the CTPAT program description contained in the February 18, 2022 document are inaccurate. This correction is being issued to remove all inaccurate information regarding the program that was published in the February 18, 2022 document.

Additionally, third-party logistics providers and Mexican long-haul highway carriers were inadvertently omitted from the list of eligible CTPAT program participants in the Abstract section of the document. This document corrects that omission by adding these two types of parties in the list of eligible CTPAT program participants in the Abstract.

Any future updates to the Portal and/or new requests for information, will continue to be posted when the need arises and, if, or when, the CTPAT Portal is able to resume its needed updates to modernize the platform.

Correction

In the **Federal Register** of February 18, 2022, in FR document 2022-03503, starting on page 9372, in the second column, under the subheading Overview of This Information Collection, revise the Abstract to read as follows:

“The CTPAT Program comprises two different program divisions: CTPAT Security and CTPAT Trade Compliance. The CTPAT Security program is designed to safeguard the world's trade industry from terrorists and smugglers by prescreening its participants. The CTPAT Security program applies to U.S. and nonresident Canadian importers, U.S. exporters, customs brokers, consolidators, port and terminal operators, carriers of cargo in/on air, sea and land, third-party logistics providers, Mexican long-haul highway carriers, and Canadian and Mexican manufacturers. However, the Trade Compliance program division is available for U.S. and nonresident Canadian importers only.

The CTPAT Security program application requests an applicant's contact and business information, including the number of company

employees, the number of years in business, and a list of company officers. This collection of information is authorized by the SAFE Port Act (Pub. L. 109–347).

The CTPAT Trade Compliance program is an optional component of the CTPAT program and adds trade compliance aspects to the supply chain security aspects of the CTPAT Security program. The CTPAT Security program is a prerequisite to applying to the CTPAT Trade Compliance program. Current CTPAT importers are given the opportunity to receive additional benefits in exchange for a commitment to assume responsibility for monitoring their own compliance by applying to the CTPAT Trade Compliance program. After a company has completed the security aspects of the CTPAT Security program and is in good standing, it may opt to apply to the CTPAT Trade Compliance component. The CTPAT Trade Compliance program strengthens security by leveraging the CTPAT supply chain requirements, identifying low-risk trade entities for supply chain security, and increasing the overall efficiency of trade by segmenting risk and processing by account.

The CTPAT Trade Compliance program is open to U.S. and non-resident Canadian importers that have satisfied both the CTPAT supply chain security and trade compliance requirements.

The CTPAT Trade Compliance program application includes questions about the following:

- Primary Point of Contact including name, title, email address, and phone number
- Business information including Company Name, Company Address, Company phone number, Company website, Company type (private or public), CBP Bond information, Importer of Record Number, and number of employees
- Information about the applicant's Supply Chain Security Profile
- Trade Compliance Profile and Internal Control Operating Procedures of the applicant
- Broker information
- Training material for Supply Chain Security and Trade Compliance
- Risk Assessment documentation and results
- Period testing documentation and results
- Prior disclosure history
- Partner Government Agency affiliation information

After an importer obtains CTPAT Trade Compliance membership, the importer will be required to submit an Annual Notification Letter to CBP confirming that it is continuing to meet the requirements of the program. This letter should include: Personnel changes that affect the CTPAT Trade Compliance program; organizational and procedural changes; a summary of risk assessment and self-testing results; a summary of post-entry amendments and/or disclosures made to CBP; and any importer activity changes within the last 12-month period.”

Dated: March 1, 2022.

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

[Published in the Federal Register, March 4, 2022 (85 FR 12473)]



**APPLICATION FOR WITHDRAWAL OF BONDED STORES
FOR FISHING VESSELS AND CERTIFICATE OF USE
(CBP FORM 5125)**

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 May 9, 2022) 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 1651-0092 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 the 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: Application for Withdrawal of Bonded Stores for Fishing Vessels and Certificate of Use.

OMB Number: 1651–0092.

Form Number: CBP Form 5125.

Current Actions: Extension without change of an existing information collection.

Type of Review: Extension (without change).

Affected Public: Carriers.

Abstract: CBP Form 5125, *Application for Withdrawal of Bonded Stores for Fishing Vessel and Certificate of Use*, is used to request the permission of the CBP port director for the

withdrawal and lading of bonded merchandise (especially alcoholic beverages) for use on board fishing vessels involved in international trade. The applicant must certify on CBP Form 5125 that supplies on board were either consumed, or that all unused quantities remain on board and are adequately secured for use on the next voyage. CBP uses this form to collect information such as the name and identification number of the vessel, ports of departure and destination, and information about the crew members. The information collected on this form is authorized by 19 U.S.C. 1309 and 1317 and is provided for by 19 CFR 10.59(e) and 10.65. CBP Form 5125 is accessible at: <https://www.cbp.gov/newsroom/publications/forms?title=5125>.

Type of Information Collection: CBP Form 5125.

Estimated Number of Respondents: 500.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 500.

Estimated Time per Response: 20 minutes (0.33 hours).

Estimated Total Annual Burden Hours: 165.

Dated: March 4, 2022.

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

[Published in the Federal Register, March 9, 2022 (85 FR 13303)]

GRANT OF “LEVER-RULE” PROTECTION

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

ACTION: Notice of grant of “Lever-Rule” protection.

SUMMARY: Pursuant to 19 CFR 133.2(f), this notice advises interested parties that CBP has granted additional “Lever-Rule” protection to Monster Energy Company (“Monster”) for the federally registered and recorded “M & Design,” “MONSTER ENERGY,” and “M (Design)” trademarks. Notice of the receipt of an application for “Lever-rule” protection was published in the December 22, 2021, issue of the *Customs Bulletin*.

FOR FURTHER INFORMATION CONTACT: Tracie Siddiqui, Intellectual Property Enforcement Branch, Regulations and Rulings, tracie.r.siddiqui@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION:**BACKGROUND**

Pursuant to 19 CFR 133.2(f), this notice advises interested parties that CBP has granted “Lever-Rule” protection for Monster Energy 450ML and 500ML beverages bottled in Russia, intended for sale in Eurasia, and bearing the “M & Design” mark (U.S. Trademark Registration No. 3,434,822, CBP Recordation No. TMK 10–00656); the “MONSTER ENERGY” mark (U.S. Trademark Registration No. 3,044,315, CBP Recordation No. TMK 15–01223); the “M & Design” mark (U.S. Trademark Registration No. 3,434,821, CBP Recordation No. TMK 15–01224); and/or the “M (Design)” mark (U.S. Trademark Registration No. 5,580,962, CBP Recordation No. TMK 19–00076). This “Lever-Rule” protection is in addition to the protection previously granted (1) on August 10, 2020 for Monster Energy 250ML beverages bottled in the Netherlands, intended for sale in the Netherlands, and bearing the above-mentioned trademarks; (2) on April 21, 2021 for Monster Energy 500ML beverages bottled in Ireland, the Netherlands, and/or Poland intended for sale in Europe, and bearing the above-mentioned trademarks; and (3) on September 9, 2021 for Monster Energy 500ML beverages bottled in South Africa, intended for sale in South Africa, and bearing the above-mentioned trademarks.

In accordance with *Lever Bros. Co. v. United States*, 981 F.2d 1330 (D.C. Cir. 1993), CBP has determined that the above-referenced gray market Monster Energy 450ML and 500ML beverages bottled in Russia differ physically and materially from the Monster Energy beverages authorized for sale in the United States with respect to the following product characteristics: physical properties, operation, performance, labelling, product codes, contact information, and measurements.

ENFORCEMENT

Importation of Monster Energy 450ML and 500ML beverages bottled in Russia, intended for sale in Eurasia, and bearing the trademarks listed above is restricted, unless the labeling requirements of 19 CFR § 133.23(b) are satisfied.

Dated: March 9, 2022

ALAINA VAN HORN

Chief,

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

19 CFR PART 177**REVOCAION OF ONE RULING LETTER AND
REVOCAION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF A SOLAR MODULE FROM
AN UNDISCLOSED COUNTRY OF ORIGIN**

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

ACTION: Notice of revocation of one ruling letter, and of revocation of treatment relating to the tariff classification of a solar module from an undisclosed country of origin.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking one ruling letter concerning tariff classification of a solar module from an undisclosed country of origin under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 56, No. 2, on January 19, 2022. No comments were received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after May 22, 2022.

FOR FURTHER INFORMATION CONTACT: Dwayne Rawlings, Automotive and International Nomenclature Branch, Regulations and Rulings, Office of Trade, at (202) 325–0092.

SUPPLEMENTARY INFORMATION:**BACKGROUND**

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

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

Pursuant to 19 U.S.C. § 1625(c)(1), a notice was published in the *Customs Bulletin*, Vol. 56, No. 2, on January 19, 2022, proposing to revoke one ruling letter pertaining to the tariff classification of a solar module from an undisclosed country of origin. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

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

In NY N255298, CBP classified a solar module in heading 8501, HTSUS, specifically in subheading 8501.31.80, HTSUS, which provides for "Electric motors and generators (excluding generating sets): Other DC motors; DC generators: Of an output not exceeding 750 W: Generators." CBP has reviewed NY N255298 and has determined the ruling letter to be in error. It is now CBP's position that the solar module is properly classified, in heading 8541, HTSUS, specifically in subheading 8541.40.60, HTSUS, which provides for "Diodes, transistors and similar semiconductor devices; photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light-emitting diodes (LED); mounted piezoelectric crystals; parts thereof: Photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light-emitting diodes (LED): Other diodes."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY N255298 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter ("HQ") H255440, set forth as an attachment to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated:

GREGORY CONNOR
for

CRAIG T. CLARK,
Director

Commercial and Trade Facilitation Division

Attachment

HQ H258440

March 4, 2022

OT:RR:CTF:EMAIN H258440 DSR

CATEGORY: Classification

TARIFF NO.: 8451.40.60

JANET TAKUSHI

SENIOR CONSULTANT

LIVINGSTON INTERNATIONAL PROFESSIONAL SERVICES

670 YOUNG STREET

TONAWANDA, NY 14150

RE: Revocation of NY N255298 (July 31, 2014); Tariff classification of a solar module from an undisclosed country of origin

DEAR Ms. TAKUSHI:

This letter is in response to a request for reconsideration submitted by you on behalf of your client, Solarmass Energy Group, Ltd., concerning New York Ruling Letter (NY) N255298, dated July 31, 2014. That ruling concerned the classification of a solar module under the 2014 Harmonized Tariff Schedule of the United States (HTSUS). The ruling classified the article under subheading 8501.31.80, HTSUS, which provides for “Electric motors and generators (excluding generating sets): Other DC motors; DC generators: Of an output not exceeding 750 W: Generators.” We have reviewed the tariff classification of the article taking into consideration the additional information you provided in your reconsideration request and have determined that the cited ruling is in error. Therefore, NY N255298 is revoked for the reasons set forth in this ruling. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 56, No. 2, on January 19, 2022. No comments were received in response to that notice.

FACTS:

In NY N255298, the device is described, in relevant part, as follows:

The merchandise in question is described as a Solar Surface, which is the solar generating component of the Ergosun™ Solar Roof Tile. This device consists of an ultra-thin solar cell membrane attached to a connector board and insulating poly-vinyl fluoride (Tedlar®) backing. The attached connector board contains a diode that prevents back feed and overheating, and male and female connector plugs which are used to connect multiple solar panels together to generate DC electricity.

Additional information submitted with the reconsideration request characterizes the diode as a “bypass diode” that “regulates the direct current (‘DC’) which is connected to a third-party inverter located in the home where the DC energy is converted to alternating current (‘AC’).” That AC energy is ultimately fed from the inverter to a meter and, from there, to the home’s electrical panel...” The imported solar module will be applied to roof tiles in the United States and sold to consumers and businesses.

ISSUE:

Is the module described above classifiable under heading 8501, HTSUS, which provides for electric generators, or under heading 8541, HTSUS, which provides for photosensitive semiconductor devices?

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRI's). 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 based on GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI's 2 through 6 may then be applied in order.

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

The following HTSUS provisions are under consideration:

8501	Electric motors and generators (excluding generating sets): Other DC motors: DC generators:
8501.31	Of an output not exceeding 750 W:
8501.31.80	Generators. * * *
8541	Diodes, transistors and similar semiconductor devices; photo-sensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light-emitting diodes (LED); mounted piezoelectric crystals; parts thereof:
8541.40	Photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light-emitting diodes (LED):
8541.40.60	Other diodes.

Explanatory Note ("EN") 85.01(II) describes two categories of items that are specifically included in heading 8501. HTSUS. To wit, the EN states:

(II) ELECTRIC GENERATORS

Machines that produce electrical power from various energy sources (mechanical, solar, etc.) are classified here, provided they are not more specifically covered by any other heading of the Nomenclature.

...

The heading also covers photovoltaic generators consisting of panels of photocells combined with other apparatus, e.g., storage batteries and electronic controls (voltage regulator, inverter, etc.) and panels or modules equipped with elements, however simple (for example, diodes to control the direction of the current), which supply the power directly to, for example, a motor, an electrolyser.

In these devices, electricity is produced by means of solar cells which convert solar energy directly into electricity (photovoltaic conversion).

...

EN 85.41 provides, in pertinent part:

(B) PHOTOSENSITIVE SEMICONDUCTOR DEVICES

This group comprises photosensitive semiconductor devices in which the action of visible rays, infra-red rays or ultra-violet rays causes variations in resistivity or generates and electromotive force, by the internal photo-electric effect.

*** The main types of photosensitive semiconductor devices are:

*** (2) Photovoltaic cells, which convert light directly into electrical energy without the need for an external source of current. [...]

Special categories of photovoltaic cells are:

(i) Solar cells, silicon photovoltaic cells which convert sunlight directly into electric energy. They are usually used in groups such as source of electric power, e.g., in rockets or satellites employed in space research, for mountain rescue transmitters.

The heading also covers solar cells, whether or not assembled in modules or made into panels. However, the heading does not cover panels or modules equipped with elements, however simple, (for example, diodes to control the direction of current), which supply the power directly to, for example, a motor, an electrolyser (heading 85.01).

Thus, per the ENs, panels or modules with elements that can supply the power directly to an external load, are precluded from classification in heading 8541, HTSUS, and are classified in heading 8501, HTSUS.

In Headquarters Rulings Letter (HQ) H084604, dated May 3, 2010, CBP noted that “a solar module is not precluded from classification under heading 8541, HTSUS, simply because it contains “elements,” e.g., diodes which control the direction of the current). Those elements must also “supply power directly” to an external load, such as a motor or an electrolyser. See EN 85.01(II), *supra*. CBP then classified the device as a photosensitive semiconductor device in subheading 8541.40.60, HTSUS, because the device lacked pertinent indicators of being a generator of heading 8501, HTSUS, e.g., blocking diodes and inverters to convert DC power produced by the solar panels into AC power usable by items intended devices. In sum, the solar panels provided for in H084604 were not able or intended to be used as generators.

The determination of whether a given solar panel is classified as a solar generator of heading 8501, HTSUS, or as a panel of photovoltaic cells of heading 8541, HTSUS, is based on whether the subject device is equipped with elements that allow it to supply power directly to another article (i.e., an external load) that consumes such power. Here, the answer is no. While the solar module of NY N255298 produces electrical power, i.e., DC current, from its solar cells, that current is intended to pass through to multiple connected solar modules and eventually to an external inverter located in a home. The current produced by the panel is not usable until it is converted to AC by the inverter. The solar module essentially functions in a manner that is comparable to the solar module considered in HQ H250768 (December 2, 2016) (a solar module that could only connect to other solar modules and could not supply power to any external loads classified in heading 8541, HTSUS).

For the reasons explained above, NY N255298 is revoked and the subject solar module is now classified in subheading 8541.40.60, HTSUS, which provides for “Diodes, transistors and similar semiconductor devices; photo-

sensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light-emitting diodes (LED); mounted piezoelectric crystals; parts thereof: Photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light-emitting diodes (LED): Other diodes.”

HOLDING:

By application of GRI 1, the solar module is classifiable under heading 8541, HTSUS. Specifically, by application of GRI 6, it is classifiable subheading 8541.40.60, HTSUS, which provides for “Diodes, transistors and similar semiconductor devices; photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light-emitting diodes (LED); mounted piezoelectric crystals; parts thereof: Photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light-emitting diodes (LED): Other diodes.”

The column one, general rate of duty is “Free.” Duty rates are provided for your convenience and subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided at www.usitc.gov.

On January 23, 2018, Presidential Proclamation 9693 imposed safeguard measures on imports of crystalline silicon photovoltaic (CSPV) cells and certain products incorporating CSPV cells in the form of additional tariffs or tariff rate quotas for a period of three years. Such products classified under subheading 8541.40.60, HTSUS, unless specifically excluded, are subject to the additional duties. See Note 18 to Chapter 99 and subheadings 9903.45.21 through 9903.45.25, HTSUS.

EFFECT ON OTHER RULINGS:

NY N255298 (July 31, 2014) is hereby revoked in accordance with this decision.

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

Sincerely,

GREGORY CONNOR

for

CRAIG T. CLARK,

Director

Commercial and Trade Facilitation Division

**PROPOSED REVOCATION OF THREE RULING LETTERS,
PROPOSED MODIFICATION OF ONE RULING LETTER
AND PROPOSED REVOCATION OF TREATMENT
RELATING TO THE TARIFF CLASSIFICATION OF
STEPSTOOL**

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

ACTION: Notice of proposed revocation of three ruling letters, proposed modification of one ruling letter and proposed revocation of treatment relating to the tariff classification of step stools.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke three ruling letters and modify one ruling letter concerning the tariff classification of step stools under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments on the correctness of the proposed actions are invited.

DATE: Comments must be received on or before April 22, 2022.

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

SUPPLEMENTARY INFORMATION:**BACKGROUND**

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

Pursuant to 19 U.S.C. § 1625(c)(1), this notice advises interested parties that CBP is proposing to revoke three ruling letters and modify one ruling letter pertaining to the tariff classification of step stools. Although in this notice, CBP is specifically referring to New York Ruling Letter ("NY") N294603, dated March 2, 2018 (Attachment A), NY N235681, dated December 5, 2012 (Attachment B), NY M84487, dated June 27, 2006, (Attachment C) and NY N196451, dated December 27, 2011 (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 one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the comment period.

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

In NY N294603 and in NY N196451, CBP classified plastic step stools in heading 9401, HTSUS. In NY N235681, CBP classified a step stool made of MDF in heading 9401, HTSUS. In NY M84487,

CBP classified a wooden stepstool in heading 9403, HTSUS. CBP has reviewed NY N294603, NY N196451, NY M84487 and NY N235681 and has determined the ruling letters are in error.

It is now CBP's position that these step stools are properly classified based on their constituent material. The plastic step stools in NY N294603 and NY N196451 are properly classified in subheading 3924, HTSUS, which provides for "Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics: Other: Other." The step stool made of MDF are properly classified in subheading 4421.99.97, HTSUS, which provides for "Other articles of wood: Other: Other: Other: Other."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY N294603, NY N196451, and NY M84487 and to modify NY N235681, and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed HQ H305377, 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: February 23, 2022

ALLYSON MATTANAH
for

CRAIG T. CLARK,
Director

Commercial and Trade Facilitation Division

Attachments

N294603

March 2, 2018

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

CATEGORY: Classification

TARIFF NO.: 9401.80.2011; 9401.80.4046

LORIANNE ALDINGER
DIRECTOR, IMPORTS
RITE AID CORPORATION
30 HUNTER LANE
CAMP HILL, PA 17011

RE: The tariff classification of a stool from Taiwan.

DEAR MS. ALDINGER:

In your letter dated February 14, 2017, you requested a tariff classification ruling. A description and illustrative literature were provided.

Item number 9028628 is the “Crayola Step Stool 7 Inch.” The step stool is made of strong, high-density plastic with slip resistant dots on top of the stool for sure footing. Each leg has a rubber grip bottom to prevent slippage. The item measures 7” x 10” x 12.5”. This stool is designed to be placed on the floor or ground, and can be used by whole family.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized Tariff Schedule of the United States (HTSUS) and are generally indicative of the proper interpretation of these headings.

The ENs state at heading 9401 to the HTSUS; Subject to the exclusions mentioned below, this heading covers all seats (including those for vehicles, provided that they comply with the conditions prescribed in Note 2 to this Chapter), for example: “Lounge chairs, arm-chairs, folding chairs, deck chairs, infants’ high chairs and children’s seats designed to be hung on the back of other seats (including vehicle seats), grandfather chairs, benches, couches (including those with electrical heating), settees, sofas, ottomans and the like, stools (such as piano stools, draughtsmen’s stools, typists’ stools, and dual purpose stool-steps), seats which incorporate a sound system and are suitable for use with video game consoles and machines, television or satellite receivers, as well as with DVD, music CD, MP3 or video cassette players.”

The term “step stool” is not defined in the text of Chapter 94 and its heading of 9401, nor the ENs to Chapter 94 and its heading of 9401. When terms are not defined, they are construed in accordance with their common and commercial meaning – *Nippon Kogasku (USA), Inc. v. United States*, 69 CCPA 89, 673 F.2d 380 (1982). Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities and other reliable sources. *C.J. Tower & Sons v. United States*, 69 CCPA 128, 673 F.2d 1268 (1982).

The Online Oxford English Dictionary defines a “stool” at 2. a. as “...a piece of furniture consisting in its simplest form of a piece of wood for a seat set upon legs, usually three or four in number, to raise it from the ground.” At 2. c. as “A low short bench or form upon which to rest the foot, to step or kneel.

Chiefly = Footstool. Sometimes used as a child's seat." Furthermore, the Online Oxford English Dictionary defined a "step-stool" as "a stool which can convert into a short stepladder."

It is our position based on the ENs to Chapter 94 and its heading of 9401 to the HTSUS and the cited dictionary definitions, the "Crayola Step Stool 7 Inch" is a type of low short bench for sitting upon and stepping upon, and therefore falls within the meaning of a "seat." Accordingly, the "Crayola Step Stool 7 Inch" is classifiable as seats of plastics in subheading 9401.80, HTSUS.

The applicable subheading for the "Crayola Step Stool 7 Inch," if made from reinforced or laminated plastics, will be 9401.80.2011, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Seats (other than those of heading 9402), whether or not convertible into beds and parts thereof: Other seats: Of rubber or plastics: Of reinforced or laminated plastics; Other household." The rate of duty will be free.

The applicable subheading for the "Crayola Step Stool 7 Inch," if not made from reinforced or laminated plastics, will be 9401.80.4046, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Seats (other than those of heading 9402), whether or not convertible into beds and parts thereof: Other seats: Of rubber or plastics: Other: 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 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 Neil H. Levy at neil.h.levy@cbp.dhs.gov.

Sincerely,

STEVEN A. MACK

Director

National Commodity Specialist Division

N196451

December 27, 2011

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

CATEGORY: Classification

TARIFF NO.: 9401.80.2031

AARON CULLEN
CVS ON-SITE IMPORT CLIENT LIAISON
BARTHCO INTERNATIONAL, DIVISION OF OHL
ONE CVS DRIVE
WOONSOCKET, RI 02895

RE: The tariff classification of “folding step stool” from China.

DEAR MR. CULLEN:

In your letter dated December 5, 2011, you requested a tariff classification ruling. As requested, the sample submitted will be returned to you.

Item number 873647 is a folding step stool made from 100% plastic. The stool is collapsible, and when not in use it can be folded upon itself and features a carrying handle. The stool is designed to be placed on the floor or ground, and has reinforced plastic ribbing on the stool’s underside. It is capable of supporting a full-sized adult weighing up to 300 pounds. When collapsed, the stool can be stored in a small area, such as a kitchen or bathroom cabinet, a closet, or even in a vehicle. This stool can be used for indoor and outdoor purposes, and in a variety of settings. Unfolded, the dimensions of the stool are 8.75 inches deep by 11.25 inches wide by 8.75 inches high.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized Tariff Schedule of the United States (HTSUS) and are generally indicative of the proper interpretation of these headings. In pertinent part, the ENs to heading 9401, the provision for seats, list stools and dual purpose stool-steps falling within its provision. Accordingly, the folding step stool, made from plastic, is classified in sub-heading 9401.80 – the subheading for plastic seats.

The applicable subheading for the folding step stool, will be 9401.80.2031, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Seats (other than those of heading 9402), whether or not convertible into beds and parts thereof: Other seats: Of rubber or plastic: Of reinforced or laminated plastics; 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 Neil H. Levy at (646) 733-3036.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

NY M84487

June 27, 2006

CLA-2-94:RR:NC:SP:233 M84487

CATEGORY: Classification

TARIFF NO.: 9403.60.8080

MR. CHRIS FLADAGER
NORVANCO INTERNATIONAL, INC.
3514 142ND AVENUE EAST, #400
SUMNER, WA 98390

RE: The tariff classification of a Children's Wooden Step Stool from China.

DEAR MR. FLADAGER:

In your letter dated June 22, 2006, on behalf of Spin Master, Inc., you requested a tariff classification ruling.

The merchandise under consideration is a Children's Wooden Step Stool. The item is suitable for use by children 3–6 years of age and may or may not have the "Thomas" design, as depicted in the submitted photograph.

The applicable subheading for the Children's Wooden Step Stool be 9403.60.8080, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Other furniture and parts thereof: Other wooden furniture: 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 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 Lawrence Mushinske at 646-733-3036.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity
Specialist Division

N235681

December 5, 2012

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

CATEGORY: Classification

TARIFF NO.: 9403.60.8081; 9401.69.6001;

9401.69.8005

DAVID FELDSTEIN

PRESIDENT

GLOBAL INNOVATIVE SERVICES INC.

150-2188 No. 5 ROAD

RICHMOND, BC V6X 2T1

CANADA

RE: The tariff classification of combination furniture, packaged together, from China.

DEAR MR. FELDSTEIN:

In your letter received by this office on November 20, 2012, you requested a tariff classification ruling.

Item number 5PTPR001 is described as a mix-n-match playroom. The pieces consist of one children's table, two children's stools, one 2-way easel/easel, and one non-woven fabric storage bin. The table, easel and stools are made of Medium-density fiberboard (MDF) – engineered wood. These five pieces will be packaged together in one retail box. It is stated that the table is 40% of the import value, the stools are 17% of the import value, the easel/easel is 35% of the import value, and the fabric storage bin is 8% of the import value.

Item number 3PTPR001 is described as a mix-n-match playroom. The pieces consist of one children's table, one stool, and one non-woven fabric storage bin. The table and stools are made of Medium-density fiberboard (MDF) – engineered wood. These three pieces will be packaged together in one retail box. It is stated that the table is 70% of the import value, the stool is 15% of the import value, and the fabric storage bin is 15% of the import value.

Item number KRSS001 is described as children's rocking chair and children's step stool. The pieces consist of one children's rocking chair and one children's step stool. The chair and step stool are made of Medium-density fiberboard (MDF) – engineered wood. These two pieces will be packaged together in one retail box. It is stated that the rocking chair is 60% of the import value and the step stool is 40% of the import value.

The Explanatory Notes (ENs), which constitute the official interpretation of the Harmonized Tariff Schedule at the international level, state in Note X to Rule 3 (b) that the term “goods put up in sets for retail sale” means goods which: consist of at least two different articles which are, prima facie, classifiable in different headings; (b) consist of products or articles put up together to meet a particular need and carry out a specific activity; and (c) are put up in a manner suitable for sale directly to users without repacking. In the case of item numbers 5PTPR001 and 3PTPR001 (mix-n-match playroom), we find that the packaged together pieces constitutes a set within the meaning of the tariff schedule, in that, the table and stool/s are classified in two different headings of Chapter 94; all of the pieces contribute to the activity of children's play and learning, and the pieces are packaged in one box for retail

sales. We are of the opinion that the tables impart the essential character to the sets, as it allow children to gather around for purposes of playing and learning.

In the case of item number KRSS001 (rocking chair and step stool), the combination of pieces presented in your submission meet the last criterion (c) only, in that, the two pieces are packaged in one box for retail sales. Criterion (a) is not meet at the heading level for both pieces are classified in heading 9401, nor is it meet at the subheading level as both pieces are classified in the same subheading 9401.69. Criterion (b) is not meet, as both pieces, although sharing in the functionality to sit a child, do not work together to fulfill a common need or a particular activity – these pieces are mutually independent of each other as one would not step up on a rock chair for fear of falling and one could not rock at all on a fixed step stool. Consequently, item number KRSS001 is not a set within the meaning of the tariff schedule, and therefore, both pieces must be classified separately.

The applicable subheading for item numbers 5PTPR001 and 3PTPR001 will be 9403.60.8081, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Other Furniture and parts thereof: Other wooden furniture: Other; Other.” The rate of duty will be free.

The applicable subheading for the rocking chair, will be 9401.69.6001, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof: Other seats, with wooden frames: Other: Other: Chairs: Other: Chairs for children including highchairs.” The rate of duty will be free.

The applicable subheading for the step stool, will be 9401.69.8005, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof: Other seats, with wooden frames: Other: Other: Other: Other seat for children.” 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 Neil H. Levy at (646) 733–3036.

Sincerely,

THOMAS J. RUSSO

Director

National Commodity Specialist Division

HQ H305377
OT:RR:CTF:CPMM H305377 KSG
CATEGORY: Classification
TARIFF NO.: 3924.90.56; 4421.99.97

LORRAINE ALDINGER
DIRECTOR, IMPORTS
RITE AID CORPORATION
30 HUNTER LANE
CAMP HILL, PA 17011

CHRIS FLADAGER
NORVANCO INTERNATIONAL, INC.
3514 142ND AVENUE EAST, #400
SUMNER, WA 98390

DAVID FELDSTEIN
PRESIDENT
GLOBAL INNOVATIVE SERVICES INC.
150-2188 No. 5 ROAD
RICHMOND, BC V6X 2T1
CANADA

AARON CULLEN
CVS IMPORT CLIENT LIAISON
BARTHCO INTERNATIONAL, DIVISION OF OHL
ONE CVS DRIVE
WOONSOCKET, RI 02895

RE: Revocation of NY N294603, NY N196451 and NY M84487 and
modification of NY N235681; tariff classification of one-step step stools

DEAR MS. ALDINGER, MR. FLADAGER, MR. FELDSTEIN AND MR. CULLEN:

This letter is in reference to New York Ruling Letters (NY) N294603, dated March 2, 2018, NY N196451, dated December 27, 2011, NY M84487, dated June 27, 2006, and NY N235681, dated December 5, 2012, regarding the classification of step stools in the Harmonized Tariff Schedule of the United States (HTSUS).

In NY N294603 and NY N196451, U.S. Customs & Border Protection (CBP) classified a plastic one-step step stool in subheading 9401.80, HTSUS, which provides for “Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof: Other seats: Of rubber or plastics.”

In NY N235681, CBP classified, amongst other items, a one-step step stool for children made of MDF in subheading 9401.69.80, HTSUS, which provides for “Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof: Other seats, with wooden frames: Other.”

In NY M84487, CBP classified a one-step step stool for children made of wood in subheading 9403.60.80, HTSUS, which provides for “Other furniture and parts thereof: Other wooden furniture: Other.”

We have reviewed NY N294603, NY N196451, NY M84487, and NY N235681, and determined that the rulings are in error. Accordingly, for the reasons set forth below, CBP is revoking NY N294603, NY N196451 and NY M84487 and modifying NY N235681.

FACTS:

The one-step step stool classified in NY N294603 is described as a step stool made of high-density plastic with slip resistant dots on the top of the stool to provide sure footing.

The one-step step stool classified in NY N196451 is described as a folding step stool made of plastic. It is collapsible and features a carrying handle.

The one-step step stool for children classified in NY M84487 is described as made of wood.

The one-step step stool classified in NY N235681 is described as a children's step stool made of MDF. The other articles classified in NY N235681 are not affected by this modification.

ISSUE:

Whether the one-step step stools are properly classified in heading 9401 as seats, in heading 9403 as other furniture or classified according to their constituent material in heading 3924 or in heading 4421.

LAW AND ANALYSIS:

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

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

The HTSUS headings under consideration are the following:

- 3924 Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics:
- 4421 Other articles of wood:
- 9401 Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof:
- 9403 Other furniture and parts thereof:

Both Chapters 39 and 44 exclude by chapter note articles of furniture of chapter 94 (Chapter 39, Note 2(x), HTSUS, and Chapter 44, Note 1(o)), HTSUS. Therefore, the first issue to address is whether the one step step stools are classified in heading 9401, HTSUS, or heading 9403, HTSUS, and therefore excluded from Chapters 39 and 44, HTSUS.

In understanding the language of the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System, constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally

indicative of the proper interpretation of these headings. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The EN for Chapter 94 provides, in pertinent part:

For the purposes of this Chapter, the term “furniture” means :

(A) Any “movable” articles (**not included** under other more specific headings of the Nomenclature), which have the essential characteristic that they are constructed for placing on the floor or ground, and which are used, mainly with a utilitarian purpose, **to equip private dwellings**, hotels, theatres, cinemas, offices, churches, schools, cafés, restaurants, laboratories, hospitals, dentists’ surgeries, etc., or ships, aircraft, railway coaches, motor vehicles, caravan trailers- or similar means of transport. (It should be noted that, for the purposes of this Chapter, articles are considered to be “movable” furniture even if they are designed for bolting, etc., to the floor, e.g., chairs for use on ships). Similar articles (seats, chairs, etc.) for use in gardens, squares, promenades, etc., are also included in this category. (emphasis added)

The EN for heading 9401 provides, in pertinent part:

Subject to the exclusions mentioned below, this heading covers all seats (including those for vehicles, provided that they comply with the conditions prescribed in Note 2 to this Chapter), for example :

Lounge chairs, arm-chairs, folding chairs, deck chairs, infants’ high chairs and children’s seats designed to be hung on the back of other seats (including vehicle seats), grandfather chairs, benches, couches (including those with electrical heating), settees, sofas, ottomans and the like, **stools (such as piano stools, draughtsman’s stools, typists’ stools, and dual purpose stool-steps)**, seats which incorporate a sound system and are suitable for use with video game consoles and machines, television or satellite receivers, as well as with DVD, music CD, MP3 or video cassette players. (emphasis added)

The heading **does not, however, include:**

(f) Stools and foot-stools (whether or not rocking) designed to rest the feet, baby walkers, and linen and similar chests having a subsidiary use as seats (**heading 94.03**).

The EN for heading 9403 provides, in pertinent part:

The heading includes furniture for:

(1) Private dwellings, hotels, etc., such as: cabinets, linen chests, bread chests, log chests; chests of drawers, tallboys; pedestals, plant stands; dressing tables-; pedestal tables; wardrobes, linen presses; hall stands, umbrella stands; sideboards, dressers, cupboards; -food safes-; bedside tables; beds (including wardrobe beds, camp beds-, folding beds, cots, etc.); needlework tables; **stools and foot-stools** (whether or not rocking) **designed to rest the feet**, fire screens; draught screens-; pedestal ash-trays; music cabinets, music stands or desks; play-pens; serving trolleys (whether or not fitted with a hot plate). (emphasis added)

CBP addressed the classification of step stools with two or more steps in Headquarters Ruling Letter (HQ) H202595, dated March 19, 2018. In the HQ ruling, CBP revoked six ruling letters and classified multi-step step stools by their constituent material rather than as furniture in heading 9403, HTSUS. CBP determined in HQ H202595 that multi-step step stools are not used to equip private dwellings; they were determined to be more like ladders. CBP

noted in HQ H202595 that “One might be able to sit on the step stools, but only for a short period of time and not comfortably.” CBP found that the stepstools were not akin to any of the exemplars listed in EN 9403 and that a step was akin to a rung of a ladder. Similarly, the one-step stools are also not used to equip private dwellings and not a seat or foot stool.

Heading 9401 covers seats. The EN for Heading 9401, in describing types of seats included within the heading, describes stools that are used as a seat such as piano stools, draughtsman’s stools, typists’ stools, and dual purpose stool-steps. The types of stools listed in the exemplar are all either round or shaped for use as seating. As discussed above, the one-step step stools are not shaped for use as seating or otherwise designed to be used as seats. The low height of the one-step stool alone renders it not very functional as a seat. The step stools are not similar to the exemplars listed in the EN for Heading 9401. Further, there is nothing about these step stools that would indicate a dual purpose. The stools would not be comfortable to sit on for more than a short period of time. Slip resistant dots or treads are a further indication that a one-step step stool is designed to solidly stand on rather than to be used as a seat.

Heading 9403 includes other furniture such as stools and footstools. The instant step stools do not equip or furnish a private dwelling. The step stool does not share in the characteristics of furniture used to equip a private dwelling for rest, relaxation, storage or display. The step stools are not designed to rest the feet. The one-step step stools are not similar to any of the exemplars listed in the EN for Heading 9403. The one-step step stools are designed to elevate a standing person in order to reach something or perform a task at a greater height. After the task is accomplished, the step stool is designed to be carried (by its handle), and stored when not in use. The one-step step stool is more akin to a rung of a ladder in its utilitarian function. Therefore, we find that the one-step step stool is not properly classified in either Heading 9401, HTSUS or in Heading 9403, HTSUS.

In New York (NY) I89058, dated December 24, 2002, and in NY 803257, dated November 18, 1994, plastic one-step step stools were classified in subheading 3924.90.55, HTSUS (now subheading 3924.90.56, HTSUS). Consistent with those rulings, the one-step plastic step stools in NY N294603 and NY N196451 are classified according to GRI 1 in heading 3924 and in accordance with GRI 6, in subheading 3924.90.56 as other household articles, of plastics.

In NY I86724, dated October 25, 2002, a wooden one-step stool was classified in subheading 4421.90.97, HTSUS (now subheading 4421.99.97). In NY N310648, dated March 25, 2020, a wooden one-step stool designed for a child to stand and reach a countertop was classified in subheading 4421.99.97, HTSUS. Consistent with those rulings, the one-step step stool made of MDF in NY N235681 and the wooden stepstool in NY M84487 are classified in heading 4421 and in accordance with GRI 6, in subheading 4421.99.97 as other articles of wood.

HOLDING:

Pursuant to GRI’s 1 and 6, the plastic one-step step stools in NY N294603 and NY N196451 are classified according to GRI 1 in heading 3924 and in accordance with GRI 6, in subheading 3924.90.56, which provides for “Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics: Other: Other”. The column one, general rate of duty is 3.4% ad

valorum. The one-step step stool made of MDF in NY N235681 and the wooden stepstool in NY M84487 are classified in heading 4421 and in accordance with GRI 6, in subheading 4421.99.97, which provides for “Other articles of wood: Other: Other: Other: Other”. The column one, general rate of duty is 3.3% ad valorum.

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

EFFECT ON OTHER RULINGS:

NY N294603, NY N196451 and NY M84487 are revoked and NY N235681 is modified in accordance with the above analysis.

Sincerely,

CRAIG T. CLARK,

Director

Commercial and Trade Facilitation Division

cc: NIS Dharmendra Lilia, NIS Sandra Carlson, NIS Kristopher Burton and NIS Seth Mazze, NCSD



19 CFR PART 177

**REVOCATION OF A RULING LETTER AND REVOCATION
OF TREATMENT RELATING TO THE TARIFF
CLASSIFICATION OF A MAGNETIC SLEEVE**

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

ACTION: Notice of revocation of one ruling letter and of revocation of treatment relating to the tariff classification of a magnetic sleeve.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking one ruling letter concerning tariff classification of a magnetic sleeve under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 56, No. 3, on January 26, 2022. No comments were received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after May 22, 2022.

FOR FURTHER INFORMATION CONTACT: Nataline Viray-Fung, Electronics, Machinery, Automotive, and International Nomenclature Branch, Regulations and Rulings, Office of Trade, at nataline.viray-fung@cbp.dhs.gov

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to 19 U.S.C. § 1625(c)(1), a notice was published in the *Customs Bulletin*, Vol. 56, No. 3, on January 26, 2022, proposing to modify a ruling letter pertaining to the tariff classification of a magnetic sleeve. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

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

In NY N304844, CBP classified a magnetic sleeve in heading 8505, HTSUS, specifically in subheading 8505.90.40, HTSUS, which provides for "Electromagnets; permanent magnets and articles intended to become permanent magnets after magnetization; electromagnetic or permanent magnet chucks, clamps and similar holding devices; electromagnetic couplings, clutches and brakes; electromagnetic lifting heads; Other, including parts; Workholders and parts thereof." CBP has reviewed NY N304844 and has determined the ruling letter to be in error. It is now CBP's position that the magnetic sleeve is

properly classified, in subheading 8505.11.00, HTSUS, which provides for “Electromagnets; permanent magnets and articles intended to become permanent magnets after magnetization; electromagnetic or permanent magnet chucks, clamps and similar holding devices; electromagnetic couplings, clutches and brakes; electromagnetic lifting heads; parts thereof: Permanent magnets and articles intended to become permanent magnets after magnetization: Of Metal.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY N304844 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in HQ H305588, set forth as an attachment to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated:

GREGORY CONNOR
for

CRAIG T. CLARK,
Director

Commercial and Trade Facilitation Division

Attachment

HQ H305588

March 3, 2022

CLA-2 OT:RR:CTF:EMAIN H305588 NVF

CATEGORY: Classification

TARIFF NO.: 8505.11.00

JOHN BESSICH
FOLLUCK & BESSICH
33 WALT WHITMAN RD
SUITE 310
HUNTINGTON STATION, NY 11746

RE: Revocation of NY N304844; Classification of a magnetic sleeve

DEAR MR. BESSICH:

This letter is in response to your request, dated August 6, 2019, for reconsideration of New York Ruling Letter (“NY”) N304844, which was issued to your client, Stanley Black & Decker (“SBD”) on July 11, 2019. In NY N304844, U.S. Customs and Border Protection (“CBP”) classified a magnetic sleeve under subheading 8505.90.40 of the Harmonized Tariff Schedule of the United States (“HTSUS”), which provides for “Electromagnets; permanent magnets and articles intended to become permanent magnets after magnetization; electromagnetic or permanent magnet chucks, clamps and similar holding devices; electromagnetic couplings, clutches and brakes; electromagnetic lifting heads; parts thereof: Other, including parts: Work holders and parts thereof.” We have reviewed NY N304844 and are revoking NY N304844 in accordance with the reasoning below. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 56, No. 3, on January 26, 2022. No comments were received in response to that notice.

FACTS:

As described in NY N304844, the magnetic sleeves or collars are cylindrically shaped articles. The body of each magnetic sleeve consists of a plastic or aluminum material that has a permanent magnet made from sintered neodymium-iron-boron fitted into one end of the sleeve and a metal spring band fastened around a recessed section of the outer surface located on the other end of the sleeve. In use, the user slides a screwdriver or a screwdriver bit into one end of the sleeve and on the other end, a metal screw is inserted into the sintered neodymium-iron-boron magnet. Each sleeve’s function is to magnetically facilitate the installation of a screw by stabilizing it while the tool (e.g., a manual or electric screwdriver) drives it into the workpiece.

In our original ruling, we determined that the magnetic sleeve was classified under subheading 8505.90.40, HTSUS as work holders. In your request for reconsideration, you argue that the magnetic sleeve is classified under subheading 8505.11.00 as permanent magnets.

ISSUE:

Whether the magnetic sleeve is classified under subheading 8505.90.40, HTSUS as work holder or under subheading 8505.11.00, HTSUS as a permanent magnet.

LAW AND ANALYSIS:

The HTSUS provisions under consideration are as follows:

8505	Electromagnets; permanent magnets and articles intended to become permanent magnets after magnetization; electromagnetic or permanent magnet chucks, clamps and similar holding devices; electromagnetic couplings, clutches and brakes; electromagnetic lifting heads; parts thereof:
	Permanent magnets and articles intended to become permanent magnets after magnetization:
8505.11.00	Of metal.

8505.90	Other, including parts:
8505.90.40	Work holders and parts thereof.

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

GRI 3(a) states that the heading that provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings refer to only part of the items in a composite good or set, those headings are to be regarded as equally specific in relation to the goods, even if one of the gives a more complete or precise description of the good. As such, they are regarded as equally specific and classification of the composite good or set is to be determined by GRI 3(b) or GRI 3(c).

GRI 3(b) states that composite goods or sets which cannot be classified by reference to GRI 3(a) are to be classified as if they consisted of the component that gives them their essential character.

In this case, we have a composite good comprised of a plastic or aluminum sleeve with a permanent magnet at one end and pursuant to GRI 3(b), we must determine which element provides the essential character. In this respect, we note that the subject magnetic sleeve is not provided for under heading 8505, HTSUS, on the basis of GRI 1 as an “electromagnetic or permanent magnet chucks, clamps and similar holding devices”. While the subject sleeve steadies or guides a screw while in use, it is not itself a “holding device” due to this operation and also because its function is not similar to “chucks” or “clamps”, which hold workpieces and not other items that may facilitate the work accomplished (e.g., a screw). This is supported by Explanatory Note 85.05(3)*, which describes “electromagnetic or permanent magnet chucks, clamps and similar holding devices” as follows:

These are mainly devices of various types in which magnets are used to hold work pieces in place while they are being worked. This group also

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

covers holding devices for machines other than machine-tools (for example, magnetic devices for holding printing plates in printing machinery).

After reviewing video footage of the magnetic sleeve in use that you provided with your reconsideration request, we find that the permanent magnet provides the essential character. The magnet in the sleeve holds a screw in place while it is being driven into wood or some other material. For instance, it prevents the screw from falling out of alignment or rotating when the drill is operated. The magnet also holds the screw straight while drilling at unusual angles and/or in hard-to-reach places and prevents it from falling off the bit. In essence, it obviates the need for the user of a drill or screwdriver to steady the screw with his or her hand. Therefore, the permanent magnet in the sleeve provides the essential character of the good.

Pursuant to GRI 3(b), we classify the sleeve as if it consists solely of the component that imparts the essential character of the good, *i.e.*, the permanent magnet. Consequently, the magnetic sleeve is classified under subheading 8505.11.00, HTSUS as a permanent magnet made of metal.

HOLDING:

By application of GRIs 1, 3(b), and 6, the magnetic sleeve is classified under subheading 8505.11.00, HTSUS which provides for “Electromagnets; permanent magnets and articles intended to become permanent magnets after magnetization; electromagnetic or permanent magnet chucks, clamps and similar holding devices; electromagnetic couplings, clutches and brakes; electromagnetic lifting heads; parts thereof: Permanent magnets and articles intended to become permanent magnets after magnetization: Of Metal.” The column one, general rate of duty is 2.1% *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY N304844, dated July 11, 2019, is REVOKED. In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after publication in the *Customs Bulletin*.

Sincerely,

GREGORY CONNOR

for

CRAIG T. CLARK,

Director

Commercial and Trade Facilitation Division

19 CFR PART 177**MODIFICATION OF A RULING LETTER AND
MODIFICATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF A SILICONE VALVE**

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

ACTION: Notice of modification of one ruling letter and of modification of treatment relating to the tariff classification of a silicone valve.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking one ruling letter concerning tariff classification of a magnetic sleeve under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 56, No. 3, on January 26, 2022. No comments were received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after May 22, 2022.

FOR FURTHER INFORMATION CONTACT: Nataline Viray-Fung, Electronics, Machinery, Automotive, and International Nomenclature Branch, Regulations and Rulings, Office of Trade, at nataline.viray-fung@cbp.dhs.gov

SUPPLEMENTARY INFORMATION:**BACKGROUND**

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

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

Pursuant to 19 U.S.C. § 1625(c)(1), a notice was published in the *Customs Bulletin*, Vol. 56, No. 3, on January 26, 2022, proposing to modify a ruling letter pertaining to the tariff classification of a silicone valve. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

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

In HQ 558009, CBP stated that all components of an Aerochamber device are classified in subheading 9019.20, HTSUS, which provides for "Mechano-therapy appliances; massage apparatus; psychological aptitude-testing apparatus; ozone therapy, oxygen therapy, aerosol therapy, artificial respiration or other therapeutic respiration apparatus; parts and accessories thereof." CBP has reviewed HQ 558009 and has determined the ruling letter to be in error. It is now CBP's position that one component of the Aerochamber, a silicone valve, is properly classified, in heading 3926, HTSUS, specifically in subheading 3926.90.99, HTSUS, which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is modifying HQ 558009 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in HQ 558009, set forth as an attachment to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated:

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

Attachment

HQ H314649

March 3, 2022

OT:RR:CTF:EMAIN H314649 NVF

CATEGORY: Classification

TARIFF NO.: 3926.90.99

BRIAN J. O'SHEA, ESQ.

McKENNA & CUNEO

1575 EYE STREET, N.W.

WASHINGTON, D.C. 20005

RE: Modification of HQ 558009; Silicone part

DEAR MR. O'SHEA:

This ruling is in reference to Headquarters Ruling Letter ("HQ") 558009, dated November 10, 1994, regarding the country of origin marking of an Aerochamber device under the North American Free Trade Agreement ("NAFTA"). In HQ 558009, U.S. Customs and Border Protection ("CBP") classified the component parts of the Aerochamber under subheading 9019.20, HTSUS which provides for, "Mechano-therapy appliance; massage apparatus; psychological aptitude-testing apparatus; ozone therapy, oxygen therapy, aerosol therapy, artificial respiration or other therapeutic respiration apparatus; parts and accessories thereof: Ozone therapy, oxygen therapy, aerosol therapy, artificial respiration or other therapeutic respiration apparatus; parts and accessories thereof."

We have since reviewed HQ 558009 and determined that the portion of the ruling pertaining to the classification of the silicone valve is in error. Therefore, CBP is modifying HQ 558009 according to the analysis set forth below. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 56, No. 3, on January 26, 2022. No comments were received in response to that notice.

FACTS:

In HQ 558009, the Aerochamber is described as:

{A}n aerosol therapy device which is marketed under the trademark "Aerochamber. According to your submission, the Aerochamber is an FDA-approved medical device that is used with a metered dose inhaler ("MDI") to deliver aerosol medication. It was designed to simplify delivery of medication to patients suffering from asthma who are unable to properly coordinate an MDI (due to age or ill-health), to reduce undesirable side effects that result from use of a MDI alone in the delivery of medication, such as oral candidiasis, and to enhance the therapeutic value of the medication.

The device is described as a temporary holding chamber for MDI-dispersed medication {T}he basic model ("Aerochamber with FLOWSIGnal") is in the shape of a tube measuring approximately 4 1/2 inches in length and 1 1/2 inches in diameter. At one end of the holding chamber is a plastic mouthpiece containing a one-way silicone inhalation "flapper" valve and exhalation ports. At the other end of the device is a rubber end cap with a port into which a standard MDI may be inserted. Imbedded in the rim of the end cap is what you refer to as a FLOWSIGnal, a plastic whistle-like device, which sounds if the patient fails to inhale at

a slow and even pace {E}xcept for the silicone flapper valve, the Aerochamber is made entirely of plastic.

{A} second model Aerochamber, which is referred to as Aerochamber with Mask, is nearly identical to the basic model, but is fitted with a permanently-attached silicone mask. This model is particularly designed for infants and the infirm who may not have the strength or ability to hold the device and coordinate inhalation and delivery of the medication.

The Aerochamber with FLOWSiGnal consists of the following six components: mouthpiece cap, mouthpiece, die-cut silicon diaphragm valve, aerochamber body, thermoplastic MDI-end, and polycarbonate reed whistle The Aerochamber with Mask consists of the following seven components: die-cut silicon diaphragm valve, aerochamber body, thermoplastic MDI-end, polycarbonate reed whistle, silicon mask, mask adaptor, and mask lock ring.

In HQ 558009, CBP stated without explanation that all the component parts of the Aerochamber are classified under subheading 9019.20, HTSUS which provides for, “Mechano-therapy appliance; massage apparatus; psychological aptitude-testing apparatus; ozone therapy, oxygen therapy, aerosol therapy, artificial respiration or other therapeutic respiration apparatus; parts and accessories thereof: Ozone therapy, oxygen therapy, aerosol therapy, artificial respiration or other therapeutic respiration apparatus; parts and accessories thereof.”

CBP next determined the NAFTA country of origin marking of two models of Aerochamber and found that, pursuant to Section 102.11 of the interim NAFTA regulations, the Aerochamber devices became goods of the U.S. and were excepted from marking pursuant to Section 134.35(b) and because the goods were processed by the importer, the outermost container of the goods were also excepted from marking.

ISSUE:

Whether the silicone valve is classified as an other article of plastic of heading 3926, HTSUS, or as a part of heading 9019, HTSUS.

LAW AND ANALYSIS:

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

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relevant section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the heading and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

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

3926 Other articles of plastics and articles of other materials of headings 3901 to 3914.

9019 Mechano-therapy appliance; massage apparatus; psychological aptitude-testing apparatus; ozone therapy, oxygen therapy, aerosol therapy, artificial respiration or other therapeutic respiration apparatus; parts and accessories thereof.

Note 2(u) to Chapter 39 states that Chapter 39 does not cover articles of chapter 90. Therefore we must first determine whether the silicone valve is classified under heading 9019, HTSUS, which provides for, “Mechano-therapy appliance; massage apparatus; psychological aptitude-testing apparatus; ozone therapy, oxygen therapy, aerosol therapy, artificial respiration or other therapeutic respiration apparatus; parts and accessories thereof.”¹

The term “part” is not defined in the HTSUS. In the absence of a statutory definition, the courts have fashioned two distinct but reconcilable tests for determining whether a particular item qualifies as a part for tariff classification purposes. See *Bauerhin Technologies Limited Partnership, & John V. Carr & Son, Inc. v. United States*, 110 F.3d 774 (Fed. Cir. 1997). Under the first test, articulated in *United States v. Willoughby Camera Stores*, 21 C.C.P.A. 322 (1933), an imported item qualifies as a part only if can be described as an “integral, constituent, or component part, without which the article to which it is to be joined, could not function as such article.” *Bauerhin*, 110 F.3d at 779. Pursuant to the second test, set forth in *United States v. Pompeo*, 43 C.C.P.A. 9 (1955), a good is a “part” if it is “dedicated solely for use” with a particular article and, “when applied to that use...meets the Willoughby test.” *Bauerhin*, 110 F.3d at 779 (citing *Pompeo*, 43 C.C.P.A. at 14); *Ludvig Svensson, Inc. v. United States*, 63 F. Supp. 2d 1171, 1178 (Ct. Int’l Trade 1999) (holding that a purported part must satisfy both the *Willoughby* and *Pompeo* tests). An item is not a part if it is “a separate and distinct commercial entity.” *Bauerhin*, 110 F.3d at 779.

The term “accessory” is not defined in the HTSUS or in the Harmonized Commodity Description and Coding Explanatory Notes (ENs). However, this office has previously stated that the term “accessory” is generally understood to mean an article which is not necessary to enable the goods with which they are intended to function. They are of secondary importance, but must, however, contribute to the effectiveness of the principal article (e.g., facilitate the use or handling of the particular article, widen the range of its uses, or improve its operation). See HQ 958710 (Apr 8, 1996); HQ 950166 (Nov. 8, 1991). We also employ the common and commercial meanings of the term “accessory,” as the courts did in *Rollerblade v. United States*, wherein the Court of International Trade derived from various dictionaries that an accessory must relate directly to the thing accessorized. See *Rollerblade, Inc. v. United States*, 116 F.Supp. 2d 1247 (Ct. Int’l Trade 2000), *aff’d*, 282 F.3d 1349 (Fed. Cir. 2002) (holding that inline roller-skating protective gear is not an accessory because the protective gear does not directly act on or contact the roller skates in any way); see also HQ 966216 (May 27, 2003), HQ H061738 (May 5, 2010).

Before we can classify the silicone valve, we must first determine the proper classification of the Aerochamber. As stated above and in HQ 558009, the Aerochamber is used with an MDI (a portable metered dose inhaler,

¹ We note that even though we refer to the silicone part at issue as a “valve,” it is not a valve of heading 8481. The silicone part is a simple flap. By virtue of its placement onto the chamber, it impacts the flow of air from the chamber, but it is itself not a valve in its condition as imported.

typically used by asthma sufferers) that delivers medication. The Aerochamber cannot be used on its own to provide any sort of aerosol therapy or relief to a patient, therefore it is not an aerosol therapy device of heading 9019, HTSUS. Rather, the MDI, which administers medication, is the aerosol therapy device because it aerosolizes and releases a set amount of medicine.

The Aerochamber is an accessory of an MDI. It is a separate commercial entity that facilitates the use of an MDI by providing a chamber that holds the dispensed medication and allows the user to inhale the medication at his or her own pace. Thus, the Aerochamber improves and enhances the use of the MDI, particularly for young users or those who otherwise may have difficulty using an MDI. The Aerochamber is not an MDI part because an MDI does not need an Aerochamber in order to aerosolize and deliver medication. An MDI can be used effectively, with the proper technique by a patient, without an Aerochamber. Because the Aerochamber is an accessory to a good of heading 9019, HTSUS, it is classified as an accessory under subheading 9019.20.00, HTSUS which provides for “Mechano-therapy appliance; massage apparatus; psychological aptitude-testing apparatus; ozone therapy, oxygen therapy, aerosol therapy, artificial respiration or other therapeutic respiration apparatus; parts and accessories thereof.”

We observe that heading 9019, HTSUS, does not provide for parts or accessories. Furthermore, we must consider *Mitsubishi Electronics America v. United States*, 19 CIT 378, 383 n.3 (1995), in which the Court of International Trade stated that:

The Court notes that if the subject merchandise is not a clutch, but rather a part of a starter motor, then it cannot be classified as part of an automobile, even though it is used solely in automobiles. This is because a subpart of a particular part of an article is more specifically provided for as a part of the part than as a part of the whole. *C.F. Liebert v. United States*, 60 Cust. Ct. 677, 686–87, 287 F. Supp. 1008, 1014 (1968) (holding that parts of clutches which are parts of winches are more specifically provided for as parts of clutches than as parts of winches).

Therefore, regardless of whether the instant valve is considered a part of the Aerochamber, it cannot be classified under heading 9019, HTSUS. The legal text of the heading does not provide for parts of accessories and *Mitsubishi* bars the valve from being classified as a part of an MDI. Because no other heading provides for the silicone article (referred to as a “valve”), it therefore is classified by constituent material as an other article of plastic of heading 3926, HTSUS.

In light of the foregoing, we conclude that the silicone valve is classified under heading 3926, HTSUS as an other article of plastic. Our analysis in HQ 558009 pertaining to NAFTA country of origin marking requirements remains the same.

HOLDING:

By application of GRIs 1 and 6, the silicone valve is classified in heading 3926, HTSUS specifically subheading 3926.90.99, HTSUS, which provides for, “Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other.” The general, column one rate of duty for goods of subheading 3926.90.99, HTSUS, is 5.3% *ad valorem*.

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

EFFECT ON OTHER RULINGS:

HQ 558009 is hereby MODIFIED.

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

Sincerely,

GREGORY CONNOR

for

CRAIG T. CLARK,

Director

Commercial and Trade Facilitation Division



**PROPOSED REVOCATION OF ONE RULING LETTER AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE TARIFF CLASSIFICATION OF SUSHI GINGER**

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

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

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke one ruling letter concerning tariff classification of sushi ginger under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments on the correctness of the proposed actions are invited.

DATE: Comments must be received on or before April 22, 2022.

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: John Rhea, Food, Textile & Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325-0035.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to 19 U.S.C. § 1625(c)(1), this notice advises interested parties that CBP is proposing to revoke one ruling letter pertaining to the tariff classification of sushi ginger. Although in this notice, CBP is specifically referring to New York Ruling Letter ("NY") N305490, dated August 15, 2019 (Attachment A), this notice also covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the comment period.

Similarly, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this comment period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise

issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY N305490, CBP classified sushi ginger in heading 2008, HTSUS, specifically in subheading 2008.99.91, HTSUS, which provides for “Vegetables, fruit, nuts and other edible parts of plants otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter ... not elsewhere specified or included ... other ... other ... other.” CBP has reviewed NY N305490 and has determined the ruling letter to be in error. It is now CBP’s position that sushi ginger is properly classified, in heading 2001, HTSUS, specifically in subheading 2001.90.60, HTSUS, which provides for “Vegetables, fruit, nuts and other edible parts of plants, prepared or preserved by vinegar or acetic acid: Other: Other: Other.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY N305490 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed HQ H316647, set forth as Attachment B to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated:

CRAIG T. CLARK,
Director
Commercial and Trade Facilitation Division

Attachments

N305490

August 15, 2019

CLA-2-20:OT:RR:NC:N2:228

CATEGORY: Classification

TARIFF NO.: 2008.99.9190

MS. ASHLEY HONG
NISSIN INTERNATIONAL TRANSPORT USA INC.
1540 WEST 190TH STREET
TORRANCE, CA 90501

RE: The tariff classification of ginger from China

DEAR MS. HONG:

In your letter dated July 26, 2019, you requested a tariff classification ruling for ginger on behalf of your client, Wismettac Asian Foods Inc.

An ingredients breakdown, a manufacturing flowchart, and an image of the packaging label were submitted with your letter. The product is said to contain approximately 65 percent ginger, 15 percent sugar, 8 percent water, 8 percent salt, and 4 percent spirit vinegar. The product will be eaten between different sushi dishes, which is used to cleanse the palate. It will be sold to restaurants and packaged in 20 pound bags, net weight.

The applicable subheading for the ginger will be 2008.99.9190, Harmonized Tariff Schedule of the United States (HTSUS), which provides for fruit ... otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter ... not elsewhere specified or included ... other ... other ... other. The general rate of duty will be 6 percent ad valorem.

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

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Bruce N. Hadley, Jr. at bruce.hadleyjr@cbp.dhs.gov.

Sincerely,

STEVEN A. MACK

Director

National Commodity Specialist Division

HQ H316647
OT:RR:CTF:FTM H316647 JER
CATEGORY: Classification
TARIFF NO.: 2001.90.60

MS. ASHLEY HONG
NISSIN INTERNATIONAL TRANSPORT USA INC.
1540 WEST 190TH STREET
TORRANCE, CA 9050

RE: Revocation of NY N305490; tariff classification of sushi ginger

DEAR MS. HONG:

On August 15, 2019, U.S. Customs and Border Protection (“CBP”) issued New York Ruling Letter (“NY”) N305490 to you, in response to your ruling request, filed on behalf of your client, Wismettac Asian Foods, Inc. (“Wismettac”), pertaining to the tariff classification under the Harmonized Tariff Schedule of the United States (“HTSUS”) of sushi ginger. Upon further review, CBP has since found NY N305490 to be incorrect. Accordingly, NY N305490 is hereby revoked.

FACTS:

In NY N305490, the sushi ginger is described as follows:

The product is said to contain approximately 65 percent ginger, 15 percent sugar, 8 percent water, 8 percent salt, and 4 percent spirit vinegar. The product will be eaten between different sushi dishes, which is used to cleanse the palate. It will be sold to restaurants and packaged in 20 pound bags, net weight.

In their initial request, Wismettac provided a breakdown of the ingredients and Nutritional Fact Sheet located on the packaging label, along with a manufacturing flowchart. The item description referred to the subject ginger as Sushi Shoga White Natural. According to the Nutritional Fact Sheet, 1/5 cup equals 1 serving with 324 total servings per container. The sushi ginger contains 0% total fat, 2% Vitamin A, 2% Vitamin C, and 270 mg of sodium.

In NY N290443, CBP classified the subject sushi ginger under heading 2008, HTSUS, and specifically under subheading 2008.99.9190, Harmonized Tariff Schedule of the United States Annotated (“HTSUSA”), which provides for fruit, nuts and other edible parts of plants otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter ... not elsewhere specified or included ... other ... other ... other.” It is now CBP’s position that the sushi ginger is classified under heading 2001, HTSUS.

ISSUE:

Whether the subject sushi ginger is classified under heading 2008, HTSUS, as other edible parts of plants otherwise prepared or preserved, not elsewhere specified or included, or under heading 2001, HTSUS, as other edible parts of plants prepared or preserved by vinegar or acetic acid.

LAW AND ANALYSIS:

Classification under the HTSUSA 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 2022 HTSUS provisions under consideration are as follows:

2001	Vegetables, fruit, nuts and other edible parts of plants, prepared or preserved by vinegar or acetic acid: * * *
2001.90	Other: Other:
2001.90.60	Other... * * *
2008	Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included: Other, including mixtures other than those of subheading 2008.19: * * *
2008.99	Other:
2008.99.63	Sweet ginger... Other:
2008.99.91	Other...

General Explanatory Note 1 to Chapter 20 provides, in pertinent part, as follows:

This Chapter includes:

- (1) Vegetables, fruit, nuts and other edible parts of plants prepared or preserved by vinegar or acetic acid.

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

The EN to heading 2001, HTSUS, provides, in pertinent part, that:

This heading covers vegetables (see Note 3 to this Chapter), fruit, nuts and other edible parts of plants prepared or preserved by means of vinegar or acetic acid, whether or not containing salt, spices, mustard, sugar or other sweetening matter. These products may also contain oil or other additives. They may be in bulk (in casks, drums, etc.) or in jars, bottles, tins or airtight containers ready for retail sale. The heading includes certain preparations known as pickles, mustard pickles, etc.

* * *

In NY N290443, CBP determined that the subject sushi ginger was classified under heading 2008, HTSUS. Heading 2008, HTSUS, is a residual provision (also referred to as a basket provision) which provides, in relevant part, for edible part of plants that were prepared or preserved in a manner not specifically provided for elsewhere. The ENs to heading 2008, HTSUS,

explain that the heading includes “...other edible parts of plants prepared or preserved otherwise than by any of the specified in other Chapters or in the preceding headings of this Chapter.” Based on the plain language of the terms of heading 2008, HTSUS, and its corresponding ENs, products are only classified in heading 2008, HTSUS, if their manner of preparation or preserving is not specified or provided for in other Chapters or headings of Chapter 20, HTSUS. Classification in a basket provision is only appropriate if there is no tariff category that covers the merchandise more specifically. See *E.M. Industries v. U.S.*, 999 F. Supp. 1473, 1480 (CIT 1998) (“‘Basket’ or residual provisions of HTSUS headings ... are intended as a broad catch-all to encompass the classification of articles for which there is no more specifically applicable subheading.”) Accordingly, where it is determined that such products are prepared or preserved in a manner that is specifically provided for in another heading, such products would not be eligible for classification under heading 2008, HTSUS.

General Explanatory Note 1 to Chapter 20, HTSUS, explains that Chapter 20 includes “Vegetables, fruit, nuts and other edible parts of plants prepared or preserved by vinegar or acetic acid.” The subject ginger an edible part of a plant (ginger root or rhizome) and is prepared and preserved by vinegar and other ingredients. The preparation or preserving of vegetables, fruit, nuts and other edible parts of plants, by *vinegar or acetic acid* falls within the scope of heading 2001, HTSUS. Hence, where an edible part of a plant, in this case, ginger rhizome, is prepared or preserved by *vinegar or acetic acid*, it is *prima facie* classified under heading 2001, HTSUS. In Headquarters Ruling Letter (“HQ”) H312071, dated September 16, 2021, described the preparation and preservation process contemplated by heading 2001, HTSUS, as it concerns ginger, roots and other similar edible parts of plants. In HQ H312071, CBP explained how fresh ginger is transformed into sushi ginger, sushi gari or benie shoga, through a process of immersion in a vinegar or acetic acid brine solution. The decision in HQ H312071 further examined how that vinegar and acetic acid brine solution had the function of pickling or marinating the ginger over a specific period of time. In HQ H312071, CBP determined that this method of pickling or marinating fresh vegetables and other edible parts of plants of Chapter 20, HTSUS, was among the methods of preparation and preservation contemplated by the terms of heading 2001, HTSUS.

CBP stated in HQ H312071 that when fresh ginger is immersed in a vinegar-based solution or other similar acetic acid solution, such solution has the function of pickling or marinating the ginger when kept in the solution over a period of time. There are two types of pickling. Pickling in a brine solution with only acid (such as vinegar) and salt results in the vegetables being both preserved and fermented. The salt encourages certain good microbes to flourish, while preventing the growth of other microbes that cause the food to go bad. Examples include butter pickles, olives, preserved lemons, kimchi, and sauerkraut. On the other hand, a pickling brine with only acid and no salt results in the vegetables being preserved and unfermented. The vinegar stops the growth of the spoilage-causing microbes and helps to flavor whatever is being pickled, without stimulating the microbe growth that causes food to ferment. *What’s the Difference Between, Pickling, Brining, Marinating and Curing, It All Comes Down to Salt versus Acid,*

<https://www.eater.com/2019/8/7/20756710/whats-the-difference-pickling-brining-marinating-curing>.¹ It is in this manner of preparation and preservation that the subject ginger is transformed into sushi ginger.

CBP has previously classified similar ginger root products which had been prepared and/or preserved by vinegar or acetic acid under heading 2001, HTSUS. For example, in NY N296327 dated May 22, 2018, CBP classified a product called “sushi ginger white” under heading 2001, HTSUS. The sushi ginger of NY N296327 consisted of 67% ginger, 15% water, 13% sugar, 2% salt, 0.86% distilled vinegar, 0.38 % acetic acid, and trace amounts of citric acid, fructose, malic acid, and potassium sorbate. Similarly, in NY E85798, dated September 9, 1999, CBP classified thin slivers of ginger, which had been brined in white wine vinegar and 2.7% acetic acid content under heading 2001, HTSUS. In each case, fresh ginger was prepared and preserved in a vinegar or acetic acid brine solution. The preparation and preserving process of which the subject ginger and the ginger of both NY N29637 and NY E85798 underwent is consistent with the concept of pickling and marinating discussed in HQ H312071.

There are two main types of pickled ginger used in Japanese cuisine. The first, is beni shoga, which is made by pickling thin matchstick like strips of ginger in [plum] vinegar.² The other variety is sushi gari or what is known as sushi ginger in the traditional presentation of sushi. Each are used to cleanse the palate in between different sushi courses.³ It is prepared via a process of slicing ginger root into thin slices, which are later cured with salt and citric acid (or other acid), and later immersed in a brine solution, which will either pickle or marinate the once fresh ginger into the edible sushi ginger served in sushi bars and other Japanese restaurants.⁴

The subject ginger is referred to as “Sushi Shoga,” which Wismettac states is to be eaten between different sushi dishes to cleanse the palate. According to the ingredients and nutritional fact sheet provided, the instant sushi ginger consists of 65.04% ginger, 15.27% sugar, 7.93% water, 7.76% salt⁵ and 4.0% spirit vinegar. Based on the manufacturing flowchart of the “Sushi

¹ The use of rice vinegar is often substituted by other types of vinegar or a combination of other types of vinegar (e.g., wine vinegar, apple cider vinegar), sugar and a citric acid (such as lemon juice). <https://tastessence.com/vinegar-substitute>. Similarly, acetic acid combined with citric acid can be used as a substitute for vinegar <https://www.cookist.com/4-amazing-citric-acid-substitutes/>. *Substitutes for vinegar* <https://www.fitday.com/fitness-articles/nutrition/healthy-eating/substitutes-for-vinegar.html>.

² Beni Shoga or Red Pickled Ginger is made with julienned young ginger that has been pickled in plum vinegar. Unlike Sushi Gari, Beni Shoga is sliced into thin “matchstick” like strips. <https://www.justonecookbook.com/beni-shoga-red-pickled-ginger/>. Beni Shoga Recipe: How to Make Pickled Ginger available at, https://www.masterclass.com/articles/beni-shoga-recipe?_cf_chl_captcha_tk__=pmd_xvHNld3K7HdZwQEvfw6zsfw4FNyGuVZt3IbQwzzKHD4-1635909192-0-gqNtZGzNAzujcnBsZQc9#quiz-0. (Last visited November 2, 2021).

³ *What is Sushi Ginger*, <https://www.japancentre.com/en/pages/68-sushi-ginger> (Last visited, November 2, 2021). Sushi gari is made by marinating flat strips of young ginger in (rice) vinegar and sugar.[3] *What is Sushi Ginger*, <https://www.japancentre.com/en/pages/68-sushi-ginger>. (Last visited, November 2, 2021).

⁴ *Gari- Pickled Sushi Ginger*, <https://www.justonecookbook.com/pickled-ginger/?nonintro=1>. (Last visited, November 2, 2021).

⁵ The solution in which the subject sushi shoga ginger is prepared contains 7.76% salt. However, the salt content does not make the instant solution a provisional brine solution as the sodium content of 270 mgs does not make this product inedible or require it to undergo

Shoga”, the immersion of slices of fresh ginger in spirit vinegar, salt, sugar and water, over a period of time, has the function of pickling the ginger and thus transforming it into sushi shoga. As previously stated, this process of pickling and marinating fresh ginger in vinegar or acetic acid is among the methods of preparation or preserving contemplated by the terms of heading 2001, HTSUS. Inasmuch as the subject ginger (“Sushi Shoga”) has been prepared and preserved by vinegar, we conclude that it classified in heading 2001, HTSUS.

HOLDING:

By application of GRI 1, the subject ginger products are classified in heading 2001, HTSUS. Specifically, the ginger is classified in subheading 2001.90.6000, HTSUSA, which provides for “Vegetables, fruit, nuts and other edible parts of plants, prepared or preserved by vinegar or acetic acid: Other: Other.” The general, column one rate of duty is 14% *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY N305490, dated August 15, 2019, is REVOKED.

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

Sincerely,

CRAIG T. CLARK,
Director

Commercial and Trade Facilitation Division

**PROPOSED MODIFICATION OF TWO RULING LETTERS
AND PROPOSED REVOCATION OF TREATMENT
RELATING TO THE TARIFF CLASSIFICATION OF
CANOPIES FOR CHILD CAR SAFETY SEATS**

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

ACTION: Notice of proposed modification of two ruling letters and proposed revocation of treatment relating to the tariff classification of canopies for child car safety seats.

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 desalination. See HQ H312071 (CBP distinguished between provisional brine solution where the product is not immediately ready for consumption and an umezu type brine solution used to pickle or marinated vegetables, fruits and other edible parts of plants).

interested parties that U.S. Customs and Border Protection (CBP) intends to modify two ruling letters concerning tariff classification of canopies for child car safety seats under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments on the correctness of the proposed actions are invited.

DATE: Comments must be received on or before April 22, 2022.

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: Ms. Arim J. Kim, Chemicals, Petroleum, Metals and Miscellaneous Articles Branch, Regulations and Rulings, Office of Trade, at (202) 325–0266.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to 19 U.S.C. § 1625(c)(1), this notice advises interested parties that CBP is proposing to modify two ruling letters concerning tariff classification of canopies for child car safety seats. Although in

this notice, CBP is specifically referring to Headquarters Ruling Letter (HQ) 953673, dated October 6, 1993 (Attachment A), and New York Ruling Letter (NY) 882039, dated February 4, 1993 (Attachment B), this notice also covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the two identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the comment period.

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

In HQ 953673 and NY 882039, CBP classified canopies for child car safety seats in heading 6307, HTSUS, specifically in subheading 6307.90.99, HTSUS, which provides for "Other made up articles, including dress patterns: Other: Other: Other". CBP has reviewed HQ 953673 and NY 882039, and has determined the ruling letters to be in error. It is now CBP's position that canopies for child car safety seats are properly classified in heading 9401, HTSUS, specifically in subheading 9401.99.90, HTSUS, which provides for "Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof: Parts: Other: Other".

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to modify HQ 953673 and NY 882039 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed HQ H321952, set forth as Attachment C to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: February 24, 2022

ALLYSON MATTANAH
for

CRAIG T. CLARK,
Director

Commercial and Trade Facilitation Division

Attachments

HQ 953673

October 6, 1993

CLA-2 CO:R:C:M 953673 DFC

CATEGORY: Classification

TARIFF NO.: 9404.90.20; 6307.90.94

DISTRICT DIRECTOR OF CUSTOMS
U.S. CUSTOMS SERVICE
PATRICK V. McNAMARA BUILDING
477 MICHIGAN AVE. 48266

RE: Protest 3801-3-100048; Seat pads; Canopies. HRL's 087689, 089018, 089776, 950370, Legal Note 3(b) to Chapter 94, EN 94.01

DEAR SIR:

The following is our decision regarding the request for further review of Protest 3801-3-100048 concerning the tariff classification under the Harmonized Tariff Schedule of the United States (HTSUS), of certain infant's seat pads and canopies for car seats produced in Canada. Samples were submitted for examination.

FACTS:

The merchandise involved consists of pads or cushions for an infant's car seat, a baby swing seat and a baby rocker, and canopies for car seats. All the pads are stuffed with polyester fiberfill. The outer surface on one side is a printed 50% polyester, 50% cotton woven fabric. The pads are backed with a nonwoven man-made fiber fabric. These pads have various slots for seat restraints and clips for attachment to the seat. The canopies are made of a woven blend of 50% polyester and 50% cotton fabric and have two elastic straps.

The entries covering this merchandise were liquidated on October 9, and 30, 1992, under subheading 9404.90.20, HTSUS. The protest was timely filed on January 6, 1993. Protestant claims that the baby car seat pads and the canopies are classifiable under subheading 9401.90.10, HTSUS, while the other pads for the baby swing seat and the baby rocker are classifiable under 9401.90.50, HTSUS.

ISSUE:

Are the pads and canopies classifiable as other parts of seats of a kind used for motor vehicles under subheading 9401.90.10, HTSUS, and as parts of other seats in subheading 9401.90.50, HTSUS, rather than as other cushions and similar furnishings in subheading 9404.90.20, HTSUS?

LAW AND ANALYSIS:

The competing provisions are as follows:

9404 Mattress supports; articles of bedding and similar furnishings (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered:

* * * *

9404.90	Other:				
		Pillows, cushions and similar furnishings:			
		* * * *			
9404.90.20	Other				
9401	Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof:				
		* * * *			
9401.90	Parts:				
9401.90.10	Of seats of a kind used for motor vehicles				
		* * * *			
	Other:				
9401.90.50	Other				
6307	Other made up articles, including dress patterns:				
		* * * *			
6307.90	Other:				
		* * * *			
6307.90.94	Other				

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI's). GRI 1 provides that "classification shall be determined according to the terms of the headings and any relative section or chapter notes, and provided such headings or notes do not otherwise require, according to [the remaining GRI's taken in order]." In other words, classification is governed first by the terms of the headings of the tariff and any relative section or chapter notes.

Protestant maintains that under the doctrines of *noscitur a sociis* and *eiusdem generis* the seat cushions are not classifiable under heading 9404, HTSUS, because they are not furnishings "similar" to the exemplars of bedding listed therein. The doctrine of *noscitur a sociis* is that the meaning of a word may be ascertained by reference to the meaning of words associated with it. The doctrine of *eiusdem generis* is that where particular words of description are followed by general terms, the latter refer only to things of a like class with those particularly described.

In support of its position that the instant cushions are not provided for under heading 9404, HTSUS, protestant cites Headquarters Ruling Letter (HRL) 087689 dated October 11, 1990, wherein Customs stated that a cushioned comfort seat was not considered to be an article of bedding within the purview of heading 9404, HTSUS, because it was not intended for use with a bed or during sleep but rather was intended for use during day time activities. The cushioned comfort seat was held to be properly classified under subheading 6307.90.95, HTSUS, which provides for other made up articles, other, other, other.

In HRL 089018 dated August 9, 1991, Customs ruled that an infant's car seat cushion/cover was properly classifiable under heading 9404, HTSUS. It should be noted that HRL 089018 modified HRL 087961 dated January 24, 1991, in which Customs held that the same infant's car seat cushion/cover was properly classifiable under subheading 6304.93.00, HTSUS, as an other furnishing article rather than under subheading 9401.90.10, HTSUS, as a part of a seat used for motor vehicles.

In HRL 950370 dated January 7, 1992, Customs ruled that a stuffed seat cushion for an infant's rocker was classifiable under subheading 9404.90.20, HTSUS.

Although the rulings cited above holding that seat cushions are classifiable under heading 9404, HTSUS, did not specifically address the doctrines of *noscitur a sociis* and *ejusdem generis*, it was implied therein that these doctrines do not apply to heading 9404 because the cushions provided for in that heading are not restricted to articles of bedding and similar furnishings.

Legal note 3(b) to Chapter 94, HTSUS, provides that “[g]oods described in heading 9404, entered separately, are not to be classified in heading 9401, 9402 or 9403 as parts of goods.”

While we agree with the protestant that the cushions are parts of seats, they are also described in subheading 9404.90.20, HTSUS, which provides for pillows, cushions, and similar furnishings, other. It is our opinion that these cushions being “goods described in heading 9404, entered separately” are precluded from classification under heading 9401 by virtue of legal note 3(b) to Chapter 94, HTSUS, *supra*.

The Harmonized Commodity Description and Coding System Explanatory Notes (EN) to the HTSUS, although not dispositive should be looked to for the proper interpretation of the HTSUS. See 54 FR 35138 (August 23, 1989). The EN to heading 94.01 at page 1576 reads, as follows:

Separately presented cushions and mattresses, sprung, stuffed or internally fitted with any material or of cellular rubber or plastics whether or not covered, are excluded (heading 94.04) even if they are clearly specialized as parts of upholstered seats (e.g., settees, couches, sofas). When these articles are combined with other parts of seats, however, they remain classified in this heading. They also remain in this heading when presented with the seats of which they form part.

Protestant asserts that heading 9401, HTSUS, is limited to cushions for beds and seats that are convertible into beds, therefore, the reference to “cushions” in EN 94.01 is limited to cushions for beds and seats convertible into beds. Clearly, the seats with which the subject cushions are used are not beds or seats convertible into beds.

The protestant in reaching his conclusion ignores certain pertinent language in heading 9401, HTSUS. Specifically, the phrase “whether or not convertible into beds” mandates an interpretation that the seat provision applies to all seats (other than 9402) as does the parts breakout. The infant's car seats, swing seats and carrier seats are not of the class or kind of seats enumerated in heading 9402, therefore the pads and cushions for the seats are precluded from classification under headings 9401, 9402 and 9403, HTSUS.

A careful reading of the EN to heading 94.01, *supra*, lends support to our position that the cushions provided for in heading 9404, HTSUS, need not be bedding or furnishings “similar” to the exemplars of bedding listed therein to be classified in heading 9404. Specifically, the EN to heading 94.01 states that separately presented cushions are excluded from classification therein and are classifiable under heading 94.04 even if they [cushions] are clearly specialized as parts of upholstered seats such as settees, couches, sofas which in most instances are not convertible into beds. Certainly, it appears from a reading of this EN that the drafters of the Harmonized System did not intend to limit the term “cushions” as proposed by the protestant. See HRL 089776

dated October 21, 1991, wherein Customs drew the same conclusion regarding the classification of a foam-filled cushion.

In summary, it is our opinion that note 3(b) to Chapter 94 and the EN to heading 94.01 require that the cushions in issue be classified under heading 9404, thus precluding application of the doctrines of *noscitur a sociis* and *eiusdem generis*.

The protestant makes an extensive argument for classification of the merchandise under subheadings 9401.90.10 and 9401.90.50, HTSUS, based on GRI 3, HTSUS. We will not entertain protestant's GRI 3 arguments because the result here is governed by GRI 1, HTSUS, (i.e., legal note 3(b) to Chapter 94).

The EN to heading 94.01, *supra*, provides in part that “[w]hen these articles are combined with other parts of seats, however, they remain classified in this heading.” Protestant relying on this excerpt states that the plastic clips which are attached to the cushions for the car seat and the swing and rocker seats are part of the seats in which the cushions are used. They are the part of the seats which secure and immobilize the cushions. Thus, protestant claims that the cushions in issue are combined with other parts [plastic clips] of seats in their imported condition, and, are properly classifiable under heading 9401.

We do not agree with protestant that the plastic clips are part of the seats in which the cushions are used. The plastic clips are sewed to the cushions. As such, the clips are not part of the seats but rather form a unitary whole with the cushion. Thus, the cushions cannot be considered as being combined with other parts of seats.

We agree with the protestant that the canopies are not classifiable under heading 9404, HTSUS. However, we do not agree that they are parts of other seats in subheading 9401.90.50, HTSUS, because they are accessories rather than parts. For this reason, it is our opinion that they are properly classifiable under subheading 6307.90.94, HTSUS [currently 6307.90.99], which provides for other made up articles, including dress patterns, other, other, other.

HOLDING:

The seat pads or cushions are classifiable under subheading 9404.90.20, HTSUS.

The canopies are classifiable under subheading 6307.90.94 [currently 6307.90.99], HTSUS.

Since the rate of duty under the classification indicated above is more than the liquidated rate, the protest should be denied in full. A copy of this decision should be attached to the Customs Form 19, and provided to the protestant, through counsel, as part of the notice of action on the protest.

Sincerely,

JOHN DURANT,

Director

Commercial Rulings Division

NY 882039

February 4, 1993

CLA-2-94:S:N:N6:349 882039

CATEGORY: Classification

TARIFF NO.: 9404.90.2000; 6307.90.9986

MR. RAYMUNDO GONZALEZ

DANIEL B. HASTINGS INC.

P.O. BOX 673

LAREDO, TEXAS 78042

RE: The tariff classification of an infant car seat pad and canopy from Mexico.

DEAR MR. GONZALEZ:

In your letter dated January 13, 1993, on behalf of Bauerhin, Lansing, Michigan, you requested a tariff classification ruling.

The instant samples are two infant car seat pads and a canopy. One pad is contoured to fit a newborn car seat/carrier, and measures approximately 18 inches by 20 inches exclusive of a 3-1/4 inch end ruffle. It is comprised of four panels whose front surface is made of a blend of 50 percent polyester/50 percent cotton woven fabric. The panels are stuffed with a 100 percent polyester filler and the back of the panels are covered with white non-woven fabric. Each side panel has a slot through which restraints will presumably protrude. The front has four small plastic clips which will hold the cover onto the newborn car seat/carrier.

The second pad is constructed to fit an infant car seat, and it measures approximately 21-1/8 inches by 25-1/2 inches exclusive of a 3-1/4 inch ruffle. It is comprised of three panels whose exterior portion is made of a blend of 50 percent polyester/50 percent cotton woven fabric. The panels are stuffed with a 100 percent polyester filler and the back is covered with white non-woven fabric. The middle panel has four slots and an opening at the bottom through which restraints will presumably protrude. The side panels have two plastic clips which will hold the cover onto the infant car seat.

The canopy is made in a woven blend of 50 percent polyester/ 50 percent cotton fabric. It measures approximately 19-3/4 inches by 28-1/2 inches exclusive of a 15/16 inch ruffle and has two elastic straps.

The applicable subheading for the pads will be 9404.90.2000, Harmonized Tariff Schedule of the United States (HTS), which provides for mattress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered: other: pillows, cushions and similar furnishings: other. The duty rate will be 6 percent ad valorem. No textile category is currently assigned to merchandise under this subheading.

The applicable subheading for the canopy will be 6307.90.9986, HTS, which provides for other made up articles, including dress patterns: other: other: other. The rate of duty will be 7 percent ad valorem. No textile category is currently assigned to merchandise under this subheading.

Articles classifiable under subheading 6307.90.9986, HTS, which are products of Mexico are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

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

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

Sincerely,

JEAN F. MAGUIRE
Area Director
New York Seaport

HQ H321952
OT:RR:CTF:CPMMA H321952 AJK
CATEGORY: Classification
TARIFF NO: 9401.99.90

MR. RAYMUNDO GONZALEZ
DANIEL B. HASTINGS INC.
P.O. BOX 673
LAREDO, TX 78042

RE: Modification of HQ 953673 and NY 882039 by Operation of Law;
Classification of Canopies for Child Safety Seats

DEAR MR. GONZALEZ:

This letter is in reference to New York Ruling Letter (NY) 882039, dated February 4, 1993, concerning the tariff classification of canopies for child safety seats under the Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed NY 822039, classifying the canopies in subheading 6307.90.9986, HTSUSA (Annotated), as other made up articles, and have determined that the classification of the canopies was incorrect due to the holding in *Bauerhin Techs. Ltd. Pshp. v. United States*, 110 F.3d 774 (Fed. Cir. 1997), *affg*, 19 C.I.T. 1441 (1995) (hereinafter, “*Bauerhin*”), and the publication of Additional U.S. Note (AUSN) 1 to chapter 94 in 2007. Accordingly, NY 882039 is modified by operation of law with respect to the classification of the canopies.

We have also reviewed Headquarters Ruling Letter (HQ) 953673, dated October 6, 1993, which was the subject of *Bauerhin*. As HQ 953673 classified substantially similar canopies in subheading 6307.90.9986, HTSUSA, and was also issued before the decision in *Bauerhin* and the publication of AUSN 1 to chapter 94, it is likewise modified by operation of law with respect to the classification of the canopies.

FACTS:

The canopies for child safety seats were described in HQ 953673 as follows:

The canopies are made of a woven blend of 50% polyester and 50% cotton fabric and have two elastic straps.

The canopy for child safety seats in NY 882039 is described as follows:

The canopy is made in a woven blend of 50 percent polyester/50% cotton fabric. It measures approximately 19–3/4 inches by 28–1/2 inches exclusive of a 15/16 inch ruffle and has two elastic straps.

ISSUE:

Whether the canopies for child safety seats are classified in heading 6307, HTSUS, as other made up articles, or in heading 9401, HTSUS, as parts of seats.

LAW AND ANALYSIS:

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be

classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

* * * * *

The HTSUS provisions at issue are as follows:

6307 Other made up articles, including dress patterns

9401 Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof

Additional U.S. Note 1 to chapter 94, which was added in 2007, states as follows:

1. For the purposes of subheading 9401.20.00, “seats of a kind used for motor vehicles” does not include child safety seats.

* * * * *

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

* * * * *

In *Bauerhin*, the U.S. Court of Appeals for the Federal Circuit reviewed canopies for child safety seats, and classified them in heading 9401, HTSUS, as parts of seats for motor vehicles. 110 F.3d at 775–6, 777–780. Similar to the canopies for child safety seats in NY 882039, the canopies discussed in *Bauerhin*—which were the protested merchandise in HQ 953673—were designed to fit over the child safety seats, were sold as parts of the seats to which they are attached, and were imported separately from those seats. *See id.* at 776. The Federal Circuit held that the canopies constitute parts of child safety seats, because they “serve[] no function or purpose that is independent of the child car safety seat” and they are “undisputedly designed, marketed, and sold to be attached to the child safety seats.” *Id.* at 779. Thus, the Federal Circuit affirmed the Court of International Trade’s holding that the canopies are properly classified in subheading 9401.90.10, HTSUS (1997), which provided for “Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof: Parts: Of seats of a kind used for motor vehicles”. By classifying the canopies in subheading 9401.90.10, HTSUS, as parts of seats for motor vehicles, *Bauerhin* directed that child safety seats are properly classified in subheading 9401.20.0010, HTSUSA (1997), which provided for “Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof: Seats of a kind used for motor vehicles: Child safety seats”. A decade after the issuance of *Bauerhin*, however, the HTSUS added AUSN 1 to chapter 94 in 2007, stating that “[f]or the purposes of subheading 9401.20.00, ‘seats of a kind used for motor vehicles’ does not include child safety seats.” Accordingly, in 2008, the HTSUS was updated to incorporate AUSN 1 to chapter 94 by carving out a provision for child safety seats in subheading 9401.80.6020, HTSUSA (2008), as other seats. This change precipitated the reclassification of parts of child safety seats from subheading 9401.90.10, HTSUS, as parts of seats for motor vehicles, to subheading 9401.90.50, HTSUS (2008), as parts of other seats.

The 2022 HTSUS continues to identify child safety seats in subheading 9401.80.60, HTSUS (2022), as other seats.¹ The HTSUS, however, was updated in 2022 to move the provision for parts of other seats from subheading 9401.90.50, HTSUS (2008), to subheading 9401.99.90, HTSUS (2022). Based on the aforementioned reasoning, the classification of canopies for child safety seats in HQ 953673 and NY 882039 is modified by operation of law to reflect the above analysis.

HOLDING:

In accordance with the holding in *Bauerhin* and the publication of Additional U.S. Note 1 to chapter 94, the classification of the canopies for child safety seats has been modified by operation of law. Accordingly, the canopies for child safety seats are classified in heading 9401, HTSUS, specifically in subheading 9401.99.90, HTSUS, which provides for “Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof: Parts: Other”. The 2022 column one, general rate of duty is free.

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

EFFECT ON OTHER RULINGS:

HQ 953673, dated October 6, 1993, and NY 882039, dated February 4, 1993, are modified by operation of law with respect to the classification of the canopies for child safety seats.

Sincerely,

CRAIG T. CLARK,
Director

Commercial and Trade Facilitation Division



**PROPOSED MODIFICATION OF ONE RULING LETTER
AND PROPOSED REVOCATION OF TREATMENT
RELATING TO THE IMPORTATION OF GROW ACE'S
PROPAGATION EQUIPMENT**

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

ACTION: Notice of proposed revocation of one ruling letter and proposed revocation of treatment relating to the importation of GrowAce's propagation equipment, including GrowAce Yield Lab Propagation Trays, Grow Ace Propagation Domes, the Grow Ace Air Duct Fan Vent System, and the Grow Ace 6 Inch Purifier Activated Charcoal Filter.

¹ Since the publication of AUSN 1 to chapter 94, CBP has classified child safety seats in subheading 9401.80.60, HTSUS. *See e.g.*, NY N044078, dated Nov. 24, 2008; NY N014874, dated Aug. 6, 2007.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke one ruling letter concerning the importation of GrowAce’s propagation equipment. Comments on the correctness of the proposed actions are invited.

DATE: Comments must be received on or before April 22, 2022.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Monique Moore, Border Security and Trade 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. Monique Moore at (202) 325–1826.

FOR FURTHER INFORMATION CONTACT: Janelle Gordon, Cargo Security, Carriers & Restricted Merchandise Branch, Regulations and Rulings, Office of Trade, at (202) 325–0087.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to 19 U.S.C. § 1625(c)(1), this notice advises interested parties that CBP is proposing to revoke 1 ruling letter pertaining to

the importation of GrowAce propagation equipment. Although in this notice, CBP is specifically referring to Headquarter Ruling Letter (“HQ”) H321671, dated November 5, 2021 (Attachment A), this notice also covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the comment period.

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

In HQ H321671, dated November 5, 2021, CBP determined that the GrowAce propagation equipment was drug paraphernalia” pursuant to 21 U.S.C. § 863 and therefore prohibited from importation into the United States. CBP has reviewed HQ H321671 and has determined the ruling letter to be in error. It is now CBP’s position that the subject propagation equipment is not drug paraphernalia.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke HQ H321671 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed H322151, set forth as Attachment A 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:

CHARLES R. STEUART,
Director
Border Security Division

Attachments

HQ H322151

February 23, 2022

OT: RR: BSTC: CCR H322151 JLG

PAUL S. ANDERSON
THE ANDERSON LAW FIRM, LLC
111 BARCLAY BOULEVARD, SUITE 206
LINCOLNSHIRE, IL 60069

Re: Reconsideration of HQ H321671 (November 5, 2021); Niche Webstores, Inc. d/b/a GrowAce; propagation equipment; 21 U.S.C. § 863

DEAR MR. ANDERSON: :

This is in response to your November 22, 2021, correspondence on behalf of Niche Websters, Inc. (Niche) and its division GrowAce, in which you request a reconsideration of ruling HQ H322151 (November 5, 2021) filed pursuant to 19 C.F.R. § 177 et. seq.¹ Our decision follows.

FACTS:

The facts outlined in HQ H322151 are incorporated herein by reference and will not be repeated. However, briefly stated, on October 6, 2021, Niche, operating under the trade name GrowAce, requested a binding ruling regarding the correct tariff classification of four horticultural products it plans to import. The products at issue in the ruling request were: GrowAce's Yield Lab Propagation Trays, Propagation Domes, the Air Duct Fan Vent System, and the 6 Inch Purifier Activated Charcoal Filter. This office did not determine the tariff classification, because we found the products were inadmissible as drug paraphernalia pursuant to 21 U.S.C. § 863.

The products at issue are as follows:

(1) GrowAce Yield Lab 10x20-inch Propagation Tray²



¹ In your request for reconsideration, you have asked this office for “confidential treatment” of certain data analytics regarding GrowAce’s website and YouTube traffic and the practices of its users. If this office receives a Freedom of Information Act request for your submission, pursuant to U.S. Custom and Border Protection (“CBP”) regulations in 19 C.F.R. § 103.35 et. seq., regarding the disclosure of business information CBP will provide business submitters with prompt written notice of receipt of FOIA requests or appeals that encompass their commercial information provided the business submitter has in good faith designated the information as commercially or financially sensitive information. We accept your request for confidential treatment as a good faith request.

² <https://growace.com/products/yield-lab-10-x-20-inch-propagation-tray-5-pack> (last visited December 30, 2021).

(2) GrowAce Yield Lab 7-inch Propagation Dome³



(3) GrowAce Yield Lab 6-inch 440 CFM Air Duct Fan Vent System⁴



(4) Yield Lab 6 Inch Purifier Activated Charcoal Filters⁵



ISSUE:

Whether GrowAce’s Yield Lab Propagation Trays, Yield Lab Propagation Domes, Yield Lab Air Duct Fan Vent Systems, and Yield Lab 6 Inch Purifier Activated Charcoal Filters are drug paraphernalia as defined in 21 U.S.C. § 863, such that they are prohibited from entry into the United States.

LAW AND ANALYSIS:

The Federal Drug Paraphernalia Statute, 21 U.S.C. § 863, which is part of the Controlled Substances Act (“CSA”) defines drug paraphernalia as “any

³ <https://growace.com/products/yield-lab-7-inch-propagation-domes-5-pack> (last visited December 30, 2021).

⁴ <https://growace.com/products/yield-lab-6-inch-440-cfm-air-duct-fan-vent-system> (last visited December 30, 2021).

⁵ <https://growace.com/products/yield-lab-6-inch-purifier-activated-charcoal-filter> (last visited December 30, 2021).

equipment, product, or material of any kind which is primarily intended or designed for use in manufacturing, compounding, converting, concealing, producing, processing, preparing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance.”⁶ Thus, Section 863(d) identifies two categories of drug paraphernalia: items “primarily intended” for use with controlled substances and items “designed for use” with such substances.

The U.S. Supreme Court examined the meaning of “drug paraphernalia” pursuant to 21 U.S.C. § 863 in *Posters ‘N’ Things v. United States*, 511 U.S. 513 (1994), and considered both the “primarily intended for use” and “designed for use” categories. The Court concluded that the “primarily intended for use,” category should be analyzed objectively and refers generally to an item’s likely use⁷. In addition, the Court noted that this phrase “is a relatively particularized definition, reaching beyond the category of items that are likely to be used with drugs by virtue of their objective features.”⁸ The Court also stated that “it is the likely use of customers generally, not any particular customer, that can render a multiple-use item drug paraphernalia.”⁹ Therefore, items having multiple possible uses may constitute drug paraphernalia for purposes of 21 U.S.C. § 863 if the *likely use* by customers of the seller of the items is for use with illegal drugs.¹⁰

With respect to the “designed for use” category, the Court referred to its decision in *Village of Hoffman Estates et al v. The Flipside, Hoffman Estate, Inc.*, 455 U.S. 489 (1982), where it stated that this standard should also be understood objectively as it refers to an item’s objective characteristics.¹¹ The Court opined that “[a]n item is ‘designed for use’...if it ‘is principally used with illegal drugs by virtue of its objective features, i.e., features designed by the manufacturer....The objective characteristics of some items establish that they are designed specifically for use with controlled substances. Such items, including bongos, cocaine freebase kits, and certain kinds of pipes, have no other use besides contrived ones (such as use of a bong as a flower vase). Items that meet the ‘designed for use’ standard constitute drug paraphernalia irrespective of the knowledge or intent of one who sells or transports them.”¹²

As stated in HQ H321671, the four products at issue are not “designed for use” with controlled substances as it is evident that the physical characteristics of the items are nor per se fashioned for use with drugs. Therefore, this determination addresses whether the products are “primarily intended for use” in manufacturing, compounding, converting, concealing, producing, processing, preparing, injecting, ingesting, inhaling, or otherwise introducing a controlled substance into the human body. As previously discussed, the “primarily intended for use” test considers the stated purpose of multiple-use items while examining whether the “likely use of customers generally . . . can

⁶ 21 U.S.C. § 863(d) (emphasis added).

⁷ *Posters ‘N’ Things*, 511 U.S. 513, 521 (1994).

⁸ *Id.* at 521 n.11.

⁹ *Id.* at 521 n.11.

¹⁰ *Id.*

¹¹ *Village of Hoffman Estates et al v. The Flipside, Hoffman Estate, Inc.*, 455 U.S. 489, 501 (1982).

¹² *See Id.*

render a multiple-use item drug paraphernalia.” Therefore, we consider the factors in 21 U.S.C. § 863(e) in determining whether an item constitutes drug paraphernalia, including “descriptive materials accompanying the item which explain or depict its use,” “national and local advertising concerning its use,” “the manner in which the item is displayed for sale,” and the “existence and scope of legitimate uses of the item in the community.”¹³ We will also determine whether any exemption in 21 U.S.C. 863(f) applies.

In your November 22, 2021, correspondence, you assert that CBP’s application of certain factors in 21 U.S.C. § 863(e) was incorrect resulting in the wrongful determination that GrowAce products are primarily intended to produce controlled substances because its website advertises “100% discreet shipping” for all of its products, its activated charcoal filter purifier is advertised as the “most effective way to eliminate odors,” and its YouTube page features “fonts and graphics reminiscent of marijuana” and a “Grow 420 Guide” video under its “Partners and Collaborators” tab. You present the following arguments to rebut CBP’s determination.

Discreet Shipping

You argue that advertising 100% discreet shipping for GrowAce products is not an indication that GrowAce is shipping illicit substances, or products intended to be used with illicit substances, as CBP alleges. Rather, you assert that as a company that is primarily engaged in e-commerce with products shipped directly to customers without signature confirmation or in-home delivery, GrowAce uses discreet and inconspicuous packaging to decrease the amount of package thefts. To support this argument, you submit the results of C+R Research’s “2020 Package Theft Statistics Report,” which found that 43% of polled respondents have had a package stolen in 2020, compared to 36% in 2019.¹⁴ You also provide screenshots of common household items sold on Amazon’s website with warning notifications indicating when products will not be packaged in a discreet manner. Specifically, the notifications state: “Item arrives in packaging that shows what’s inside. To hide it, choose Ship Amazon packaging.” Because the discreet shipping advertisement may be misinterpreted, you state that you have removed this notice from GrowAce’s site and plan to display a warning regarding plain packaging similar to Amazon’s warning.

Removal of Odors

You argue that in HQ H321671, CBP did not provide an accurate and complete impression of the purification benefits of activated charcoal filters because the ruling included only a partial quote from GrowAce’s website regarding the elimination of odors. You also claim that CBP incorrectly determined that most plants grown indoors do not emit a strong odor like marijuana; therefore, the Yield Lab 6 inch Activated Charcoal Filter is not necessary for any other plant except marijuana.

You provide the complete quote from GrowAce’s website, which states that “The grow room filter is the most effective way to eliminate odors, filter particulates, and purify the air to provide both you and your plants with a clean and fresh environment.” You point out that GrowAce’s website does not

¹³ 21 U.S.C. § 863(e).

¹⁴ www.crrresearch.com/blog/2020-package-theft-statistics-report (last visited January 2, 2022).

emphasize odor removal over the other features of the filter, thus it was inappropriate for CBP to take this advertisement out of context and create a connection to marijuana. Moreover, you claim that most worthwhile air filters on the market generally claim to remove odors and are likely not considered drug paraphernalia. An example of a high-quality air filter advertised as effective in removing odors, among other things was included in support of this argument.

Next, you provide articles from the University at Albany¹⁵ and HortiDaily.com¹⁶ to support your claim that most plants produce strong smells as part of their natural defense system against pests, such as the tomato plant, a popular plant grown indoors, and that a carbon filter is beneficial for healthy indoor vegetable and herb gardens. You maintain that one of the primary advantages to growing vegetables and herbs indoors compared to outdoors, is to have full control over the growing environment. However, you caution that it is still imperative to have the cleanest and purest environment when growing indoors given that many indoor grows are in urban areas where plants can be negatively affected by pollutants that can come from things such as car smog, pet dander, oil and odor particles from cooking, mold, and mildew spores.¹⁷ You state that the Activated Charcoal Filter is used for filtration of both incoming, outgoing, and recirculating air in order to remove odors, pathogens, disease-causing mold spores, bacteria and contaminants from entering from the outside environment into any grow room, which is not limited to marijuana plants.¹⁸

In further support of your argument, you provide a link of a YouTube video from Everest Fernandez of Urban Garden Magazine, an industry expert and educator in the indoor gardening who is well-regarded and well-known as someone who grows vegetables and herbs and does *not* grow or promote the cultivation of cannabis. In his YouTube video, titled *Carbon Scrubbers - Grow Room Scrubbing 1015*, Everest explains the benefit of using a carbon filter in a vegetable and herb indoor garden. He states, “if you are serious about having clean produce, you absolutely need a carbon scrubber in your life . . . you might well be surprised with how much dust is filtered over the course of a growing cycle. All that dust has the potential of getting stuck in your crop, especially if its resinous and can potentially give fungal spores a base to colonize”¹⁹. Everest further explains that carbon filters are effective in removing ethylene gas, which extends the ripening period and ultimately increases the yields of fruits and vegetables. You also warn that the odors from plants grown indoors with no filters can negatively affect those with allergies and other sensitivities.

Finally, you state that gardening applications, similar to the products at issue in this ruling, are sold by Amazon and Home Depot, reputable busi-

¹⁵ <https://www.albany.edu/news/66493.php> (last visited December 31, 2021).

¹⁶ <https://www.hortidaily.com/article/9330447/why-do-tomato-plants-smell-like-that/> (last visited January 3, 2022).

¹⁷ Niche Webstores/Grow Ace Request for Reconsideration, Exhibit 2. As an example, you also state that when “growing microgreens such as alfalfa, beets, kale, pea shoots and kohlrabi, there is a particular concern for mold, mildew, and fungus . . . [and] [w]ithout proper air flow and filtration, these mold spores will start to grow on the plant itself and ultimately ruin the entire crop.”

¹⁸ *Id.*

¹⁹ <https://www.youtube.com/watch?v=hrKy2errkTw> (last visited December 31, 2021).

nesses that have long-standing restrictions²⁰ against the sale of drugs and drug paraphernalia, further demonstrating that these products are not used or intended for use with drugs. You provide an example of the HydroCrunch 4-inch Ducting Hydroponic Ventilation Kit advertised for sale on Amazon,²¹ as well as the HydroCrunch Centrifugal Inline Duct Fan System for Indoor Grow Room Ventilation advertised for sale on Home Depot's website²².

GrowAce's YouTube Page

You argue that the GrowAce YouTube page channel does not market or advertise its products for use with marijuana as CBP claims. The "Grow 420 Guide" referenced in HQ H321671 with "fonts and graphics reminiscent of marijuana," as well as the video under GrowAce's "Partners and Collaborators" tab with a Grow 420 Guide account listed as part of "The Team" was completed by a separate company that is not owned or related to GrowAce. You also challenge CBP's claims that GrowAce does not have any videos on how to grow other plants and submit examples of three videos on GrowAce's YouTube account regarding indoor planting. The first video titled *Window Farm Installation Tutorial | DIY Window Hydroponics for Any Horticulture Garden*,²³ explains how to create a window farm "which can produce about a salad a week. The second and most recent video titled *Best LED Grow Light Bar and Stand for Clones, Germination, and Micro-green 2019*,²⁴ which is produced by GrowAce, clearly indicates in both the title and description that the video is about microgreen planting. The third video, *14W Advance Spectrum LED Grow Light Panels*,²⁵ GrowAce explains how the subject product is optimal for growing cucumbers, lettuce, and chrysanthemum plants.

In addition, you note that GrowAce has not actively managed or produced video content for its YouTube channel in years. You also provide data verifying that the number of people that visit and/or make a purchase on GrowAce website after viewing its YouTube channel is minimal.

Upon careful review of the record, including the additional arguments in your reconsideration request, we find that the four GrowAce products at issue are not drug paraphernalia as defined in 21 U.S.C. § 863. There is sufficient evidence establishing that the subject products sold on the GrowAce website are both primarily designed and intended for general gardening use. While it is possible that GrowAce customers may purchase these products to grow marijuana, there is adequate evidence to show that its customers are likely using these items for legitimate reasons, to grow plants, vegetables, and herbs. Specifically, there are no written or oral instructions with the products that refer to marijuana cultivation (21 U.S.C. § 863(e)(1)), we found no descriptive materials included with the items that explain or depict the

²⁰ <https://sellercentral.amazon.com/gp/help/external/help.html?itemID=200164490> (last visited January 3, 2022).

²¹ <https://www.amazon.com/Hydro-Crunch-Booster-Hydroponic-Ventilation/dp/B0759TV7V4/> (January 3, 2022).

²² <https://www.homedepot.com/p/Hydro-Crunch-677-CFM-8-in-Centrifugal-Inline-Duct-Fan-with-8-in-Booster-Fan-Complete-System-for-Indoor-Grow-Room-Ventilation-VENTKIT-B08IN1/303726869> (last visited January 3, 2022).

²³ https://www.youtube.com/watch?v=igWJ_Suq_y4&t=12s (January 3, 2022).

²⁴ <https://www.youtube.com/watch?v=3pQmAFWMivU> (last visited January 3, 2022).

²⁵ <https://www.youtube.com/watch?v=jK6DyggqTYyM&t=70s> (last visited January 3, 2022).

products' use with marijuana (21 U.S.C. § 863(e)(2)), and each of the four items are displayed for sale on GrowAce's website in a manner that is consistent for use with lawful products (21 U.S.C. § 863(e)(4)).

CBP research further reveals that a "discreet shipping" label is not always indicative of a shipment of illegal or suspicious products. Furthermore, our research indicates that there are legitimate indoor gardening businesses that discuss the use of charcoal filters;²⁶ therefore, Activated Charcoal Filters sold by a legitimate garden supply or hydroponics company is not intrinsically used for illicit substances. As for GrowAce's YouTube page and channel, we determine that under these circumstances, the "Grow 420 Guide" under the "Partners & Collaborators" tab on the GrowAce YouTube channel is not significant given the data regarding the modest number of visitors to its channel and GrowAce's own lack of use of its YouTube channel.

DECISION:

In conformity with the foregoing, it is our position in the particular circumstances of the instant matter, that the record supports a finding that the subject merchandise, GrowAce's Yield Lab Propagation Trays, Yield Lab Propagation Domes, Yield Lab Air Duct Fan Vent Systems, and Yield Lab 6 Inch Purifier Activated Charcoal Filters, does not constitute drug paraphernalia pursuant to the statutory definition set forth in 21 U.S.C. § 863.

Sincerely,

CHARLES STEUART,

Director

Border Security and Trade Compliance Division

Regulations and Rulings Directorate

Office of Trade

U.S. Customs and Border Protection

²⁶ See <https://gardensynthesis.com/how-to-clean-carbon-filters-for-grow-room/> (last visited January 3, 2022); See <https://todaysgardener.com/how-long-do-carbon-filters-last/> (last visited January 3, 2022).