U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR PART 12

CBP DEC. 22–24

RIN 1515–AE76

EXTENSION OF IMPORT RESTRICTIONS ON ARCHAEOLOGICAL AND ECCLESIASTICAL ETHNOLOGICAL MATERIALS FROM GUATEMALA

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

ACTION: Final rule.

SUMMARY: This document amends the U.S. Customs and Border Protection (CBP) regulations to reflect an extension of import restrictions on certain categories of archaeological and ecclesiastical ethnological materials from Guatemala to fulfill the terms of the new agreement, titled "Memorandum of Understanding between the Government of the United States of America and the Government of the Republic of Guatemala Concerning the Imposition of Import Restrictions on Categories Of Archaeological and Ethnological Material of Guatemala." CBP Dec. 12–17, which contains the Designated List of archaeological and ecclesiastical ethnological material from Guatemala to which the restrictions apply, is being extended for an additional five years by this final rule.

DATES: Effective September 29, 2022.

FOR FURTHER INFORMATION CONTACT: For legal aspects, W. Richmond Beevers, Chief, Cargo Security, Carriers and Restricted Merchandise Branch, Regulations and Rulings, Office of Trade, (202) 325–0084, *ot-otrrculturalproperty@cbp.dhs.gov*. For operational aspects, Julie L. Stoeber, Chief, 1USG Branch, Trade Policy and Programs, Office of Trade, (202) 945–7064, *1USGBranch@cbp.dhs.gov*.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to the Convention on Cultural Property Implementation Act, Public Law 97–446, 19 U.S.C. 2601 *et seq.,* which implements the 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (823 U.N.T.S. 231 (1972)), the United States entered into a memorandum of understanding (MOU) with the Republic of Guatemala (Guatemala) on September 29, 1997, concerning the imposition of import restrictions on archaeological material from the Pre-Columbian cultures of Guatemala (the 1997 MOU). The 1997 MOU included among the materials covered by the restrictions, the archaeological materials from the Peten Region of Guatemala, then subject to the emergency restrictions imposed by the former U.S. Customs Service (U.S. Customs and Border Protection's (CBP) predecessor agency) in Treasury Decision (T.D.) 91–34 (56 FR 15181 (April 15, 1991)). These emergency import restrictions were imposed pursuant to 19 U.S.C. 2603(c) and 19 CFR 12.104g(b) and effective for a period of five years. They were subsequently extended pursuant to 19 U.S.C. 2603(c)(3), for a three-year period by publication of T.D. 94–84 in the **Federal Register** (59 FR 54817 (November 2, 1994)).

On October 3, 1997, the former U.S. Customs Service published T.D. 97–81 in the **Federal Register** (62 FR 51771), which amended 19 CFR 12.104g(a) to reflect the imposition of restrictions on these materials and included a list designating the types of archaeological materials covered by the restrictions.

Import restrictions listed at 19 CFR 12.104g(a) are effective for no more than five years beginning on the date on which an agreement enters into force with respect to the United States. This period may be extended for additional periods of no more than five years if it is determined that the factors which justified the agreement still pertain and no cause for suspension of the agreement exists. *See* 19 CFR 12.104g(a).

Since the initial final rule was published on October 3, 1997, the import restrictions were subsequently extended and/or amended four (4) times. First, on September 30, 2002, the former U.S. Customs Service published a final rule (T.D. 02–56) in the **Federal Register** (67 FR 61259) to extend the import restrictions for an additional five-year period.

Second, on September 26, 2007, CBP published a final rule (CBP Dec. 07–79) in the **Federal Register** (72 FR 54538) to extend the import restrictions for an additional five-year period.

Third, on September 28, 2012, CBP published a final rule (CBP Dec. 12–17) in the **Federal Register** (77 FR 59541) amending the CBP regulations to reflect the extension of import restrictions on archaeological materials and the addition of ecclesiastical ethnological materials of the Conquest and Colonial Periods of Guatemala, c. A.D. 1524 to 1821.

Fourth and lastly, on September 28, 2017, CBP published a final rule (CBP Dec. 17–14) in the **Federal Register** (82 FR 45178) to extend the import restrictions for an additional five-year period through September 28, 2022.

On January 6, 2022, the United States Department of State proposed in the **Federal Register** (87 FR 792) to extend the 1997 MOU between the United States and Guatemala concerning the import restrictions on certain categories of archaeological and ecclesiastical ethnological material from Guatemala. On May 5, 2022, after considering the views and recommendations of the Cultural Property Advisory Committee, the Assistant Secretary for Educational and Cultural Affairs, United States Department of State, determined that the cultural heritage of Guatemala continues to be in jeopardy from pillage of certain archeological and ecclesiastical ethnological materials, and that the import restrictions should be extended for an additional five years, pursuant to 19 U.S.C. 2602(e). Pursuant to the new agreement, the existing import restrictions will remain in effect for an additional five years through September 28, 2027.

Accordingly, CBP is amending 19 CFR 12.104g(a) to reflect the extension of the import restrictions. The restrictions on the importation of archaeological and ecclesiastical ethnological material are to continue to be in effect through September 28, 2027. Importation of such material from Guatemala continues to be restricted through that date unless the conditions set forth in 19 U.S.C. 2606 and 19 CFR 12.104c are met.

The Designated List and additional information may also be found at the following website address: *https://eca.state.gov/cultural-heritage-center/cultural-property/current-agreements-and-import-restrictions* by selecting the material for "Guatemala."

Inapplicability of Notice and Delayed Effective Date

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

Regulatory Flexibility Act

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

Executive Order 12866

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

Signing Authority

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

Chris Magnus, the Commissioner of CBP, having reviewed and approved this document, has delegated the authority to electronically sign this document to Robert F. Altneu, who is the Director of the Regulations and Disclosure Law Division for CBP, for purposes of publication in the **Federal Register**.

List of Subjects in 19 CFR Part 12

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

Amendment to the CBP Regulations

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

PART 12—SPECIAL CLASSES OF MERCHANDISE

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

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

* * * * *

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

* * * * *

■ 2. In § 12.104g, amend the table in paragraph (a) by revising the entry for Guatemala to read as follows:

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

(a) * * *

State party	Cultural property	Decision No.
* * * * * * *		
Guatemala ...	Archaeological material, c. 12,000 B.C. to A.D. 1524, and Hispanic period ecclesiastical ethnological material, c. A.D. 1524 to 1821.	CBP Dec. 12–17 extended by CBP Dec. 22–24.
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ROBERT F. ALTNEU,
Director,
Regulations & Disclosure Law Division,
Regulations & Rulings, Office of Trade
U.S. Customs and Border Protection.

THOMAS C. WEST, JR.,
Deputy Assistant Secretary of the Treasury
for Tax Policy.

[Published in the Federal Register, September 28, 2022 (85 FR 58757)]

PROPOSED REVOCATION OF ONE RULING LETTER AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF SYNTHETIC ICE PANELS FROM SWEDEN

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 synthetic ice panels from Sweden.

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 synthetic ice panels under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments on the correctness of the proposed actions are invited.

DATE: Comments must be received on or before November 11, 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: Michele A. Boyd, Chemicals, Petroleum, Metals and Miscellaneous Articles Classification Branch, Regulations and Rulings, Office of Trade, at (202) 325–0136.

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 synthetic ice panels. Although in this notice, CBP is specifically referring to New York Ruling Letter ("NY") N278463, dated August 26, 2016 (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 N278463, CBP classified synthetic ice panels in heading 3918, HTSUS, specifically in subheading 3918.90.1000, HTSUSA, which provides for "Floor coverings of plastics, whether or not self-adhesive, in rolls or in the form of tiles ... Of other plastics: Floor coverings ..." CBP has reviewed NY N27846 and has determined the ruling letter to be in error. It is now CBP's position that synthetic ice panels are properly classified, in heading 9506, HTSUS, specifically in subheading 9506.99.2580, HTSUS, which provides for "Articles and equipment for general physical exercise, gymnastics, athletics, other sports ... Other: Other: Ice-hockey ... articles and equipment, except balls and skates, and parts and accessories thereof ... Other, including parts and accessories."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY N278463 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter ("HQ") H313208, 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.

CRAIG T. CLARK,
Director
Commercial and Trade Facilitation Division

Attachments

HQ H313937
OT:RR:CTF:CPMM H313937 MAB
CATEGORY: Classification
TARRIFF NO.: 9506.99.2580

HILARY DORAN
ROYAL CUSTOMS BROKERS DBA SPEED GLOBAL SERVICES
2299 KENMORE AVENUE
BUFFALO, NY 14207

RE: Revocation of NY N278463; Classification of synthetic ice panels from Sweden

DEAR MS. DORAN:

This letter is in reference to New York Ruling Letter ("NY") N278463, dated August 26, 2016, in which U.S. Customs and Border Protection ("CBP") classified synthetic ice panels in subheading 3918.90.1000, HTSUSA ("Annotated"), which provides for "[f]loor coverings of plastics, whether or not self-adhesive, in rolls or in the form of tiles ... Of other plastics: Floor coverings ..." After reviewing this ruling in its entirety, we believe that it was issued in error. For the reasons set forth below, we hereby revoke NY N278463.

FACTS:

In NY N278463, we described the synthetic ice panels as follows:

> The merchandise at issue, identified as Scan-Ice® synthetic ice panels, consists of interlocking tiles manufactured from high density polyethylene (HDPE) plastic. The Scan-Ice® panels are designed to be mounted together to form an artificial ice skating surface, and can be used in any climate. The HDPE panels have been specially formulated to mimic the friction coefficient and glide properties of actual ice skating rinks. Per the information provided, the Scan-Ice® tiles measure 2.5' x 1.25,' and have a thickness of 5 mm. The tiles can be placed on any firm surface (indoor or outdoor) and interlocked to form a seamless uniform skating surface

In a letter dated September 11, 2020, counsel for Pace Enterprises, LLC, dba Skate Anytime ("Pace"), the entity to which NY N278463 was originally issued, submitted a request for reconsideration of NY N278463 concerning the proper classification of the synthetic ice panels, on behalf of Pace. As part of its reconsideration request, counsel for Pace argued that NY N278463 failed to consider the instant product's design and use as sports equipment to practice skills in the sport of ice hockey, thereby submitting evidence that the product is designed, marketed, and used as an ice hockey training aid.

ISSUE:

Whether the subject synthetic ice panels are classified in heading 9506, HTSUS, as articles and equipment for other sports, or in heading 3926, HTSUS, as floor coverings of plastics in the form of tiles.

LAW AND ANALYSIS:

The classification of merchandise under the HTSUS is governed by the General Rules of Interpretation ("GRIs"). GRI 1 provides, in part, that "for legal purposes, classification shall be determined according to terms of the headings and any relative section or chapter notes..." If 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 in order.

The following provisions of the HTSUS are under consideration:

3918	Floor coverings of plastics, whether or not self-adhesive, in rolls or in the form of tiles; wall or ceiling coverings of plastics, as defined in note 9 to this chapter:
3918.90	Of other plastics:
3918.90.1000	Floor coverings ...
9506	Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof:
	Other:
9506.99	Other:
9506.99.25	Ice-hockey and field-hockey articles and equipment, except balls and skates, and parts and accessories thereof ...
9506.99.2580	Other, including parts and accessories ...

* * * *

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 the headings. It is CBP's practice to consult, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

EN 95.06 provides, in pertinent part, as follows:

This heading covers:

(A) Articles and equipment for general physical exercise, gymnastics or athletics, e.g.:

Trapeze bars and rings; horizontal and parallel bars; balance beams, vaulting horses; pommel horses; spring boards; climbing ropes and ladders; wall bars; Indian clubs; dumb bells and bar bells; medicine balls; jump balls with one or more handles designed for physical exercises; rowing, cycling and other exercising apparatus; chest expanders; hand grips; starting blocks; hurdles; jumping stands and standards; vaulting poles; landing pit pads; javelins, discuses, throwing hammers and putting shots; punch balls (speed bags) and punch bags (punching bags); boxing or wrestling rings; assault course climbing walls; skipping ropes designed for sports activities and fitness classes.

(B) Requisites for other sports and outdoor games (other than toys presented in sets, or separately, of heading 95.03), e.g.:

(1) Snow-skis and other snow-ski equipment, (e.g., ski-fastenings (ski-bindings), ski brakes, ski poles).

(2) Water-skis, surf-boards, sailboards and other water-sport equipment, such as diving stages (platforms), chutes, divers' flippers and respiratory masks of a kind used without oxygen or compressed air bottles, and simple underwater breathing tubes (generally known as "snorkels") for swimmers or divers.

(3) Golf clubs and other golf equipment, such as golf balls, golf tees.

(4) Articles and equipment for table-tennis (ping-pong), such as tables (with or without legs), bats (paddles), balls and nets.

(5) Tennis, badminton or similar rackets (e.g., squash rackets), whether or not strung.

(6) Balls, other than golf balls and table-tennis balls, such as tennis balls, footballs, rugby balls and similar balls (including bladders and covers for such balls); water polo, basketball and similar valve type balls; cricket balls.

(7) Ice skates and roller skates, including skating boots with skates attached.

(8) Sticks and bats for hockey, cricket, lacrosse, etc.; chistera (jai alai scoops); pucks for ice hockey; curling stones.

(9) Nets for various games (tennis, badminton, volleyball, football, basketball, etc.).

(10) Fencing equipment: fencing foils, sabres and rapiers and their parts (e.g., blades, guards, hilts and buttons or stops), etc.

(11) Archery equipment, such as bows, arrows and targets.

(12) Equipment of a kind used in children's playgrounds (e.g., swings, slides, see-saws and giant strides).

(13) Protective equipment for sports or games, e.g., fencing masks and breast plates, elbow and knee pads, cricket pads, shin-guards, ice hockey pants with built-in guards and pads.

(14) Other articles and equipment, such as requisites for deck tennis, quoits or bowls; skate boards; racket presses; mallets for polo or croquet; boomerangs; ice axes; clay pigeons and clay pigeon projectors; bobsleighs (bobsleds), luges and similar non-motorised vehicles for sliding on snow or ice.

As a preliminary matter, note 2(y) to chapter 39 states: "This chapter does not cover...Articles of chapter 95 (for example, toys, games, sports equipment) . . ." As such, the subject merchandise cannot be classified in heading 3918, HTSUS, if it is *prima facie* classifiable in heading 9506, HTSUS. Accordingly, we first consider classification in heading 9506, HTSUS, which provides, *inter alia*, for "articles and equipment for...other sports."

The term "sports equipment" is not defined in the HTSUS. Undefined tariff terms are construed in accordance with their common meanings, which may be ascertained by reference to "standard lexicographic and scientific authorities," as well as the pertinent ENs. *GRK Can., Ltd. v. United States*, 761 F.3d 1354, 1357 (Fed. Cir. 2014). Relying on dictionary definitions of "sports equipment," the Court of Appeals for the Federal Circuit (CAFC) has held that the term denotes items that are "necessary, useful, or appropriate" for a sport. *See LeMans Corp. v. United States*, 660 F.3d 1311, 1318 (Fed. Cir. 2011) (citing *Bauer Nike Hockey USA, Inc. v. United States*, 393 F.3d 1246, 1250–51

(Fed. Cir. 2004)) (hereinafter "*LeMans*"). However, the term does not apply broadly to any article used in conjunction with a sport or physical activity and, as the court explained in *LeMans*, use of the exemplars listed in EN 95.06 to clarify the scope of the term is "entirely proper." *See id.* at 1320. As the court found in *LeMans*, the exemplars of EN 95.06 include articles that are entirely separate from the user, held by the user in his or her hand, fastened to a user, or worn by a user for protection. *Id.* at 1322.

Of those articles that are "separate from a user," all play integral roles in the particular sports or activities with which they are used, insofar as they enable the implementation of playing rules and/or the accrual of points in competitive matches or enable the sport or physical activity itself through direct interaction. For example, nets, enumerated in exemplar (7) of EN 95.06, are used to establish the required trajectory of the ball in games like tennis, badminton, and volleyball, and serve as the receptacle for the ball and scoring marker in soccer, basketball, and other contact sports. Likewise, the projectile shooting of archery targets and clay pigeons is the objective of, and scoring mechanism for, archery and clay target shooting, while swings, slides, see saws are directly swung, ridden, and tipped by their users.

The subject synthetic ice panels are also articles "separate from a user" and are designed to be mounted together to form an artificial ice skating surface of any size for use as a training aid in the sport of ice hockey. The product can be used either indoors or outdoors (e.g., basements, garages, driveways, decks, etc.) and plays an integral role in enabling users to practice specific ice hockey skills – including skating, shooting, passing, stickhandling, and goalie training – all while wearing ice hockey skates, similar to how an ice hockey player would on real ice. A review of Pace's website and accompanying testimonials reveals that the product is marketed primarily to youth athletes and sold to purchasers and end-users associated with both professional and amateur ice hockey players, managers, trainers, and coaches. Other ice hockey training aids are also sold to enhance the use of the synthetic ice panels, including "puck stop curbing" that attach to the edges of the ice hockey skating surface and "goalie slide plates" to assist in goalie training.[1]

CBP has previously classified ice hockey training aids or equipment that are "separate from a user" in heading 9506, HTSUS. In NY 883968, dated April 13, 1993, Customs considered a "Sportslide" pro skating simulator, which is a device consisting of a plastic strip with two aluminum wedge end stops bolted to the plastic, and classified it in subheading 9506.99.2580, HTSUSA. As the Sportslide is designed for a user to slide in a lateral motion on the plastic surface, simulating the skating motion, Customs considered it to be training equipment for the sport of ice hockey. In NY N295624, dated April 19, 2018, CBP classified ice hockey training equipment aids consisting of four separate products, in subheading 9506.99.2580, HTSUSA. One of the products included an item called the "My Puzzle Systems" ice hockey training aid, wherein the product is used while wearing athletic sneakers alone or

[1] See https://www.skateanytime.com (last visited June 9, 2022).

with fabric "booties" covering them[2] , to simulate the gliding motion of ice skating.[3] The ruling describes the item as follows:

> This item consists of interlocking floor tile pieces made of plastic. The tiles are designed to simulate the color and feel of playing hockey on the ice. This product can be used to create an ice hockey playing surface wherever desired. When used in conjunction with other hockey training products or equipment, the "My Puzzle Systems" ice hockey training aid is designed to provide a professional level "ice feeling" when training off ice. This item is packaged for retail sale and additional tiles may be purchased separately to increase the playing surface size.

As required by *LeMans*, the subject synthetic ice panels in NY N278463 create a playing surface that is "necessary, useful, or appropriate" for practicing the sport of ice hockey in that the product has been specially formulated to mimic the friction coefficient and glide properties of ice as found in ice hockey rinks. Like the ice hockey training aids in NY 883968 and NY N295624, the instant product is also designed for a user to slide in a lateral motion and practice ice hockey skills. Furthermore, since the instant product is engineered and designed for practicing the sport of ice hockey while wearing ice hockey skates, it is arguably an even more useful or appropriate training aid than the merchandise in NY 883968 and NY N295624. In sum, the subject synthetic ice panels are classified in subheading 9506.99.2580, HTSUSA, which provides for "[a]rticles and equipment for general physical exercise, gymnastics, athletics, other sports ... Other: Other: Ice-hockey ... articles and equipment, except balls and skates, and parts and accessories thereof ... Other, including parts and accessories."

Since the synthetic ice panels are *prima facie* classifiable in heading 9506, HTSUS, pursuant to Note 2(y) to Chapter 39, they cannot be classified in heading 3918, HTSUS.

HOLDING:

By operation of GRI 1, the subject synthetic ice panels are classified in heading 9506, HTSUS. They are specifically classified in subheading 9506.99.2580, HTSUSA, which provides for "Articles and equipment for general physical exercise, gymnastics, athletics, other sports ... Other: Other: Ice-hockey ... articles and equipment, except balls and skates, and parts and accessories thereof ... Other, including parts and accessories." The 2022 column one rate of duty is *free*.

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

EFFECT ON OTHER RULINGS:

NY N278463, dated August 26, 2016, is hereby REVOKED as set forth above.

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

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[2] *See* https://www.hockeyrevolution.us.com (last visited June 9, 2022).

[3] *Id.* The product is described as "interlocking flooring surface tiles," "training flooring tiles," or "dryland flooring tiles." They are sold either as a "Build Your Own Platform" or as part of a variety of sets, which may include items described as "passers," "symbols," "colors," and a "free training mobile app."

Sincerely,

GREGORY CONNOR,
Acting Director
Commercial and Trade Facilitation Division

cc: Mr. Jon P. Yormick
Mr. Craig A. Leslie
One Canalside
125 Main Street
Buffalo, NY 14203–2887

Mr. James Kevin Wholey
1101 Pennsylvania Avenue, NW
Washington, DC 20004–2514

N278463
August 26, 2016
CLA-2–39:OT:RR:NC:N2:421
CATEGORY: Classification
TARIFF NO.: 3918.90.1000

HILARY DORAN
ROYAL CUSTOMS BROKERS DBA SPEED GLOBAL SERVICES
2299 KENMORE AVENUE
BUFFALO, NY 14207

RE: The tariff classification of Scan-Ice® panels from Sweden

DEAR MS. DORAN:

In your letter dated August 10, 2016, on behalf of Pace Enterprises LLC, you requested a tariff classification ruling.

The merchandise at issue, identified as Scan-Ice® synthetic ice panels, consists of interlocking tiles manufactured from high density polyethylene (HDPE) plastic. The Scan-Ice® panels are designed to be mounted together to form an artificial ice skating surface, and can be used in any climate. The HDPE panels have been specially formulated to mimic the friction coefficient and glide properties of actual ice skating rinks. Per the information provided, the Scan-Ice® tiles measure approximately 2.5' by 1.25', and have a thickness of 5 mm. The tiles can be placed on any firm surface (indoor or outdoor) and interlocked to form a seamless uniform skating surface.

The Scan-Ice® plastic panels are similar in form and function to the plastic floor coverings described in heading 3918, Harmonized Tariff Schedule of the United States (HTSUS). They are imported in the form of tiles and installed over an existing firm surface or floor. Consequently, the Scan-Ice® panels would be classified as floor coverings of that heading.

The applicable subheading for the Scan-Ice® synthetic ice panels will be 3918.90.1000, HTSUS, which provides for Floor coverings of plastics, whether or not self-adhesive, in rolls or in the form of tiles; wall or ceiling coverings of plastics, as defined in note 9 to this chapter...: Of other plastics: Floor coverings. The rate of duty will be 5.3% ad valorem.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on World Wide Web at 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 Evan Conceicao at evan.m.conceicao@cbp.dhs.gov.

Sincerely,

STEVEN A. MACK
Director
National Commodity Specialist Division

PROPOSED MODIFICATION OF ONE RULING LETTER AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF FINISHED WOOD SLATS AND WOOD BOTTOM RAILS WITH UV COATINGS USED FOR WINDOW BLINDS

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

ACTION: Notice of proposed modification of one ruling letter and proposed revocation of treatment relating to the tariff classification of finished wood slats and wood bottom rails with UV coatings used for window blinds.

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

DATE: Comments must be received on or before November 11, 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: Michele A. Boyd, Chemicals, Petroleum, Metals and Miscellaneous Classification Branch, Regulations and Rulings, Office of Trade, at (202) 325–0136.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to 19 U.S.C. § 1625(c)(1), this notice advises interested parties that CBP is proposing to modify one ruling letter pertaining to the tariff classification of finished wood slats and wood bottom rails with UV coatings used for window blinds. Although in this notice, CBP is specifically referring to New York Ruling Letter ("NY") N041645, dated October 30, 2008, (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 ruling 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 modify or 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 N041645, CBP classified various wood components used for the manufacture of window blinds, including two styles of finished wood valances and wood slats that were primed and painted and three styles of finished wood slats and wood bottom rails that were either stained or painted and coated with UV coatings, in heading

4409, HTSUS, specifically in subheading 4409.29.9000, HTSUSA ("Annotated")[1] , which provides for "[w]ood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rebated, chamfered, V-jointed, beaded, molded, rounded or the like) along any of its edges, ends or faces, whether or not planed, sanded or end-jointed: Nonconiferous: Other: Other: Other." CBP has reviewed NY N041645 and has determined the ruling letter to be partially in error. It is now CBP's position that the finished wood slats and wood bottom rails with UV coatings used for window blinds are properly classified, in heading 4421, HTSUS, specifically in subheading 4421.99.9880, HTSUSA, which provides for "[o]ther articles of wood: Other: Other: Other: Other...Other."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to modify NY N041645 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter ("HQ") H310648, 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.

GREG CONNOR,
Acting Director
Commercial and Trade Facilitation Division

Attachments

[1] Please note that subheading 4409.29.9000, HTSUSA (2008), has been replaced by 4409.29.9100, HTSUSA (2022).

HQ H310648
OT:RR:CTF:CPMMA H310648 MAB
CATEGORY: Classification
TARIFF NO.: 4421.99.9880

LARS-ERIK A. HJELM, ESQ.
AKIN, GUMP, STRAUSS, HAUER & FELD, LLP
333 NEW HAMPSHIRE AVENUE, N.W.
WASHINGTON, DC 20036–1564

Re: Modification of NY N041645; Classification of wood slats, wood valances, and wood bottom rails for wood blinds imported from China, Vietnam, and Mexico

DEAR MR. HJELM:

This letter is in reference to your New York Ruling Letter ("NY") N041645, dated October 30, 2008, involving the classification of wood components including slats, valances, and bottom rails, used in the construction of window blinds, including three styles with a UV coating, under the Harmonized Tariff Schedule of the United States ("HTSUS"). In NY N041645, all of the aforementioned wood components were classified in subheading 4409.29.9000, HTSUSA ("Annotated")[1] , as "[w]ood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rebated, chamfered, V-jointed, beaded, molded, rounded or the like) along any of its edges, ends or faces, whether or not planed, sanded or end-jointed: Nonconiferous: Other: Other: Other."[2] After reviewing this ruling, we find it to be partially in error. For the reasons set forth below, we are modifying NY N041645 with respect to the wood components with UV coatings only. The remaining analysis of NY N041645 remains unchanged.

FACTS:

In NY N041645, we described the merchandise as follows:

The subject wood products are made of solid basswood (Tilia Americana), a nonconiferous wood species. You state that in their imported condition, the wood products in question are not finished window blinds. After importation into the United States, [the importer] will cut the wood products to custom lengths, punch channel holes, and assemble them with cords and hardware.

Five representative samples of the wood products in question were submitted. They are described as follows:

1. Wood valance – primed and painted white. The valences measure between 3/8 to 3/4 inch in thickness, 3 to 5 inches in width, and 3 to 10 feet in length. The face and the edges are continuously shaped to a pattern along the length. The valances will be imported either stained or painted.

[1] Please note that subheading 4409.29.9000, HTSUSA (2008), has been replaced by 4409.29.9100, HTSUSA (2022).

[2] Please note that NY N041645 inadvertently omits the last "Other" in subheading 4409.29.9000, HTSUSA (2008) and reads as follows: "[w]ood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rebated, chamfered, V-jointed, beaded, molded, rounded or the like) along any of its edges, ends or faces, whether or not planed, sanded or end-jointed: Nonconiferous: Other: Other."

2. Wood slat – with stain base and "stain coating" ("2 PASS SLAT TOPCOAT"), which is stated to be a slightly tinted paint. The wood slats measure 1/8 to 3/16 of an inch in thickness, range from 1 inch to 2–5/8 inches in width, and will be imported in lengths of 3 to 10 feet. The slats have rounded edges along the length. The slats will be imported either stained or painted.

3. Wood bottom rail – primed, painted white, and with a UV protective coat. The bottom rails measure 5/8 inch in thickness, 1 to 2.5 inches in width, and 3 to 10 feet in length. The rails are continuously shaped to a pattern along the length. The rails will be imported either stained or painted.

4. Wood slat - with stain base, stain coating, and with a UV protective coat. (See sample #2 for sizes and finishing options.) The slats have rounded edges along the length.

5. Wood bottom rail - with primer and white paint. (See sample #3 for sizes and finishing options.) The edges are continuously shaped to a pattern along the length.

We further note that your ruling request, dated September 16, 2008, leading to the issuance NY N041645, described sample #2 to include a clear UV coat.

ISSUE:

Whether the finished wood slats and wood bottom rails with UV coatings used in the manufacture of window blinds are classified in heading 4409, HTSUS, as "[w]ood ... continuously shaped ... [n]onconiferous ..." or in heading 4421, HTSUS, as "[o]ther articles of wood."

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States ("HTSUS") is made in accordance with the General Rules of Interpretation ("GRI"). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. If the goods cannot be classified solely based on 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:

4409	Wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rebated, chamfered, V-jointed, beaded, molded, rounded or the like) along any of its edges, ends or faces, whether or not planed, sanded or end-jointed:
	Nonconiferous:
4409.29	Other:
	Other:
4909.29.9100	Other ...
4421	Other articles of wood:

	Other:	
4421.99	Other:	
	Other:	
4421.99.98		Other
4421.99.9880		Other ...

* * *

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

EN 44.09 states the following, in relevant part:

> The heading also excludes:
>
> ...
>
> (e) Wood which has been surface worked beyond planing or sanding, other than painting, staining or varnishing (e.g., veneered, polished, bronzed, or faced with metal leaf) (generally heading 44.21).
>
> * * *

The classification of samples #1 and #5 in heading 4409, HTSUS, is not in dispute, as primer and paint are permitted coatings in accordance with the ENs to heading 44.09; thus, their classification in subheading 4409.29.9100, HTSUSA, as "[w]ood ... continuously shaped ... [n]onconiferous ...", remains unchanged.[3] Unlike samples #1and #5, however, the remaining samples—in addition to painting or staining—are also coated with a UV protective coat (samples #2, #3, and #4). Accordingly, we examine whether this additional UV protective coat is a permissible coating for merchandise classifiable in heading 4409, HTSUS, or whether samples #2, #3, and #4 are classified elsewhere.

We note that a UV coating applied to wood products is essentially a liquid plastic layer, such as acrylic or polyurethane, that is cured with ultraviolet light. Pursuant to EN 44.09, wood that has been "surface worked beyond planing or sanding, other than painting, staining, or varnishing" is excluded from classification in heading 4409, HTSUS. Thus, the question before us is whether the application of UV coatings constitutes a finishing process whereby the subject wood blind parts are "surface worked beyond planing or sanding."

It is CBP's established practice that continuously shaped wood coated with UV coatings, lacquer, polyurethane, aluminum oxide (in polyurethane), acrylic, and the like, is precluded from classification in heading 4409, HTSUS, as these coatings fall under the exclusion described in EN 44.09 as wood that has been "surface worked beyond planing or sanding, other than painting, staining, or varnishing..." *See, e.g.*, NY 892737, dated February 9, 1994 (lacquered picture frame moldings classified in heading 4421, HTSUS); NY I83439, dated July 25, 2002 (wood flooring coated with clear polyurethane

[3] Please note that subheading 4409.29.9000, HTSUSA (2008), has been replaced by subheading 4409.29.9100, HTSUSA (2022).

and acrylic classified in heading 4418 and 4412, HTSUS); NY K82706, dated February 20, 2004 (wood flooring coated with polyurethane classified in heading 4418, HTSUS); NY K88580, dated September 13, 2004 (wood floors with UV-cured aluminum oxide or polyurethane coating classified in heading 4412 or 4418, HTSUS, respectively); NY L82292, dated February 25, 2005 (wood floors with UV coating classified in heading 4418, HTSUS); NY L86986, dated September 1, 2005 (wood floors with UV coating classified in heading 4418, HTSUS); NY L88584, dated November 25, 2005 (wood floors with UV coating classified in heading 4418, HTSUS); NY M83957, dated June 16, 2006 (wood flooring coated with polyurethane classified in heading 4418, HTSUS); NY N006429, dated March 6, 2007 (wood flooring with nine coats of acrylic urethane featuring a sealer and a topcoat containing aluminum oxide classified in heading 4418, HTSUS); NY N007234, dated March 22, 2007 (wood flooring with five coats of UV-cured urethane classified in heading 4418, HTSUS); NY N027021, dated May 20, 2008 (wood flooring with UV coating classified in heading 4418, HTSUS), NY N067513, dated July 30, 2009 (wood floors sealed with polyurethane classified in heading 4418, HTSUS); NY N069658, dated August 20, 2009 (wood floors with UV coating and aluminum oxide classified in heading 4418, HTSUS); NY N199498, dated January 24, 2012 (wood floors with a 9-coat UV-cured prefinish with aluminum oxide classified in heading 4418, HTSUS); NY N270952, dated December 22, 2015 (wood floors with polyurethane, acrylic or UV coating classified in heading 4418, HTSUS), and NY N273588, dated March 25, 2016 (wood floors with UV-cured urethane finish classified in heading 4418, HTSUS).

Like the merchandise in the aforementioned rulings—many of which also involved wood with a UV coating—we find that samples #2, #3, and #4 of the finished wood slats and wood bottom rails with UV coatings in NY N041645 are excluded from classification in heading 4409, HTSUS, pursuant to EN 44.09, as the application of a UV coating to a wood slat or bottom rail constitutes wood that is surface worked beyond planing or sanding, other than painting, staining, or varnishing. Our conclusion is consistent with established CBP practice that classifies such merchandise outside of heading 4409, HTSUS. Under GRI 1, samples #2, #3, and #4 are instead classified in heading 4421, HTSUS, and specifically in subheading 4421.99.9880, HTSUSA, which provides for "[o]ther articles of wood: Other: Other: Other: Other...Other."

HOLDING:

By application of GRIs 1 and 6, the subject finished wood slats and wood bottom rails with UV coatings used in the manufacture of window blinds (samples #2, #3, and #4) are classified in heading 4421, HTSUS, and specifically in subheading 4421.99.9880, HTSUSA, which provides for "[o]ther articles of wood: Other: Other: Other: Other...Other." The column one, general rate of duty is 3.3% *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 at *www.usitc.gov*.

EFFECT ON OTHER RULINGS:

NY N041645, dated October 30, 2008, is hereby MODIFIED only with respect to the tariff classification of the finished wood slats and wood bottom rails with UV coatings.

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,
Acting Director
Commercial and Trade Facilitation Division

Cc: Center Director
Industrial & Manufacturing Materials
Center of Excellence & Expertise
U.S. Customs and Border Protection
726 Exchange Street, Suite 400
Buffalo, NY 14201

N041645
October 30, 2008
CLA-2–44:OT:RR:NC:2:230
CATEGORY: Classification
TARIFF NO.: 4409.29.9000

LARS-ERIK A. HJELM, ESQ.
LISA W. ROSS, ESQ.
AKIN, GUMP, STRAUSS, HAUER & FELD, LLP
1333 NEW HAMPSHIRE AVENUE, N.W.
WASHINGTON, D.C. 20036–1564

RE: The tariff classification of wood slats, wood valances, and wood bottom rails for wood blinds imported from China, Vietnam, and Mexico

DEAR MR. HJELM AND MS. ROSS:

In your letters dated May 29, 2008 and September 16, 2008, you are requesting a classification ruling on behalf of Comfortex Corp. (d/b/a Hunter Douglas Wood Products) ("HD"). HD will import continuously shaped wood slats, wood valances, and wood bottom rails that are used in the manufacture of wood blinds and intends to source these products from suppliers in China, Vietnam, and Mexico.

The subject wood products are made of solid basswood (Tilia Americana), a nonconiferous wood species. You state that in their imported condition, the wood products in question are not finished window blinds. After importation into the United States, HD will cut the wood products to custom lengths, punch channel holes, and assemble them with cords and hardware.

Five representative samples of the wood products in question were submitted. They are described as follows:

1. Wood valance – primed and painted white. The valences measure between 3/8 to 3/4 inch in thickness, 3 to 5 inches in width, and 3 to 10 feet in length. The face and the edges are continuously shaped to a pattern along the length. The valances will be imported either stained or painted.

2. Wood slat – with stain base and "stain coating" ("2 PASS SLAT TOPCOAT"), which is stated to be a slightly tinted paint. The wood slats measure 1/8 to 3/16 of an inch in thickness, range from 1 inch to 2–5/8 inches in width, and will be imported in lengths of 3 to 10 feet. The slats have rounded edges along the length. The slats will be imported either stained or painted.

3. Wood bottom rail – primed, painted white, and with a UV protective coat. The bottom rails measure 5/8 inch in thickness, 1 to 2.5 inches in width, and 3 to 10 feet in length. The rails are continuously shaped to a pattern along the length. The rails will be imported either stained or painted.

4. Wood slat - with stain base, stain coating, and with a UV protective coat. (See sample #2 for sizes and finishing options.) The slats have rounded edges along the length.

5. Wood bottom rail - with primer and white paint. (See sample #3 for sizes and finishing options.) The edges are continuously shaped to a pattern along the length.

You have submitted a step-by-step manufacturing process and surface finishing of the five products in question. Regarding the finishing process, you have submitted a complete description and the manufacturer's data sheets for each material used to coat the subject wood products. The data sheets provide the proprietary and trade secret composition of each material. Therefore, you have requested that the data sheets be returned to you at the conclusion of this ruling request. The data sheets are being returned as requested.

The classification of merchandise under the Harmonized Tariff Schedule of the United States (HTSUS) is governed by the General Rules of Interpretation (GRIs), taken in order. GRI 1 requires that classification be determined according to the terms of the headings and any relative section or chapter notes. In the event that 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 will be applied, in the order of their appearance.

Heading 4409 provides for wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rebated, chamfered, v-jointed, beaded, molded, rounded or the like) along any of its edges, ends or faces, whether or not planed, sanded or end-jointed. The subject wood parts, which are used to manufacture window blinds, have been continuously shaped along the edges and/or faces. Therefore, heading 4409 appears to be the first and most specific provision at the heading level. However, we need to consider the fact that these wood blind parts have been further processed by staining, priming, painting, and coated with a UV protective material.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level (for the 4 digit headings and the 6 digit subheadings) and facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and the General Rules of Interpretation. While neither legally binding nor dispositive of classification issues, the ENs provide commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of the headings. See T.D. 89–80, 54 Fed. Reg. 35127–28 (Aug. 23, 1989).

The General ENs to Chapter 44 state as follow:

> Generally speaking, throughout the Nomenclature, the classification of wood is not affected by treatment necessary for its preservation, such as seasoning, superficial charring, priming and stopping, or impregnation with creosote or other wood preservatives (e.g., coal tar, pentachlorophenol (ISO), chromated copper arsenate or ammoniacal copper arsenate); nor is it affected by reason of being painted, stained or varnished. However, these general considerations do **not** apply in the case of the subheadings of headings 44.03 and 44.06, where specific classification provision has been made for particular categories of painted, stained or preservative-treated wood.

Clearly, the ENs tell us that there is a distinction between preservative-treated wood and painted, stained, and varnished wood. Paints, stains, and varnishes do not preserve a wood product; they are protective coatings that

provide a superficial decoration and protection. Accordingly, the ENs to chapter 44 list them separately. Nevertheless, painting, staining, and varnishing are wood finishing methods that generally do not affect the tariff classification. However, the ENs tell us that under heading 4409 there are limitations as to the type of surface working that can be performed on the provided wood products and still remain classified in the heading.

The ENs to heading 44.09 state as follows:

> The heading also **excludes**:
>
> (e) Wood which has been surface worked beyond planing or sanding, other than painting, staining or vanishing (e.g. veneered, polished, bronzed, or faced with metal leaf) (generally **heading 44.21**).

The ENs state that there are surface processing methods that exclude wood products from being classified under heading 4409, HTSUS. Thus, in each case, we need to determine if the wood processing has made a product of heading 4409, HTSUS, "surface worked beyond planing or sanding, other than painting, staining or vanishing." (ENs to 4409, exclusion (e), *supra*.)

The discussion that you offer on the tariff classification of paints and varnishes under heading 3208, HTSUS, is not relevant when classifying products under chapter 44. However, it is instructive to note that heading 3208, HTSUS, provides for "Paints, and varnishes (including enamels and lacquers)." Thus, the tariff recognizes these goods as being distinct and separate products, that is, paints, varnishes, enamels, and lacquers. Indeed, they may be classifiable under the same heading, but they are not the same product. Hawley's *Condensed Chemical Dictionary*, Fourteenth Edition, (2001) defines the terms in questions as follows:

1. **Paint:** A uniform dispersed mixture having a viscosity ranging from a thin liquid to a semisolid paste and consisting of (1) a drying oil, synthetic resin, or other film-forming component, called the binder; (2) a solvent or thinner; and (3) an organic or inorganic pigment. The binder and the solvent are collectively called the vehicle. Paints are used (1) to protect a surface from corrosion, oxidation, or other type of deterioration, and (2) to provide decorative effects.
2. **Stain:** (1) An organic protective coating similar to a paint, but with much lower solids content (pigment loading).
3. **Varnish:** (1) An organic protective coating similar to a paint except that it does not contain a colorant. It may be composed of a vegetable oil (linseed, tung, etc.) and solvent or of a synthetic or natural resin and solvent. In the first case the formation of the film is due to polymerization of the oil and the second to evaporation of the solvent. "Long-oil" varnishes such as spar varnish have a high proportion of drying oil; "Short-oil" types have a lower proportion, i.e., furniture varnishes. Spirit varnishes contain such solvents as methanol, toluene, ketones, etc. and often also thinners such as naphtha or other light hydrocarbon. Flammable. (2) A hard, tightly adherent deposit on the metal surfaces of automobile engines resulting from resinous oxidation products of gasoline and lubricating oils.
4. **Lacquer:** A protective or decorative coating that dries primarily by evaporation of solvent, rather than by oxidation or polymerization. Lacquers were originally comprised of high-viscosity nitrocellulose, a plasticizer (dibutyl phthalate or blown castor oil), and a solvent.

> Later, low-viscosity nitrocellulose became available; this was frequently modified with resins, such as ester gum or rosin. The solvents used are ethanol, toluene, xylene, and butyl acetate. Together with nitrocellulose, alkyd resins are used to improve durability. The nitrocellulose used for lacquers has a nitrogen content of 11–13.5% and is available in a wide range of viscosities, compatibilities, and solvencies. Chief uses of nitrocellulose-alkyd lacquers are for coating for metal, paper products, textiles, plastics, furniture, and nail polish. Various types of modified cellulose are also used as lacquer bases, combined with resins, and plasticizers. Many noncellulosic materials such as vinyl and acrylic resins are also used, as are bitumens, with or without drying oils, resins, etc.

Exclusion (e) to the ENs of heading 4409 should be read within the context of treatment of wood for its preservation, but also it allows three specific treatments, that is, painting, staining, and varnishing. It excludes products that have gone through complex finishing processes, e.g., veneering, polishing, bronzing, and metal leaf application.

You have presented various arguments on the interpretation of the Explanatory Notes. However, the Explanatory Notes, as we have noted above, are a guide in understanding the scope of the headings and the General Rules of Interpretation. They are not the law. It is neither appropriate nor instructive to interpret the ENs, or we run the risk of creating a guide to the guide, *ad infinitum*.

The law, that is, the tariff provision heading 4409, HTSUS, is unambiguous. Nevertheless, the ENs provide commentary on the scope of heading 4409, HTSUS, and are indicative of the proper interpretation of this heading. In this case, the ENs explain what types of products are excluded from heading 4409, HTSUS. Customs and Border Protection ("CBP") has followed the guidance of the ENs in interpreting heading 4409, HTUS, without disturbing the guide.

In the present case, we need to determine if the wood finishing process has made the subject wood parts for window blinds, in the condition as imported, "surface worked beyond planing or sanding, other than painting, staining or vanishing." (ENs to 4409, exclusion (e), *supra*.)

According to the information you have submitted, specifically the manufacturer's chemical composition data sheets, the stain, primer, and paint used to finish the subject wood products are of the type that do not affect the tariff classification of goods under heading 4409, HTSUS. However, some of the subject parts for window blinds, sample 2 – wood slat, sample #3 - wood bottom rail, and sample #4 – wood slat, have coatings of substances referred to as "SPRAY UV TOPCOAT," "2 PASS SLAT TOPCOAT," or "UV ROLLCOAT WATER WHITE." These substances are not clearly identifiable as paint, stain, or varnish. In an additional submission, you have offered additional information on the nature of the three above substances, including the manufacturer's chemical composition data sheets. The manufacturer of these three substances identifies them as paint products.

We have analyzed the manufacturer's chemical composition data sheets and carefully considered your arguments that these finishing coating substances should be treated as paints, and thus, the subject parts for window blinds treated with them should be classified under heading 4409, HTSUS. However, the manufacturer's chemical composition data sheets for the three

substances do not present the general understood composition of paints[1] . These three substances appear to offer some of the composition and benefits of paints and some of the composition and benefits of lacquers. According to the information you have submitted, the "SPRAY UV TOPCOAT," the "2 PASS SLAT TOPCOAT," and the "UV ROLLCOAT WATER WHITE." appear to be known as "lacquer paint."

The question before us is than to determine if the manufacturing and finishing processes, including the use of "lacquer paint," have made the subject wood blind parts "surface worked beyond planing or sanding, other than painting, staining, or varnishing," as explained by the ENs of heading 44.09. Based on the information provided, it is our finding that these wood coating substances are paint products for purposes of heading 4409, HTSUS. Thus, we find that the manufacturing and finishing processes, as described above, are processes within the terms of heading 4409, HTSUS.

The applicable subheading for the subject wood parts for window blinds will be 4409.29.9000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rebated, chamfered, V-jointed, beaded, molded, rounded or the like) along any of its edges, ends or faces, whether or not planed, sanded or end-jointed: nonconiferous: 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 Paul Garretto at (646) 733–3035.

Sincerely,

ROBERT B. SWIERUPSKI
Director
National Commodity Specialist Division

Attachments

[1] *See Hawley's Condensed Chemical Dictionary*, Fourteenth Edition (2001).
The National Paint and Coatings Association, Glossary of Terms, *available at* http://www.paint.org/industry/glossary.cfm

HQ H326009
OT:RR:CTF:FTM H326009 JER
CATEGORY: Classification
TARIFF NO.: 2008.19.90

MR. SURESH PATEL
LNK STORE
2828 KENNEDY BLVD.
JERSEY CITY, NJ 07306

RE: Revocation of NY 830068 and DD H890859; Tariff Classification of Pan Masala Betel Nut Food Product

DEAR MR. PATEL:

On June 9, 1988, U.S. Customs and Border Protection ("CBP") issued New York Ruling Letter ("NY") 830068 to you, in response to your ruling request, dated May 12, 1988, regarding the classification under the Harmonized Tariff Schedule of the United States ("HTSUS") of a food product referred to as pan masala. In NY 830068, CBP classified the pan masala product under heading 2106, HTSUS, which provides for "Food preparations not elsewhere specified or included." Upon further review of that ruling, CBP has now determined that the decision in NY 830068 was incorrect. Accordingly, NY 830068 is hereby revoked for the reasons set forth below.

In addition, we are revoking DD H890859, dated October 22, 1993, in which CBP classified a food product referred to as betel nut powder made of betel nut, cloves, cardamon, nutmeg, cubes, borneol, menthol and licorice under heading 2106, HTSUS.

FACTS:

In NY 830068, CBP described the pan masala as follows:

> The product consists of chopped betel nuts coated with flavors and spices. The stated ingredients are betel nuts, catechu, lime, cardamon, and flavors. The merchandise is packaged with a small plastic spoon in a foil-sealed metal container holding 100 grams, net weight. Pan masala is consumed after meals, a small spoonful placed in the mouth and chewed as a stimulant and digestive aid.

ISSUE:

Whether the subject pan masala is classified under heading 2106, HTSUS, as a food preparation, or under heading 2008, HTSUS, as prepared nuts, fruits, and other edible parts of plants.

LAW AND ANALYSIS:

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

The 2022 HTSUS provisions under consideration are as follows:

2008	Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included:
	Nuts, peanuts (ground-nuts) and other seeds, whether or not mixed together:
2008.19	Other, including mixtures:
2008.19.90	Other...
2008.19.9090	Other...
	* * * *
2106	Food preparations not elsewhere specified or included:
21.06.90	Other:
	Other:
	Other:
	Other:
	Other:
2106.90.99	Other . . .
	* * * *

The Harmonized Commodity Description and Coding System Explanatory Notes ("ENs") constitute the official interpretation of the HTSUS at the international level. 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. *See* T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

The ENs to heading 2008, HTSUS, provided, in relevant part, as follows:

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

At issue is whether the merchandise described as "pan masala," is classified under heading 2008, HTSUS, or under heading 2106, HTSUS. Heading 2008, HTSUS, provides for "fruits, 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." The decision in NY 830068, classified the pan masala under heading 2106, HTSUS, which provides for "food preparations not elsewhere specified or included." Heading 2106, HTSUS, is a residual provision also known as a "basket provision" which provides for, "food preparations not elsewhere specified or included." It is well settled that 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."). Hence, in order for the subject pan masala to be classified under heading 2106, HTSUS, it must first, be a food preparation, and secondly, it must not be more specifically described or included under another tariff provision.

Food preparations of heading 2106, HTSUS, are generally considered to be mixtures of food ingredients to be used in or with other foods. The terms "food," "preparation," and "food preparation" are not defined in the HTSUS. The ENs to heading 2106 explain that "Preparations for use, either directly or after processing ... for human consumption". *See* EN(A) 21.06. Similarly, in *Orlando Food Corp. v. United States*, 140 F.3d 1437, 1441 (Fed. Cir. 1998), the United States Court of Appeals for the Federal Circuit ("CAFC") previously explained that the term "prepared" suggests, but does not require, the addition of incidental ingredients that do not affect the essential character of the product. The CAFC concluded that producing a preparation necessarily involves some degree of processing or addition of ingredients. *Id*. at 1442. The CAFC further noted that inherent in the term "preparation" is the notion that the object involved is destined for a specific use. *Id*. Moreover, the CAFC referred to The Oxford English Dictionary definition of "preparation" which is "'a substance specially prepared or made up for its appropriate use or application.'" *Id*. (citing The Oxford English Dictionary 374 (2d. ed. 1989)). It follows that a food substance which is subjected to a process or treatment to ready that substance for a specific use or consumption can be considered a "food preparation" or a prepared food product.

Pan masala is most often considered to be an item to aid digestion or used as a breath freshener for use after consuming highly spicy meals.[1] The subject pan masala is used for that purpose. It is prepared by means of chopping betel nuts, mixing, and coating the betel nuts with catechu, lime, cardamon and various flavors to prepare it for immediate consumption. In this regard, the subject pan masala is indeed a food preparation or said differently, edible ingredients, which have been prepared for immediate consumption. Accordingly, the subject pan masala is described by the terms of heading 2106, HTSUS, as it is a food preparation. However, when as the case is here, a more specific heading describes a particular product, classification under a basket provision is inapplicable.

In the instant case, the subject pan masala is more specifically provided for under heading 2008, HTSUS. Heading 2008, HTSUS, provides for "fruits, 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." Classification under heading 2008, HTSUS, requires that a product be 1) a fruit, nut or an edible part of a plant; 2) that has been otherwise prepared or preserved; and finally, 3) that it is not more specifically provided for elsewhere. Under our facts, the primary component ingredients of the subject pan masala consist of nuts, fruits and edible parts of plants (i.e., betel nut, catechu, lime and cardamon seed). Betel nut (Areca nut) is the seed of the fruit berry that grows on the areca palm tree. Thus, it is a nut which is specifically provided for under the terms of heading 2008, HTSUS. Similarly, catechu, another ingredient of the subject pan masala, is an extract of the Acacia tree and is therefore an edible part of plants described by the terms of heading 2008, HTSUS. Cardamon is a spice made from the seeds of the Elettaria Cardamomum plant and is therefore an

[1] *What is Pan masala, Mary McMahon*, Delighted Cooking (February 15, 2022). (Last visited March 23, 2022). *https://www.delightedcooking.com/what-is-pan-masala.htm*. (Last visited March 23, 2022).

edible part of a plant. Lime, of course, is a fruit. Accordingly, each one of the primary ingredients to the subject pan masala are described by the terms of heading 2008, HTSUS.

The production of pan masala fits squarely with the definition of food preparations which have been prepared for human consumption. The subject pan masala is produced by first skinning and cutting the betel nut which is then scanned and cleaned. Simultaneously the catechu is baked and blended with the lime and other spices. The lime and catechu are reduced to powder before being mixed and thereafter blended with the betel nut. Other spices are often added for flavor. Likewise, the betel nut powder of DD H890859 is produced in a similar manner and includes combined ingredients such as, betel nut, cloves, cardamon, nutmeg, cubes, borneol, menthol and licorice. These betel nut products are considered to be prepared for purposes of heading 2008, HTSUS, because the additional component ingredients have been mixed with the betel nut, with combined component ingredients being subjected to a production process in such a manner that the finished product is ready for consumption. Based on its manner of preparation and its specific use for human consumption, we conclude that the subject pan masala product is a preparation which is specifically described by the terms of heading 2008, HTSUS. This finding is consistent with other CBP rulings involving substantially similar merchandise. For example, in NY 891608, dated November 10, 1998, CBP classified a product which consisted of betel nut, catechu, lime, cardamom, and other flavors under heading 2008, HTSUS.

HOLDING:

By application of GRI 1, the subject pan masala betel nut food product is classified in heading 2008, HTSUS. Specifically, it is classified under subheading 2008.19.9090, 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 or spirit, not elsewhere specified or included: Other, including mixtures: Other, including mixtures: Other: Other." The column one rate of duty is 17.9 % *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 830068, dated June 9, 1988, is hereby REVOKED. DD H890859, dated October 22, 1993, is hereby REVOKED.

Sincerely,

YULIYA A. GULIS
for

GREGORY CONNOR,
Acting Director
Commercial and Trade Facilitation Division

PROPOSED MODIFICATION OF ONE RULING LETTER AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF WOVEN UPHOLSTERY FABRICS

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

ACTION: Notice of proposed modification of one ruling letter and proposed revocation of treatment relating to the tariff classification of woven upholstery fabrics.

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

DATE: Comments must be received on or before November 11, 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: Michael J. Dearden, Food, Textiles, and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325–0101.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to 19 U.S.C. § 1625(c)(1), this notice advises interested parties that CBP is proposing to modify one ruling letter pertaining to the tariff classification of woven upholstery fabrics. Although in this notice, CBP is specifically referring to New York Ruling Letter ("NY") N319028, dated April 30, 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 ruling 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 N319028, CBP classified the woven upholstery fabrics (Style N1829 (Moriarty), Style D1818 (Glossary), and Style J1819 (Fringe)) in heading 5903, HTSUS, specifically in subheading 5903.90.25, HTSUS, which provides for "Textile fabrics impregnated, coated, covered or laminated with plastics, other than those of heading 5902: Other: Of man-made fibers: Other." CBP has reviewed NY N319028 and has

determined the ruling letter to be in error. It is now CBP's position that woven upholstery fabrics are properly classified, within either heading 5407, HTSUS, or heading 5515, HTSUS, dependent on the specific subject merchandise at-issue. Specifically it is CBP's position that the first woven upholstery fabric (Style N1829 (Moriarty)) is properly classified within in subheading 5407.53.20, HTSUS, which provides for "Woven fabrics of synthetic filament yarn, including woven fabrics obtained from materials of heading 5404: Other woven fabrics, including 85 percent or more by weight of textured polyester filaments: Of yarns of different colors: Other," that the second woven upholstery fabric (Style D1818 (Glossary)) is classified within 5407.73.20, HTSUS, which provides for "Woven fabrics of synthetic filament yarn, including woven fabrics obtained from materials of heading 5404: Other woven fabrics, containing 85 percent or more by weight of synthetic filaments: Of yarns of different colors: Other," and that the third woven upholstery fabric (Style J1819 (Fringe)) is classified within subheading 5515.12.00, HTSUS, which provides for "Other woven fabrics of synthetic staple fibers: Of polyester stable fibers: Mixed mainly or solely with man-made filaments."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to modify NY N319028 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter ("HQ") H322298, 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.

YULIYA A. GULIS
for
GREGORY CONNOR,
Acting Director
Commercial and Trade Facilitation Division

Attachments

N319028

April 30, 2021
CLA-2–58:OT:RR:NC:N3:352
CATEGORY: Classification
TARIFF NO.: 5801.36.0020; 5903.90.2500;
9903.88.03; 9903.88.15

ANGIE COURTEAU
LZB MANUFACTURING, INC.
ONE LA-Z-BOY DRIVE
MONROE, MI 48162

RE: The tariff classification of five woven upholstery fabrics from China

DEAR MS. COURTEAU:

In your letter dated April 16, 2021, you requested a tariff classification ruling. Five sample swatches were submitted.

In your letter, you submitted five styles of woven fabrics designated as N1829 (Moriarty), D1818 (Glossary), J1819 (Fringe), B1827 (Brink) and B1808 (Social Club). According to the information provided, all five fabrics will be used to manufacture cut and sewn covers for upholstered furniture, such as recliners, sofas, and loveseats. The fabrics will be imported in rolls in 54-inch widths.

Style N1829 (Moriarty) is a woven fabric composed wholly of polyester textured filament yarns of different colors and weighs 525 g/m ^{2}. The fabric has an acrylic coating applied to the reverse side of the fabric that is visible to the naked eye.

Style D1818 (Glossary) is a woven fabric of yarns of different colors composed of 54 percent polyester filament yarns and 46 percent polypropylene filament yarns. The fabric weighs 358 g/m ^{2}. The fabric has an acrylic coating applied to the reverse side of the fabric that is visible to the naked eye.

Style J1819 (Fringe) is a woven fabric composed wholly of polyester yarns of different colors, of which 72 percent is staple fibers and 28 percent is filament yarns. The fabric weighs 482 g/m ^{2}. The fabric has an acrylic coating applied to the reverse side of the fabric that is visible to the naked eye.

Style B1827 (Brink) is a woven fabric composed wholly of polyester yarns of different colors, of which 86.5 percent is staple fibers and 13.5 percent is filament yarns. The fabric contains chenille yarns on both sides of the fabric. The fabric weight varies from 318 g/m ^{2} to 445 g/m ^{2}. The fabric has an acrylic coating applied to the reverse side of the fabric that is visible to the naked eye.

Style B1808 (Social Club) is a woven fabric composed wholly of polyester yarns of different colors, of which 78 percent is filament yarns and 22 percent is staple fibers. The fabric contains chenille yarns on both sides of the fabric. The fabric weight varies from 320 g/m ^{2} to 360 g/m ^{2}. The fabric has an acrylic coating applied to the reverse side of the fabric that is visible to the naked eye.

Although both fabric styles B1827 (Brink) and B1808 (Social Club) have a visible coating on the reverse side of the fabric, the fabrics are constructed with chenille yarns, which through virtue of Note 1 to Chapter 58, such fabrics may not be classified in Chapter 59, Harmonized Tariff Schedule of the United States, HTSUS. The Note states:

> This chapter [58] does not apply to textile fabrics referred to in note 1 to chapter 59, impregnated, coated, covered or laminated, or to other goods of chapter 59.

The applicable subheading for styles N1829 (Moriarty), D1818 (Glossary) and J1819 (Fringe) will be 5903.90.2500, HTSUS, which provides for: Textile fabrics impregnated, coated, covered or laminated with plastics, other than those of heading 5902: Other: Of man-made fibers: Other: Other. The rate of duty will be 7.5 percent ad valorem.

Pursuant to U.S. Note 20 to Subchapter III, Chapter 99, HTSUS, products of China classified under subheading 5903.90.2500, HTSUS, unless specifically excluded, are subject to an additional 25 percent ad valorem rate of duty. At the time of importation, you must report the Chapter 99 subheading, i.e., 9903.88.03, in addition to subheading 5903.90.2500, HTSUS, listed above.

The applicable subheading for styles B1827 (Brink) and B1808 (Social Club) will be 5801.36.0020, HTSUS, which provides for Woven pile fabrics and chenille fabrics, other than fabrics of heading 5802 or 5806: Of man-made fibers: Chenille fabrics: Other. The rate of duty will be 9.8 percent ad valorem.

Pursuant to U.S. Note 20 to Subchapter III, Chapter 99, HTSUS, products of China classified under subheading 5801.36.0020, HTSUS, unless specifically excluded, are subject to an additional 15 percent ad valorem rate of duty. At the time of importation, you must report the Chapter 99 subheading, i.e., 9903.88.15, in addition to subheading 5801.36.0020, HTSUS, listed above.

The HTSUS is subject to periodic amendment so you should exercise reasonable care in monitoring the status of goods covered by the Note cited above and the applicable Chapter 99 subheading. For background information regarding the trade remedy initiated pursuant to Section 301 of the Trade Act of 1974, you may refer to the relevant parts of the USTR and CBP websites, which are available at https://ustr.gov/issue-areas/enforcement/section-301-investigations/tariff-actions and https://www.cbp.gov/trade/remedies/301-certain-products-china, respectively.

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

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

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 Nicole Rosso via email at *nicole.rosso@cbp.dhs.gov*.

Sincerely,

STEVEN A. MACK
Director
National Commodity Specialist Division

HQ H322298
OT:RR:CTF:FTM H322298 MD
CATEGORY: Classification
TARIFF NO.: 5407.53.20; 5407.73.20; 5515.12.00

MS. ANGIE COURTEAU
LZB MANUFACTURING, INC.
ONE LA-Z-BOY DRIVE
MONROE, MICHIGAN 48162

RE: Modification of NY N319028; Tariff Classification of Three Woven Upholstery Fabrics from China

DEAR MS. COURTEAU:

This is in response to your request, dated December 1, 2021, for reconsideration of New York Ruling Letter ("NY") N319028, issued to you on April 30, 2021. In that ruling, U.S. Customs and Border Protection ("CBP") classified five woven upholstery fabrics from China under the Harmonized Tariff Schedule of the United States ("HTSUS").

Specifically, CBP classified the five woven upholstery fabrics in two distinct groups. The first group, composed of two woven upholstery fabrics (Style B1827 (Brink) and Style B1808 (Social Club)), were classified under subheading 5801.36.0020, HTSUS Annotated ("HTSUSA"). As noted within your request for reconsideration, the classification of these two woven upholstery fabrics is "not in question," as you "agree with the classification" set forth by CBP. The second group, composed of three woven upholstery fabrics (Style N1829 (Moriarty), Style D1818 (Glossary), and Style J1819 (Fringe)), were classified under subheading 5903.90.2500, HTSUSA, which provides for "Textile fabrics impregnated, coated, covered or laminated with plastics, other than those of heading 5902: Other: Of man-made fibers: Other: Other." It is this second group of woven upholstery fabrics that is at-issue in this ruling. Upon review, we have found this classification to be incorrect. For the reasons set forth below, we hereby modify NY N319028 to address the proper classification of three woven upholstery fabrics.

FACTS:

NY N319028 described the subject merchandise as follows:[1]

> Style N1829 (Moriarty) is a woven fabric composed wholly of polyester textured filament yarns of different colors and weighs 525 g/m^2. The fabric has an acrylic coating applied to the reverse side of the fabric [that is visible to the naked eye].
>
> Style D1818 (Glossary) is a woven fabric of yarns of different colors composed of 54 percent polyester filament yarns and 46 percent polypropylene filament yarns. The fabric weighs 358 g/m^2. The fabric has an acrylic coating applied to the reverse side of the fabric [that is visible to the naked eye].

[1] In this instance, we note that the woven upholstery fabric samples initially provided to the National Commodity Specialist Division ("NCSD") were incorrectly labelled – as identical samples received by Headquarters were labelled differently. As such, the description of "Moriarty" provided in NY N319028 is actually representative of "Fringe." Likewise, the description of "Fringe" is representative of "Moriarty." As the sample for "Glossary" was consistently labelled in both sample sets, the descriptions of "Moriarty" and "Fringe" from NY N319028 have been swapped in this ruling to properly reflect the subject merchandise.

Style J1819 (Fringe) is a woven fabric composed wholly of polyester yarns of different colors, of which 72 percent is staple fibers and 28 percent is filament yarns. The fabric weighs 482 g/m^2. The fabric has an acrylic coating applied to the reverse side of the fabric [that is visible to the naked eye].

In your request for reconsideration, you contend that subject merchandise should be classified under either heading 5407, HTSUS, as woven fabrics of synthetic filament yarn; or heading 5515, HTSUS, as other woven fabrics of synthetic staple fibers. Specifically, you assert that the acrylic coating applied to the reverse side of each woven upholstery fabric is not "visible to the naked eye," and thus classification within heading 5903, HTSUS, is precluded. In support of this assertion, you cite to several CBP rulings and their enumerated criteria. Specifically, you cite to Headquarters Ruling Letter ("HQ") 082219, dated November 21, 1998; HQ 083542, dated September 22, 1989; HQ 961172, dated August 6, 1998; HQ 967884, dated October 26, 2005; and HQ W968381, dated November 20, 2007. You contend that the aforementioned rulings support the following four points: 1) The acrylic coating does not change the surface character of the fabric; 2) "The fabrics in question do not impart a visible sheen[] and the underlying weave is still visible;" 3) "For each of the fabrics in question, when held up to a light source, the light can be seen through the interstices of the weave;" and, 4) The fabrics are neither "leveled [n]or smoothed, and the coating does not create a distinct visible pattern.

ISSUE:

What is the tariff classification of the woven upholstery fabrics?

LAW AND ANALYSIS:

Classification under the HTSUS is determined in accordance with the General Rules of Interpretation ("GRI"). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and, *mutatis mutandis*, to GRIs 1 through 5.

The 2022 HTSUS provisions under review are as follows:

5407	Woven fabrics of synthetic filament yarn, including woven fabrics obtained from materials of heading 5404:
	Other woven fabrics, including 85 percent or more by weight of textured polyester filaments:
5407.53	Of yarns of different colors:
5407.53.20	Other:
5407.53.2060	Weighing more than 170 g/m^2.
5407.73	Other woven fabrics, containing 85 percent or more by weight of synthetic filaments:
	Of yarns of different colors:

5407.73.20	Other:
5407.73.2060	Weighing more than 170 g/m^2.
	* * *
5515	Other woven fabrics of synthetic staple fibers:
	Of polyester stable fibers:
5515.12	Mixed mainly or solely with man-made filaments:
5515.12.0090	Other.
	* * *
5903	Textile fabrics impregnated, coated, covered or laminated with plastics, other than those of heading 5902:
5903.90	Other:
	Other:
5903.90.2500	Other.

* * *

In addition to the terms of the headings, classification of goods under the HTSUS is governed by any applicable section or chapter notes. Note 2 to Chapter 59, HTSUS, provides, in pertinent part, the following:

2) Heading 5903 applies to:

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

(1) Fabrics in which the impregnation, coating or covering cannot be seen with the naked eye (usually chapters 50 to 55, 58 or 60); for the purpose of this provision, no account should be taken of any resulting change of color;...

* * *

The subject fabrics have been coated with an acrylic coating. At issue is whether they are coated fabrics of Chapter 59, HTSUS, and whether, pursuant to Note 2(a)(1) to Chapter 59, HTSUS, they are products of heading 5903, HTSUS. CBP determines whether fabrics are coated for purposes of classification under heading 5903, HTSUS, based on whether the plastic coating is visible to the naked eye. Although there is no definition within the HTSUS of whether or not a coating is "visible to the naked eye," CBP has set forth a number of factors to consider when determining what constitutes a coating that can be seen with the naked eye within the meaning of Note 2(a)(1) to Chapter 59, HTSUS. In HQ 955031, dated March 30, 1994, CBP stated:

> The sole criter[ion] upon which Customs is to determine whether fabric is coated for purposes of classification under heading 5903, HTSUSA, is based on visibility: fabric is classifiable in Chapter 59 if the plastic coating is visible to the naked eye. This standard does not allow for the examiner to take the "effects" of plastic into account. Plastic coating will often result in a change of color, increase in the fabric's stiffness[,] or lend a sheen to fabric: these are factors which while indicative of the presence of plastic, may not be taken into account in determining whether the plastic itself is visible to the naked eye. The prohibition against taking a change of color into account is explicitly set forth in Chapter Note 2(a)(1). Stiffness is not a reliable indicator of coating because it may dissipate or entirely disap-

pear over time, and it is detected more by touch than by visual inspection. Sheen may be imparted to a fabric by the application of coating, but this too is an unreliable indicator of the presence of coating inasmuch as it may be imparted to fabric by means of heat calendaring and other methods of treating fabric which do not involve the application of coating.

The following rulings also provide substantial guidance on the factors giving rise to coatings which are considered "visible to the naked eye:" HQ 083194, dated December 18, 1989 (the pattern on the fabric was obscured and the plastic coating filled the intersections of the weave); HQ 086846, dated July 23, 1990 (the plastic was visible at the interstices of the yarns of the fabric when the fabric was held up to the light); HQ 957850, dated July 5, 1995 (wherein a plastic coating was clearly visible when viewed in cross section); HQ 088769, dated May 23, 1991 (a partial obscuring of the underlying weave pattern was attributable to the coating and found to be an indication of a visible coating); HQ 950022, dated September 26, 1991 (where all interstices of fabric weave were filled with polyurethane so as to leave no gaps was found to have a visible coating; however, when noticeable gaps were found in the fabric weave where plastic had not occluded, the fabric was found not to be visibly coated); HQ 952705, dated January 22, 1993 (the dull appearance of fabric was not an indication of visible coating); HQ 953407, dated July 12, 1993 (visible coating was found where the coating "blurred the surface of the fabrics"); HQ 950468, dated January 2, 1992 (a visible coating was found where the plastic coating changes the visual or surface characteristics of the fabric).

Within your request for reconsideration, you also make note of HQ W968381, dated November 20, 2007, in which CBP found that a number of factors may be considered when making a Note 2 to Chapter 59, HTSUS, determination on the visibility of a coating to the naked eye. These include: Whether the coating has visibly altered the surface of the fabric (*See* HQ 967884, dated October 26, 2005); whether the plastic is visible in the interstices of the fabric (*See* HQ 961172, dated August 6, 1998); whether the thread or weave is blurred or obscured (*See* HQ W968381, dated November 20, 2007); and whether the surface of the fabric is leveled or smoothed and whether the coating itself creates a distinct visible pattern (*Id.*). For the purposes of Note 2(a)(1) to Chapter 59, HTSUS, and in deciding as to whether or not the coating on subject fabrics is visible to the naked eye, we consider each of the above-referenced factors, which are not exclusive and none of which are determinative. *See* HQ W968300, dated February 8, 2007.

Applying each of the aforementioned criteria, we find that the acrylic coating on each of the three woven upholstery fabrics at-issue is not visible to the naked eye. Specifically, we find that the acrylic coating does not change the surface character of any of the fabrics. Additionally, the acrylic coating neither imparts a visible sheen nor does it create a visible pattern. Moreover, the underlying weave of each fabric is still visible. When each fabric is held up to a source of light, the acrylic coating is not seen through the interstices of the weave. Lastly, each of the fabrics are neither leveled nor smoothed as a result of the application of the acrylic coating. As such, we find that the woven upholstery fabrics are excluded from classification within heading 5903, HTSUS. Instead, we find that the woven upholstery fabrics are properly provided for based upon their construction.

Accordingly, as a "woven fabric composed wholly of polyester textured filament yarns of different colors [weighing] 525 525 g/m^2," Style N1829

(Moriarty) is classified within subheading 5407.53.2060, HTSUSA, which provides for "Woven fabrics of synthetic filament yarn, including woven fabrics obtained from materials of heading 5404: Other woven fabrics, including 85 percent or more by weight of textured polyester filaments: Of yarns of different colors: Other: Weighing more than 170 g/m^2." As a "woven fabric of yarns of different colors" weighing "352 g/m^2," made from a combination of polyester filament yarns and polypropylene filament yarns – both of which are defined as "synthetic" fibers within the Chapter 54, HTSUS – Style D1818 (Glossary) is classified within subheading 5407.73.2060, HTSUSA, which provides for "Woven fabrics of synthetic filament yarn, including woven fabrics obtained from materials of heading 5404: Other woven fabrics, containing 85 percent or more by weight of synthetic filaments: Of yarns of different colors: Other: Weighing more than 170 g/m^2." Lastly, as a "woven fabric composed wholly of polyester yarns of different colors," including staple fibers and filaments yarns, Style J1819 (Fringe) is classified within subheading 5515.12.0090, HTSUSA, which provides for "Other woven fabrics of synthetic staple fibers: Of polyester stable fibers: Mixed mainly or solely with man-made filaments: Other."

HOLDING:

By application of GRIs 1 and 6, the woven upholstery fabrics are classified as follows. Style N1829 (Moriarty) is classified within subheading 5407.53.2060, HTSUSA, which provides for "Woven fabrics of synthetic filament yarn, including woven fabrics obtained from materials of heading 5404: Other woven fabrics, including 85 percent or more by weight of textured polyester filaments: Of yarns of different colors: Other: Weighing more than 170 g/m^2." The column one, general rate of duty is 12% *ad valorem*.

Style D1818 (Glossary) is classified within subheading 5407.73.2060, HTSUSA, which provides for "Woven fabrics of synthetic filament yarn, including woven fabrics obtained from materials of heading 5404: Other woven fabrics, containing 85 percent or more by weight of synthetic filaments: Of yarns of different colors: Other: Weighing more than 170 g/m^2." The column one, general rate of duty is 8.5% *ad valorem*.

Style J1819 (Fringe) is classified within subheading 5515.12.0090, HTSUSA, which provides for "Other woven fabrics of synthetic staple fibers: Of polyester stable fibers: Mixed mainly or solely with man-made filaments: Other." The column one, general rate of duty is 12% *ad valorem*.

EFFECT ON OTHER RULINGS:

NY N319028, dated April 30, 2021, is hereby MODIFIED.

Sincerely,

YULIYA A. GULIS
For

GREGORY CONNOR,
Acting Director
Commercial and Trade Facilitation Division

PROPOSED REVOCATION OF ONE RULING LETTER AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF A WOMAN'S TOP

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 a woman's top.

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 a woman's top under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments on the correctness of the proposed actions are invited.

DATE: Comments must be received on or before November 11, 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: Tanya Secor, Food, Textiles and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325–0062.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obli-

gation 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 a woman's top. Although in this notice, CBP is specifically referring to New York Ruling Letter ("NY") N324185, dated February 18, 2022 (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 N324185, CBP classified a woman's top in heading 6211, HTSUS, specifically in subheading 6211.42.10, HTSUS, which provides for "Track suits, ski-suits and swimwear; other garments: Other garments, women's or girls': Of cotton: Other." CBP has reviewed NY N324185 and has determined the ruling letter to be in error. It is now CBP's position that the woman's top is properly classified in heading 6206, HTSUS, specifically in subheading 6206.30.30, HTSUS, which provides for "Women's or girls' blouses, shirts and shirt-blouses: Of cotton: Other: Other."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY N324185 and to revoke or modify any other ruling not specifically

identified to reflect the analysis contained in the proposed Headquarters Ruling Letter ("HQ") H326573, 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.

YULIYA A. GULIS
for
GREGORY CONNOR,
Acting Director
Commercial and Trade Facilitation Division

Attachments

N324185
February 18, 2022
CLA-2–62:OT:RR:NC:N3:360
CATEGORY: Classification
TARIFF NO.: 6211.42.1056

MS. CELESTE AGUIRRE-FERNANDEZ
GAP INC.
2 FOLSOM STREET
SAN FRANCISCO, CA 94105

RE: The tariff classification of a woman's top from India

DEAR MS. AGUIRRE-FERNANDEZ:

In your letter dated February 5, 2022, you requested a tariff classification ruling. Your sample will be retained by this office.

Style 3322 is a woman's top constructed from 100% cotton woven fabric. The top has a right over left full front opening with seven button closures, a pointed collar, long sleeves with button cuffs, a single chest pocket, an inside pocket below the waist, and a curved hemmed bottom.

The applicable subheading for style 3322 will be 6211.42.1056, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Track suits, ski-suits and swimwear; other garments: Other garments, women's or girls': Of cotton: Other: Blouses, shirts and shirt-blouses, sleeveless tank styles and similar upper body garments, excluded from heading 6206: Other. The duty rate will be 8.1 percent ad valorem.

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.

At the time of Entry/Entry Summary, you may be requested to verify the information for any specific shipment or product.

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

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

Sincerely,

DEBORAH MARINUCCI
for

STEVEN A. MACK
Director
National Commodity Specialist Division

HQ H326573
OT:RR:CTF:FTM H326573 TJS
CATEGORY: Classification
TARIFF NO.: 6206.30.30

MS. CELESTE AGUIRRE-FERNANDEZ
GAP INC.
2 FOLSOM STREET
SAN FRANCISCO, CA 94105

RE: Revocation of NY N324185; Tariff classification of a woman's top from India

DEAR MS. AGUIRRE-FERNANDEZ,

This is in reference to New York Ruling Letter ("NY") N324185, dated February 18, 2022, concerning the tariff classification of a woman's top under the Harmonized Tariff Schedule of the United States ("HTSUS"). In that ruling, U.S. Customs and Border Protection ("CBP") classified the top at issue under subheading 6211.42.10, HTSUS, which provides for "Track suits, ski-suits and swimwear; other garments: Other garments, women's or girls': Of cotton: Other." Upon additional review, we have found the classification of this product under subheading 6211.42.10, HTSUS, to be incorrect. For the reasons set forth below, we hereby revoke NY N324185.

FACTS:

NY N324185 described the garment at issue as follows:

> Style 3322 is a woman's top constructed from 100% cotton woven fabric. The top has a right over left full front opening with seven button closures, a pointed collar, long sleeves with button cuffs, a single chest pocket, an inside pocket below the waist, and a curved hemmed bottom.

Along with the ruling request, you submitted a sample of the garment to the National Commodity Specialist Division, who forwarded the sample to our office. The sample's inside pouch[1] measures two inches by two inches, has an overlap opening of approximately ¾ inch, and is sewn along one edge to the garment's inner seam.

ISSUE:

What is the tariff classification of the woman's top at issue?

LAW AND ANALYSIS:

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

The 2022 HTSUS headings under consideration are as follows:

6206 Women's or girls' blouses, shirts and shirt-blouses:

6211 Track suits, ski-suits and swimwear; other garments:

[1] Referred to as "an inside pocket below the waist" in NY N324185.

* * *

Note 4 to Chapter 62, HTSUS, provides:

> 4. Headings 6205 and 6206 do not cover garments with pockets below the waist, with a ribbed waistband or other means of tightening at the bottom of the garment. Heading 6205 does not cover sleeveless garments.
>
> "Shirts" and "shirt-blouses" are garments designed to cover the upper part of the body, having long or short sleeves and a full or partial opening starting at the neckline. "Blouses" are loose-fitting garments also designed to cover the upper part of the body but may be sleeveless and with or without an opening at the neckline. "Shirts", "shirt-blouses" and "blouses" may also have a collar.

* * *

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While not legally binding, and therefore not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the System. *See* T.D. 89–80, 54 Fed. Reg. 35127 (Aug. 23, 1989).

The ENs to heading 6206, HTSUS, provide in pertinent part:

> This heading covers the group of women's or girls' clothing, not knitted or crocheted, which comprises blouses, shirts and shirt-blouses (see Note 4 to this Chapter).
>
> This heading does not cover garments with pockets below the waist or with a ribbed waistband or other means of tightening at the bottom of the garment.

* * *

The issue before us is whether the small inside pouch constitutes a "pocket" such that Note 4 to Chapter 62, HTSUS, precludes the garment from being classified in heading 6206, HTSUS. We find that it does not.

The term "pocket" is not defined in the HTSUS or the ENs. In the absence of a definition of a term in the HTSUS or ENs, the term's correct meaning is its 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). According to dictionary definitions, a "pocket" is a pouch or small bag sewn into or on clothing used for carrying small items.[2]

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[2] Dictionary definitions include:

- a pouch sewn into or on clothing, for carrying a purse or other small articles Oxford English Dictionary, https://www.oed.com/view/Entry/146402.
- a small bag sewn into or on clothing so as to form part of it, used for carrying small articles. Lexico Dictionary, https://www.lexico.com/en/definition/pocket.
- a small bag for carrying things in, made of cloth and sewn into the inside or onto the outside of a piece of clothing. Cambridge Dictionary, https://dictionary.cambridge.org/us/dictionary/english/pocket.

Merriam-Webster Dictionary defines "pocket" as "a small bag that is sewed or inserted in a garment so that it is open at the top or side." https://www.merriam-webster.com/dictionary/pocket. A "bag" is "a usually flexible container that may be closed for holding, storing, or carrying something." https://www.merriam-webster.com/dictionary/bag.

Here, the small pouch is sewn into the inner seam of the woman's top. Hence, the pouch will be considered a "pocket" if the wearer uses it to carry small items.

CBP has previously considered various factors that make a pocket capable of use. For example, in Headquarters Ruling Letter ("HQ") 964737, dated January 4, 2001, CBP determined that a small flat pocket on a plush cartoon character head was not sufficient to find that the article's primary use was as a novelty coin purse or similar container of heading 4202, HTSUS. Although the issue in that ruling concerned the article's primary use as ornamental, CBP noted that the articles were stuffed so full that the pockets were rendered useless except for the possibility of inserting very small, flat articles. Thus, the capacity to hold very small, flat articles does not necessarily make a pocket functional. Functional pockets must also be accessible. In HQ 080047, dated August 26, 1988, CBP determined that a rear pocket was primarily decorative rather than functional since the position of the pocket (approximately halfway down the back of a shirt) made it difficult for the wearer to have access to it.

In our opinion, the pouch in the garment at issue is incapable of functioning as a coin pocket. As discussed in HQ 080047, a crucial element of a functional pocket is accessibility. Here, the pouch's position at the garment's lower inner seam is impractical. Accessing the pouch would require the wearer to either reach inside the garment or turn the bottom inside out. Given the pouch's size and construction, inserting, and retrieving articles into and from the pouch would require even more dexterity. The pouch measures two inches by two inches and can hardly fit a single key or two quarter coins. Although it is possible to fit very small items into the pouch, we find that the wearer would not likely rely on the pouch to securely hold items. The pouch is flimsy, lacks any means of secure closure, and is predominantly unattached to the top since it is sewn onto the garment by a mere two-inch seam. We find that the construction and position of the pouch renders it futile and that a consumer would not reasonably utilize it to hold or carry articles. Accordingly, the pouch is not a pocket.

Since the pouch is not a pocket, Note 4 to Chapter 62, HTSUS, does not preclude the subject garment from classification in heading 6206, HTSUS. Accordingly, the women's top, Style 3322, is classified in heading 6206, HTSUS. Specifically, the subject top, which is made of 100% cotton, is classified in subheading, 6206.30.30, HTSUS, which provides for "Women's or girls' blouses, shirts and shirt-blouses: Of cotton: Other: Other."

HOLDING:

Based on the information provided, by application of GRI 1 and 6, the woman's top at issue in NY N324185 is classified under heading 6206, HTSUS, and specifically under subheading 6206.30.30, HTSUS, which provides for "Women's or girls' blouses, shirts and shirt-blouses: Of cotton: Other: Other." The 2022 general, column one, general rate of duty is 15.4% *ad valorem*.

EFFECT ON OTHER RULINGS:

NY N324185, dated February 18, 2022, is hereby REVOKED.

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

Sincerely,
YULIYA A. GULIS
for
GREGORY CONNOR,
Acting Director
Commercial and Trade Facilitation Division

PROPOSED REVOCATION OF ONE RULING LETTER AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF METAL STORAGE LOCKERS AND CABINETS FOR GARAGE USE

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 metal storage lockers and cabinets for garage use.

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 metal storage lockers and cabinets under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments on the correctness of the proposed actions are invited.

DATE: Comments must be received on or before November 11, 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 revoke one ruling letter pertaining to the tariff classification of metal storage lockers and cabinets. Although in this notice, CBP is specifically referring to NY N310710, dated April 14, 2020 (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 N310710, CBP classified the metal storage lockers and cabinets in heading 9403, HTSUS, specifically in subheading 9403.20.0081, HTSUSA (Annotated), which provides for "Other furniture and parts thereof: Other metal furniture: Other: Counters, lockers, racks, display cases, shelves, partitions and similar fixtures: Other". CBP has reviewed NY N310710 and has determined the

ruling letter to be in error. It is now CBP's position that the metal locker cabinets are properly classified, in heading 9403, HTSUS, specifically in subheading 9403.20.0050, HTSUSA, which provides for "Other furniture and parts thereof: Other metal furniture: Household: Other: Other".

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY N310710 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed HQ H313152, 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.

ANDREW LANGREICH
for
YULIYA A. GULIS,
Director
Commercial and Trade Facilitation Division

Attachments

ATTACHMENT A

N310710

April 14, 2020
CLA-2-94:OT:RR:NC:N4:433
CATEGORY: Classification
TARIFF NO.: 9403.20.0081; 9903.88.03

PATRICK GILL
SANDLER, TRAVIS & ROSENBERG, P.A.
551 5TH AVENUE, SUITE 1100
NEW YORK, NY 10176

RE: The tariff classification of metal furniture from China.

DEAR MR. GILL:

In your letter dated March 16, 2020, on behalf of NewAge Products Inc., you requested a tariff classification ruling and confirmation that the articles are not subject to China Section 301 duties, specifically US Note 20(qq) Annex (100). In lieu of samples, illustrative literature and product descriptions were provided.

Item 1, the "Bold Series," is a group of unequipped, locking, modular, shelved, metal storage lockers and cabinets that are available in different paint finishes. First, a floor standing, 2-door shelved locker whose dimensions are 42" in width, 18" in depth, and 72" in height. Second, a floor standing, 2-door shelved locker whose dimensions are 30" in width, 18" in depth, and 72" in height. Third, a floor standing, 2-door pair of shelved lockers whose combined dimensions are 84" in width, 18" in depth, and 77.25" in height. Fourth, a floor standing, 2-door base cabinet whose dimensions are 24" in width, 16" in depth, and 35.25" in height. Fifth, a floor standing, 5-drawer project workstation and locker component whose overall dimensions are 62" in width, 18" in depth, and 35." in height. The workstation contains four casters, two that are lockable. Sixth, a floor standing, multi-level rolling tool drawer whose dimensions are 20.75" in width, 16" in depth, and 33" in height. The tool drawer contains four casters. Seventh, a wall mounted 2-door cabinet whose dimensions are 36" in width, 12" in depth, and 19.5" in height. Eighth, a wall mounted 2-door cabinet whose dimensions are 24" in width, 12" in depth, and 18" in height.

Item 2, the "Pro Series," is a group of unequipped, locking, modular, shelved, metal storage lockers and cabinets that are available in different paint finishes. First, a floor standing, 2-door, shelved multi-use locker whose dimensions are 36" in width, 24" in depth, and 80" in height. Second, a floor standing, 5-drawer tool cabinet whose dimensions are 28" in width, 22" in depth, and 32.25" in height. Third, a floor standing, multi-functional cabinet whose dimensions are 28" in width, 22" in depth, and 35.5" in height. Fourth, a floor standing, 2-door base cabinet whose dimensions are 28" in width, 22" in depth, and 32.25" in height. Fifth, a floor standing mobile locker on casters whose dimensions are 28" in width, 22" in depth, and 65" in height. Sixth, a floor standing sink-cabinet whose dimensions are 28" in width, 22" in depth, and 38.75" in height. The sink-cabinet is equipped with a sink and faucet. Seventh, a floor standing, single-door, adjustable-shelf locker whose dimensions are 15" in width, 24" in depth, and 80" in height. Eighth, a wall mounted single-shelf cabinet whose dimensions are 28" in width, 14" in depth, and 22" in height.

You request classification of the subject merchandise in subheading 9403.20.0050, Harmonized Tariff Schedule of the United States, (HTSUS). We disagree.

The Explanatory Notes (ENs) to the HTSUS constitute the official interpretation of the tariff at the international level.

Chapter 94, Legal Note 2, and 2a provides: "articles (other than parts) referred to in headings 9401 to 9403 are to be classified in those headings only if they are designed for placing on the floor or ground. The following are, however, to be classified in the above-mentioned headings even if they are designed to be hung, to be fixed to the wall or to stand one on the other: 2(a) Cupboards, bookcases, other shelved furniture (including single shelves presented with supports for fixing them to the wall) and unit furniture." A review of the facts finds the "Bold Series" and the "Pro Series" of lockers and cabinets to fall within the construct of Chapter 94, Legal Note 2 and 2a.

Unit furniture is not defined. In Storewall, LLC versus the United States, Slip Op. 09-146, Court No.05-00462 dated December 18, 2009, the United States Court of International Trade (CIT), derived the following meaning for the term "unit furniture."

> (a) fitted with other pieces to form a larger system or which is itself composed of smaller complementary items,
> (b) designed to be hung, or fixed to the wall, or stand one on the other or side by side,
> (c) assembled together in various ways to suit the consumer's individual needs to hold various objects or articles, and
> (d) excludes other wall fixtures such as coat, hat and similar racks, key racks, clothes brush hangers, and newspaper racks.

Further, the United States Court of Appeals for the Federal Circuit (CAFC), in Storewall, LLC versus the United States also added that unit furniture may be assembled together in various ways to suit the consumer's individual needs to hold various objects and articles, and it was this versatility and adaptability that was the essence of unit furniture. A review of the facts finds the subject merchandise to be separately presented elements of unit furniture.

Subheading 9403.20.00, HTSUS, provides for "Other furniture and parts thereof: Other metal furniture." At the eight-digit 9403.20.00, HTSUS, subheading level the subject merchandise are classified therein. The issue arises at the ten-digit subheading level as to whether or not the subject merchandise are of subheading 9403.20.0050 which provides for "Other metal furniture: Household: Other: Other" or subheading 9403.20.0081, HTSUS, which provides for "Other metal furniture: Other: Counters, lockers, racks, display cases, shelves, partitions and similar fixtures." In the condition as imported the subject merchandise are identified according to the terms of the subheading 9403.20.0081, HTSUS, specifically lockers and similar fixtures. As subheading 9403.20.0081, HTSUS, is more specific, classification in subheading 9403.20.0050, HTSUS, is precluded.

The applicable subheading for the subject merchandise will be 9403.20.0081, HTSUS, which provides for "Other furniture and parts thereof: Other metal furniture: Other: Counters, lockers, racks, display cases, shelves, partitions and similar fixtures: Other." The rate of duty will be free.

TRADE REMEDY

Products of China classified under subheading 9403.20.0081, HTSUS, unless specifically excluded, are subject to the additional 25 percent ad valorem rate of duty. At the time of importation, you must report the Chapter 99 subheading, i.e., 9903.88.03, in addition to subheading 9403.20.0081, HTSUS, listed above. *See* U.S. Note 20 to Subchapter III, Chapter 99, HTSUS.

The HTSUS is subject to periodic amendment so you should exercise reasonable care in monitoring the status of goods covered by the Note cited above and the applicable Chapter 99 subheading. For background information regarding the Section 301 trade remedy, you may refer to the relevant parts of the USTR and CBP websites, which are available at *https://ustr.gov/issue-areas/enforcement/section-301-investigations/tariff-actions* and *https://www.cbp.gov/trade/remedies/301-certain-products-china*, respectively.

The merchandise in question may be subject to antidumping duties and countervailing duties (AD/CVD). Written decisions regarding the scope of AD/CVD orders are issued by the Enforcement and Compliance office in the International Trade Administration of the Department of Commerce and are separate from tariff classification and origin rulings issued by Customs and Border Protection (CBP). You can contact them at *https://trade.gov/enforcement/* (click on "Contact Us"). *For your information, you can view a list of current AD/CVD cases at the United States International Trade Commission website at https://www.usitc.gov/trade_remedy/documents/orders.xls, and you can search AD/CVD deposit and liquidation messages using CBP's AD/CVD Search tool at https://aceservices.cbp.dhs.gov/adcvdweb*.

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 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 Dharmendra Lilia at dharmendra.lilia@cbp.dhs.gov.

Sincerely,

STEVEN A. MACK
Director
National Commodity Specialist Division

ATTACHMENT B

HQ H313152
OT:RR:CTF:CPMMA H313152 AJK
CATEGORY: Classification
TARIFF NO: 9403.20.0050

MR. PATRICK D. GILL
SANDLER, TRAVIS & ROSENBERG, P.A.
551 5TH AVENUE, SUITE 1100
NEW YORK, NY 10176

RE: Revocation of NY N310710; Classification of Metal Storage Lockers and Cabinets for Garage Use

DEAR MR. GILL:

This letter is in response to your reconsideration request, dated May 12, 2020, on behalf of your client, NewAge Products, Inc., in which you requested reconsideration of New York Ruling Letter (NY) N310710, dated April 14, 2020, concerning the classification of metal storage lockers and cabinets for garage use under the Harmonized Tariff Schedule of the United States (HTSUS). In NY N310710, U.S. Customs and Border Protection (CBP) classified the merchandise in subheading 9403.20.0081, HTSUSA (Annotated), as other metal furniture.[1] We have reviewed the aforementioned ruling and have determined that the classification of the metal storage lockers and cabinets was incorrect.

FACTS:

In your initial ruling request, dated March 16, 2020, you stated that the products under consideration are metal locker cabinets that are advertised and sold for use in household garages. The subject merchandise was described in NY N310710 as follows:

> Item 1, the "Bold Series," is a group of unequipped, locking, modular, shelved, metal storage lockers and cabinets that are available in different paint finishes. First, a floor standing, 2-door shelved locker whose dimensions are 42" in width, 18" in depth, and 72" in height. Second, a floor standing, 2-door shelved locker whose dimensions are 30" in width, 18" in depth, and 72" in height. Third, a floor standing, 2-door pair of shelved lockers whose combined dimensions are 84" in width, 18" in depth, and 77.25" in height. Fourth, a floor standing, 2-door base cabinet whose dimensions are 24" in width, 16" in depth, and 35.25" in height. Fifth, a floor standing, 5-drawer project workstation and locker component whose overall dimensions are 62" in width, 18" in depth, and 35." in height. The workstation contains four casters, two that are lockable. Sixth, a floor standing, multi-level rolling tool drawer whose dimensions are 20.75" in width, 16" in depth, and 33" in height. The tool drawer contains four casters. Seventh, a wall mounted 2-door cabinet whose dimensions are 36" in width, 12" in depth, and 19.5" in height. Eighth, a wall mounted 2-door cabinet whose dimensions are 24" in width, 12" in depth, and 18" in height.

[1] Subheading 9403.20.0081, HTSUSA, was removed and replaced with subheading 9403.20.0086, HTSUSA, on July 1, 2022.

Item 2, the "Pro Series," is a group of unequipped, locking, modular, shelved, metal storage lockers and cabinets that are available in different paint finishes. First, a floor standing, 2-door, shelved multi-use locker whose dimensions are 36" in width, 24" in depth, and 80" in height. Second, a floor standing, 5-drawer tool cabinet whose dimensions are 28" in width, 22" in depth, and 32.25" in height. Third, a floor standing, multi-functional cabinet whose dimensions are 28" in width, 22" in depth, and 35.5" in height. Fourth, a floor standing, 2-door base cabinet whose dimensions are 28" in width, 22" in depth, and 32.25" in height. Fifth, a floor standing mobile locker on casters whose dimensions are 28" in width, 22" in depth, and 65" in height. Sixth, a floor standing sink-cabinet whose dimensions are 28" in width, 22" in depth, and 38.75" in height. The sink-cabinet is equipped with a sink and faucet. Seventh, a floor standing, single-door, adjustable-shelf locker whose dimensions are 15" in width, 24" in depth, and 80" in height. Eighth, a wall mounted single-shelf cabinet whose dimensions are 28" in width, 14" in depth, and 22" in height.

ISSUE:

Whether the metal storage lockers and cabinets are classified in subheading 9403.20.0050, HTSUSA, as metal household furniture, subheading 9403.20.0078, HTSUSA, as metal exchange lockers, or subheading 9403.20.0086, HTSUSA, as other metal furniture.

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 HTSUSA provisions at issue are as follows:

7324	Sanitary ware and parts thereof, of iron or steel:
7324.10.00	Sinks and wash basins, of stainless steel:
7324.10.0050	Other
9403	Other furniture and parts thereof:
9403.20.00	Other metal furniture:
	Household:
	Other:
9403.20.0050	Other
	Other:
	Counters, lockers, racks, display cases, shelves, partitions and similar fixtures:

9403.20.0078	Storage lockers, other than exchange lockers as described in statistical note 3 to this chapter
9403.20.0086	Other

Note 2 to chapter 94, HTSUS, provides, in pertinent part:

2. The articles (other than parts) referred to in headings 9401 to 9403 are to be classified in those headings only if they are designed for placing on the floor or ground.

The following are, however, to be classified in the above-mentioned headings even if they are designed to be hung, to be fixed to the wall or to stand one on the other:

(a) Cupboards, bookcases, other shelved furniture (including single shelves presented with supports for fixing them to the wall) and unit furniture ....

Statistical note 3 to chapter 94, HTSUS, provides, in pertinent part:

3. For the purposes of statistical reporting number 9403.20.0078, "metal exchange lockers" are lockers with individual locking doors mounted on one master locking door to access multiple units used by commercial businesses, hospitals, police departments, condominiums, apartments, hotels, automobile dealerships, etc.

* * * * * *

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).

EN to chapter 94 provides, in pertinent part, as follows:

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.

(B) The following:

(i) Cupboards, bookcases, other shelved furniture (including single shelves presented with supports for fixing them to the wall) and unit furniture, designed to be hung, to be fixed to the wall or to stand one on the other or side by side, for holding various objects or articles (books, crockery, kitchen utensils, glassware, linen,

> medicaments, toilet articles, radio or television receivers, ornaments, etc.) and separately presented elements of unit furniture. ...
>
> Headings 94.01 to 94.03 cover articles of furniture of any material (wood, osier, bamboo, cane, plastics, base metals, glass, leather, stone, ceramics, etc.). ...

EN 94.03 provides, in pertinent part, as follows:

> [This heading] includes furniture for general use (e.g., cupboards, showcases, tables, telephone stands, writing-desks, escritoires, book-cases, and other shelved furniture (including single shelves presented with supports for fixing them to the wall), etc.), and also furniture for special uses.
>
> The heading includes furnitures for:
>
> (1) Private dwellings, hotels, etc., such as: cabinets, ...

* * * * * *

There is no dispute that the metal locker cabinets are metal furniture classified in subheading 9403.20.00, HTSUS, which is an *eo nomine* provision that provides for other metal furniture. *See* EN 94.03. The General EN to chapter 94 explains that "furniture" means any movable articles that are designed to be placed on the floor or ground and are used, mainly with a utilitarian purpose, to equip private dwellings. Furthermore, it provides that "furniture" also includes other shelved furniture that are "designed to be hung, [or] to be fixed to the wall". *See also* note 2 of chapter 94. In the instant case, the metal storage lockers and cabinets are either placed directly on the floor or mounted to a wall to furnish houses—specifically, household garages. Thus, the subject merchandise constitutes metal furniture within the scope of HTSUS. Specifically, they constitute metal household furniture in subheading 9403.20.0050, HTSUSA, because they are intended to be used in household garages.[2] Although statistical note 3 to chapter 94 provides that subheading 9403.20.0078, HTSUSA, specifically provides for metal exchange lockers, the subject merchandise is precluded from this subheading because they are not intended to be used by commercial businesses. In addition, the subject metal storage lockers and cabinets are also precluded from subheading 9403.20.0086, HTSUSA, which is a basket provision for other metal furniture, because they are household furniture that is more specifically provided for in subheading 9403.20.0050, HTSUSA. Pursuant to GRI 1, therefore, the metal locker cabinets are classified in subheading 9403.20.0050, HTSUSA, as metal household furniture.

The sixth product of item #2, the "Pro Series," however, is a floor standing combination sink-cabinet that is equipped with a steel sink and a faucet. Accordingly, the classification of the sink-cabinet is determined by the appli-

[2] CBP has historically held that metal furniture that is utilized in household garages constitute metal household furniture within the scope of HTSUS. *See e.g.*, NY N263824, dated May 7, 2015 (classifying a metal table intended to be used in a household garage in subheading 9403.20.0018, HTSUSA, as metal household furniture); NY N246865, dated Nov. 15, 2013 (classifying a floor-standing steel shelving unit intended for use from pantry to garage in subheading 9403.20.0018, HTSUSA, as metal household furniture); NY I85764, dated Aug. 28, 2002 (classifying a metal rolling storage chest that is designed to be used in the garage or workshop as furniture for storage in subheading 9403.20.0010, HTSUSA, as metal household furniture).

cation of GRI 3(b), which applies to composite goods. To classify under GRI 3(b), CBP must identify the component of the subject merchandise that imparts the essential character of the merchandise. "The 'essential character' of an article is 'that which is indispensable to the structure, core or condition of the article, i.e., what it is.'" *Structural Industries v. United States*, 360 F. Supp. 2d 1330, 1336 (Ct. Int'l Trade 2005). Generally, the physical measures of bulk, quantity, weight or value are considered to determine the constituent material that imparts the essential character of the merchandise. *See* EN to GRI 3(b). Heading 7324, HTSUS, provides for steel sinks whereas heading 9403, HTSUS, provides for furniture, including the subject metal storage lockers and cabinets, as analyzed above. Historically, CBP has classified composite goods of consisting of a sink and cabinet in the heading that provides for cabinets by holding that the cabinet component imparts the essential character of the merchandise.[3] Accordingly, we find that the metal cabinet component imparts the essential character of the sink-cabinet and thus, the sink-cabinet constitutes furniture in heading 9403, HTSUS. The metal combination sink-cabinet, which is a floor standing metal cabinet that is used to equip household garages, is classified in subheading 9403.20.0050, HTSUSA, as metal household furniture.

HOLDING:

By application of GRI 1, the metal storage lockers and cabinets are classified in heading 9403, HTSUS, specifically subheading 9403.20.0050, HTSUSA, which provides for "Other furniture and parts thereof: Other metal furniture: Household: Other: Other". The 2022 column one, general rate of duty is free.

By application of GRI 3(b), the metal floor standing combination sink-cabinet is classified in heading 9403, HTSUS, specifically subheading 9403.20.0050, HTSUSA, which provides for "Other furniture and parts thereof: Other metal furniture: Household: Other: 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:

NY N310710, dated April 14, 2020, is hereby revoked.

Sincerely,

YULIYA A. GULIS,
Director
Commercial and Trade Facilitation Division

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[3] *See e.g.*, NY N318142, dated Mar. 16, 2021 (classifying a stainless-steel laundry sink and cabinet, and an acrylic laundry sink and cabinet in subheading 9403.60.8081, HTSUSA, as wooden furniture); NY R03428, dated Mar. 20, 2006 (classifying a wood cabinet base with a marble top and ceramic sink in subheading 9403.60.8080, HTSUSA, as wooden furniture); NY L80594, dated Nov. 1, 2004 (classifying a wooden cabinet with a marble top, bronze sink and bronze faucets in subheading 9403.60.8080, HTSUSA, as wooden furniture).

PROPOSED REVOCATION OF ONE RULING LETTER AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF CAST-IRON CYLINDER HEADS AND BLOCK CASTINGS

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 cast-iron cylinder heads and block castings.

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 cast-iron cylinder heads and block castings under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments on the correctness of the proposed actions are invited.

DATE: Comments must be received on or before November 11, 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 Karellas, Electronics, Machinery, Automotive, and International Nomenclature Branch, Regulations and Rulings, Office of Trade, at (202) 325–1737.

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 cast-iron cylinder heads and block castings. Although in this notice, CBP is specifically referring to New York Ruling Letter ("NY") N312073, dated June 18, 2020 (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 ruling 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 N312073, CBP classified cast-iron cylinder heads and block castings in heading 8409, HTSUS, specifically in subheading 8409.99.91, HTSUS, which provides for "Parts suitable for use solely or principally with the engines of heading 8407 or 8408: Other: Other: Other: For vehicles of subheading 8701.20, or heading 8702, 8703 or 8704." CBP has reviewed NY N312073 and has determined the ruling

letter to be in error. It is now CBP's position that cast-iron cylinder heads and block castings are properly classified in heading 8409, HTSUS, specifically in subheading 8409.99.10, HTSUS, which provides for "Parts suitable for use solely or principally with the engines of heading 8407 or 8408: Other: Other: Cast-iron parts, not advanced beyond cleaning, and machined only for the removal of fins, gates, sprues and risers or to permit location in finishing machinery."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY N312073 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter ("HQ") H317007, 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.

GREGORY CONNOR
for
YULIYA A. GULIS,
Director
Commercial and Trade Facilitation Division

Attachments

ATTACHMENT A

N312073

June 18, 2020
CLA-2-84:OT:RR:NC:N2:206
CATEGORY: Classification
TARIFF NO.: 8409.99.9190

DEBORAH B. STERN
SANDLER, TRAVIS & ROSENBERG, P.A.
1000 NW 57TH COURT, SUITE 600
MIAMI, FL 33126

RE: The tariff classification of cast-iron cylinder head and block castings from Germany.

DEAR MS. STERN:

In your letter dated May 26, 2020, you requested a tariff classification ruling on behalf of your client, PACCAR, Inc.

The products under review are Cast-Iron Cylinder Head and Block castings, which are designed to be used with vehicle heavy duty diesel engines. You state that the castings will undergo the following steps prior to importation into the United States:

(A) Manufacturing the cast-iron part: 1. Core making, 2. Core package assembly, 3. Painting core package, 4. Mold preparation, 5. Locating core package in mold, 6. Pouring, 7. Cooling down; (B) Cleaning (or "fettling") the casting and rough machining for the removal of fins, gates, sprues and risers: 8. Removing sand, 9. Breaking gating system (i.e., removing the casting from the mold), 10. Rough shot blasting, 11. Rough automatic finishing, 12. Manual grinding, 13. Final shot blasting, 14. Quality checks; (C) Machining to permit location in finishing machinery: 15. Primer (a coat of primer paint is sprayed onto the casting to prevent rust), 16. Data Matrix Code ("DMC") laser-etching; (D) Packing: 18. Preservation, 19. Packaging.

For the cylinder head castings only, there is step 17. After precision scan measurements of each casting, the foundry will machine datum points to within microns of their required positions, and then performs a quality check. The datum points are used by the engine plant in the U.S. to ensure proper positioning of the machining processes; some of the U.S. processes are held to a few micron tolerances.

You suggested classifying the cylinder head and block castings in subheading 8409.99.1040, Harmonized Tariff Schedule of the United States, (HTSUS), which provides for parts of motor vehicle diesel engines that are "Cast-iron parts, not advanced beyond cleaning, and machined only for the removal of fins, gates, sprues and risers or to permit location in finishing machinery." This office disagrees. In order for us to determine whether an article fits into this subheading, the article must not be advanced beyond general foundry work.

In ruling HQ H286670, dated July 23, 2019, CBP stated regarding castings "CBP has consistently held that coating, laquering and painting are processes not incidental to general foundry work and which advance cast products beyond the scope of heading 7325. See e.g., Treasury Decision (T.D.) 32506, 22 Treas. Dec. 806, decided May 9, 1912, finding that cast-iron nails galvanized in zinc are no longer dutiable as "castings" because the process of galvanization advanced the cast-iron nails to the point where they were

considered "manufactures of metal not specially provided for." See also HQ 959315, dated October 1, 1996, in which CBP held that that zinc-coated castings used as socket caps were not classifiable in heading 7325, HTSUS. Likewise, in HQ 963283, dated May 11, 2000, we held that coating cast-iron platens with lacquer advanced the platens to the extent that they were no longer classifiable as cast articles of heading 7325, HTSUS. In HQ W968382, CBP directly addressed the question of whether painting is, like coating or laquering, a process which precludes classification in heading 7325, finding that "Painting, like coating with lacquer or zinc, accomplishes the purpose of inhibiting rust from developing on the subject cast-iron products. Also like zinc or lacquer coating, painting is a process entirely independent from casting. As such, even if the subject merchandise is painted as opposed to coated with lacquer, it has still been advanced beyond the condition allowed for classification in heading 7325, HTSUS."

The cylinder head casting in NY N276963, dated July 27, 2016, which you compare your product to, did not have a "primer" step, which is a step beyond general foundry work. As a result, this ruling is not applicable.

The applicable subheading for the Cast-Iron Cylinder Head and Block Castings, will be 8409.99.9190, HTSUS, which provides for "Parts suitable for use solely or principally with the engines of heading 8407 or 8408: Other: Other: Other: For vehicles of subheading 8701.20, or heading 8702, 8703 or 8704: Other." The general rate of duty will be 2.5% ad valorem.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, please contact National Import Specialist Liana Alvarez at *liana.alvarez@cbp.dhs.gov*.

Sincerely,

STEVEN A. MACK
Director
National Commodity Specialist Division

ATTACHMENT B

HQ H317007
CLA-2 OT:RR:CTF:EMAIN H317007 JDK
CATEGORY: Classification
TARIFF NO(s).: 8409.99.10

DEBORAH STERN
SANDLER, TAVIS & ROSENBERG, P.A.
5835 BLUE LAGOON DRIVE, SUITE 200
MIAMI, FL 33126

RE: Revocation of NY N312073; Tariff Classification of Cast-Iron Cylinder Heads and Block Castings

DEAR MS. STERN,

This is in response to your letter, dated February 24, 2021, submitted on behalf of PACCAR, Inc. (PACCAR) requesting reconsideration of New York Ruling Letter (NY) N312073, dated June 18, 2020. In NY N312073, United States Customs and Border Protection (CBP) classified the cast-iron cylinder heads and block castings under the Harmonized Tariff Schedule of the United States (HTSUS). Upon review of NY N312073, we have determined the ruling to be incorrect. We accordingly revoke the ruling.

FACTS:

The instant merchandise is designed to be used with heavy duty diesel engines for vehicles. The steps that the castings and cylinder heads will undergo before importation to the United States is described in NY N312073 as follows:

(A) Manufacturing the cast-iron part:
1. Core making, 2. Core package assembly, 3. Painting core package, 4. Mold preparation, 5. Locating core package in mold, 6. Pouring, 7. Cooling down;

(B) Cleaning (or "fettling") the casting and rough machining for the removal of fins, gates, sprues and risers:
8. Removing sand, 9. Breaking gating system (i.e., removing the casting from the mold), 10. Rough shot blasting, 11. Rough automatic finishing, 12. Manual grinding, 13. Final shot blasting, 14. Quality checks;

(C) Machining to permit location in finishing machinery:
15. Primer (a coat of primer paint is sprayed onto the casting to prevent rust), 16. Data Matrix Code ("DMC") laser-etching; (D) Packing: 18. Preservation, 19. Packaging.

For the cylinder head castings only, there is step 17. After precision scan measurements of each casting, the foundry will machine datum points to within microns of their required positions, and then performs a quality check. The datum points are used by the engine plant in the U.S. to ensure proper positioning of the machining processes; some of the U.S. processes are held to a few micron tolerances.

In your submission, you clarify that the primer step is only for block castings, and oiling is only for cast-iron cylinder heads.

ISSUE:

Whether or not the instant cylinder heads and block castings are "cast-iron parts, not advanced beyond cleaning, and machined only for the removal of fins, gates, sprues and risers or to permit location in finishing machinery."

LAW AND ANALYSIS:

Classification under the HTSUS is determined 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.

There is no dispute that the subject merchandise are parts of diesel engines that are classified in heading 8408, HTSUS, or in subheading 8409.99, HTSUS. As such, the case is governed by GRI 6, which provides as follows:

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

The HTSUS provisions in question are as follows:

8409	Parts suitable for use solely or principally with the engines of heading 8407 or 8408:	
	Other:	
8409.99	Other:	
8409.99.10		Cast-iron parts, not advanced beyond cleaning, and machined only for the removal of fins, gates, sprues and risers or to permit location in finishing machinery...
* * *		
		Other:
8409.99.91		For vehicles of subheading 8701.20, or heading 8702, 8703 or 8704...

Per GRI 6, the subject parts are properly classified under subheading 8409.99.10, HTSUS, if they fall under the scope of the provision for cast-iron parts, not advanced beyond cleaning, and machined only for the removal of fins, gates, sprues and risers or to permit location in finishing machinery.

In *Ross Machine & Mill Supply, Inc. et al. v. United States*, 69 Cust. Ct. 160 (U.S. 1972) (*Ross Machine*), the court held that "painting" cast-iron rollers for machines to protect them against oxidation did not advance them beyond being cleaned for the purposes of classification under the Tariff Schedule of the United States (TSUS), the predecessor tariff schedule to the HTSUS. Specifically, the issue in *Ross Machine* was whether painted iron castings were classified under TSUS provision 680.60, which provided for "Cast-iron

(except malleable cast-iron) rollers for machines, not alloyed and not advanced beyond cleaning, and machined only for the removal of fins, gates, sprues, and risers or to permit location in finishing machinery."

Decisions by the Customs Service and the courts interpreting nomenclature under the TSUS are not deemed dispositive in interpreting the HTSUS. However, such prior decisions should be considered on a case-by-case basis if they are instructive in interpreting the HTSUS, particularly where the nomenclature previously interpreted in those decisions remains unchanged and no dissimilar interpretation is required by the text of the HTSUS.[1] In this case, the text of subheading 8409.99.10, HTSUS, is quite similar to the text of the provision at issue in *Ross Machine*. As such, we find Ross Machine to be instructive in determining whether the instant parts are advanced beyond cleaning, and machined only for the removal of fins, gates, sprues and risers or to permit location in finishing machinery.

Likewise, in HQ H015186 (October 17, 2008), CBP also found that Ross Machinery was instructive when we held that a rust preventative coating did not remove certain cast iron machine tools, which are parts, from the applicable subheading of 8466.93.15, HTSUS. Subheading 8466.93.15, HTSUS, provides for cast iron parts, "not advanced beyond cleaning and machined only for the removal of fins, gates, sprues and risers, or to permit location in finishing machinery," which is identical to the language of 8409.99.10, HTSUS.

In the instant matter, the block castings are painted with primer and the cast-iron cylinder heads are coated with an oil only to prevent oxidation during transport. Pursuant to the reasoning in *Ross Machine* and HQ H015186, the application of rust preventative coating to products considered cast-iron parts do not advance the products beyond being cleaned, and the instant parts fall under the scope of subheading 8409.99.10, HTSUS.

HOLDING:

By application of GRIs 1 and 6, the instant cast-iron cylinder heads and block castings are classified under heading 8409, HTSUS, and specifically provided under subheading 8409.99.10, HTSUS, as "[p]arts suitable for use solely or principally with the engines of heading 8407 or 8408: Other: Other: Cast-iron parts, not advanced beyond cleaning, and machined only for the removal of fins, gates, sprues and risers or to permit location in finishing machinery...." 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 on the World Wide Web at www.usitc.gov.

EFFECT ON OTHER RULINGS:

NY N312073, dated June 18, 2020, 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.

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[1] Omnibus Trade and Competitiveness Act of 1988, P.L. 100-418, August 23, 1988, 102 Stat. 1107, 1147; H.R. Rep. No. 576, 100th Cong., 2d Sess. 549-550 (1988) 1988 U.S.C.C.A.N. 1547, 1582-1583. *See also*, *Hewlett-Packard Co. v. United States*, 189 F. 3d. 1346; 22 Ct. Int'l. Trade 514 (1999)

Sincerely,

YULIYA A. GULIS,
Director
Commercial and Trade Facilitation Division

PROPOSED REVOCATION OF ONE RULING LETTER, PROPOSED MODIFICATION OF ONE RULING LETTER AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE COUNTRY OF ORIGIN OF CERTAIN AIR PURIFIERS

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

ACTION: Notice of proposed revocation of one ruling letter, proposed modification of one ruling letter and proposed revocation of treatment relating to the country of origin of certain air purifiers.

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 and modify one ruling letter concerning the country of origin of certain air purifiers. Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments on the correctness of the proposed actions are invited.

DATE: Comments must be received on or before November 11, 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: Michael J. Dearden, Food, Textiles, and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325–0101.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to 19 U.S.C. § 1625(c)(1), this notice advises interested parties that CBP is proposing to revoke one ruling letter and modify one ruling letter pertaining to the country of origin of air purifiers. Although in this notice, CBP is specifically referring to New York Ruling Letter ("NY") N322681, dated December 1, 2021 (Attachment A) and NY N322364, dated November 18, 2021 (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 rulings identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the comment period.

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

In NY N322681, CBP determined that the air purifiers, manufactured from parts of Chinese and Vietnamese-origin and further assembled in Vietnam into subassemblies and the finished air purifiers, were products of China. It is now CBP's position that the country of origin of these air purifiers is Vietnam.

In NY N322364, CBP determined that air purifiers, manufactured from parts of Chinese and Vietnamese-origin and further assembled in Vietnam into subassemblies and the finished air purifiers, were products of Vietnam in the first manufacturing scenario and products of China in the second manufacturing scenario. It is now CBP's position that the country of origin of the air purifiers in the second manufacturing scenario is Vietnam.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY N322681 and modify NY N322684, and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter ("HQ") H323218, 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.

YULIYA A. GULIS
for
GREGORY CONNOR,
Acting Director
Commercial and Trade Facilitation Division

Attachments

N322681
December 1, 2021
OT:RR:NC:N1:105
CATEGORY: Country of Origin

MIKE PACKARD
COMPLIANCE SPECIALIST
GREEN WORLDWIDE SHIPPING LLC
3131 SOUTH VAUGHN WAY, SUITE 605
AURORA, COLORADO 80014

RE: The country of origin of an Air Purifier.

DEAR MR. PACKARD:

In your letter dated November 8, 2021, on behalf of your client, Lasko Products, LLC, you requested a country of origin ruling determination on an air purifier.

The merchandise under consideration is an air purifier described as the GermGuardian Elite 5-in-1 Air Purifier with Pet Pure (model No. AC4300BPTCA). The device utilizes a fan, a UV-C light, a carbon pre-filter and a HEPA filter to help remove allergens from the air. The HEPA filter captures 99.97% of particles like pet dander, dust mites and pollen. The carbon filter reduces common odors from pets, smoking and cooking. The UV-C light helps reduce airborne bacteria, viruses, mold spores and works with Titanium Dioxide to reduce volatile organic compounds. It is recommended that the HEPA filter be replaced every 6–8 months, depending on the use, indicated by the filter change indicator. The dimensions are 8.88" x 6.38" x 22" and is recommended for use in rooms up to 153 square feet.

According to your submission, Lasko Products, LLC is considering two proposed manufacturing scenarios, which are described as follows:

Manufacturing Scenario 1:

In manufacturing scenario 1 numerous components are purchased in China including the HEPA filter, motor assembly, light assembly, PCBA assembly, power cable, starting capacitor, most UV lamp parts and the color carton for packaging. The PCBA assembly is purchased in China as a complete assembly and is loaded with Chinese firmware containing product controls and safety features. The functions of the PCBA are to turn on/off the machine and UV lamp, control the working speeds, the timer for UV and HEPA working time and the UV and HEPA replacement reminder. The HEPA filter is composed of a plastic frame, PU foam, hot melt glue, tape, white non-woven fabric as well as anti-bacterial and antiallergic non-woven fabric. These Chinese-origin materials are shipped to Vietnam for assembly into finished air purifiers. There is no assembly work done at the factory in China except for some minor assembly of the wiring. The processes done at the Chinese factory include inspections, testing and handling of purchased components.

The wire assembly in China is completed using an automatic wire stripping machine. An automatic terminal playing/tin dipping/sheath wearing machine and automatic terminal playing/tin dipping/terminal shell wearing machine are also used in the wire assembly. The PCBA assembly is tested using a test fixture machine. A motor inspection is done, which includes noise, RPM and temperature rise in a quiet room using an RPM meter and sound level meter.

A UV lamp inspection is done using an air leakage testing machine. There is also a filter inspection, metal parts inspection and packaging inspection.

The remaining parts will be manufactured in Vietnam including the housing components, fan, motor frame, control panel, PCB box, brackets and switches, screws and fasteners, Microswitch boxes; and packaging components such as labels, product manual and brochure, paper pallets and bags. The front and rear housing and covers provide air flow channels, aesthetic appeal and protection for the interior components.

The assembly process in Vietnam includes the following steps: Unpack and combine the front cover components, attach the decorative lamp component and lock fixing the frame. The next steps involve installing the motor assembly, place air duct cover, and attach motor brackets. This is followed by attaching the air duct cover, aligning and installing the UV lamp (including plugging in the terminals), rear housing assembly (inserting terminal wires, plug terminal and apply glue), fix the voltage-reduce capacitor, fix the top cover, align and combine the front and rear covers, fix the rear housing, and install the filter. The final processes include packing the air purifiers, applying logos and labels, and sealing the box. Installation of each of the Chinese assemblies (including microswitch, UV lamp, rear housing, decorative lamp, top cover, motor and light) involve several steps which include plugging in devices, screwing, gluing, and manipulation of wires (separating, straightening, or twisting). The overall production process in Vietnam will involve 94 workers and inspectors and take approximately 64 minutes to assemble the electrical and non-electrical components to each air purifier.

Manufacturing Scenario 2:

In this scenario, additional components made in China are sent to Vietnam for final assembly of the air purifier. Additional components sourced in China include the top and bottom fan housing, fan, switch boxes, frames, control panel, brackets and switches. This is a temporary scenario and once additional Chinese component inventory is taken to zero, all these components will be made in Vietnam (same as Manufacturing Scenario 1).

The marking statute, section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin (or its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article.

The "country of origin" is defined in 19 CFR 134.1(b), in pertinent part, as "the country of manufacture, production, or growth of any article of foreign origin entering the United States. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the 'country of origin' within the meaning of this part."

For tariff purposes, the courts have held that a substantial transformation occurs when an article emerges from a process with a new name, character or use different from that possessed by the article prior to processing. United States v. Gibson-Thomsen Co., Inc., 27 CCPA 267, C.A.D. 98 (1940); National Hand Tool Corp. v. United States, 16 CIT 308 (1992), aff'd, 989 F. 2d 1201 (Fed. Cir. 1993); Anheuser Busch Brewing Association v. The United States, 207 U.S. 556 (1908) and Uniroyal Inc. v. United States, 542 F. Supp. 1026 (1982).

Further, in Energizer Battery, Inc. v. United States, 190 F. Supp. 3d 1308 (2016), the Court of International Trade ("CIT") interpreted the meaning of "substantial transformation" as used in the Trade Agreements Act of 1979 ("TAA") for purposes of government procurement. In Energizer the court reviewed the "name, character and use" test in determining whether a substantial transformation had occurred in determining the origin of a flashlight and reviewed various court decisions involving substantial transformation determinations. The court noted, citing Uniroyal, Inc. v. United States, 3 C.I.T. 220, 226, 542 F. Supp. 1026, 1031, aff'd, 702 F.2d 1022 (Fed. Cir. 1983), that when "the post-importation processing consists of assembly, courts have been reluctant to find a change in character, particularly when the imported articles do not undergo a physical change." Energizer at 1318. In addition, the court noted that "when the end-use was pre-determined at the time of importation, courts have generally not found a change in use." Energizer at 1319, citing as an example, National Hand Tool Corp. v. United States, 16 C.I.T. 308, 310, aff'd 989 F.2d 1201 (Fed. Cir. 1993). Furthermore, courts have considered the nature of the assembly, i.e., whether it is a simple assembly or more complex, such that individual parts lose their separate identities and become integral parts of a new article.

Regarding the country of origin of the air purifier, we would note that the finished device consists of several important subassemblies such as the motor, fan, UV lamp and PCB (with embedded Chinese software), which are previously manufactured in China. These items are not only the most expensive items that go into the manufacturing process but also imparts the critical functionality for the air purifier. The items do not lose their core abilities when assembled in Vietnam. In our view, the assembly operations performed in Vietnam, which consists of attaching, fastening, straightening wires, and gluing, is not complex. The air purifier is produced by joining these subassemblies together to form an air purifier, but the Chinese subassemblies do not undergo a physical change as a result. While we acknowledge that the assembly operations performed in Vietnam are plentiful, they are all still considered simple assembly.

In your cited ruling, HQ H303177 (dated May 4, 2020), most of the parts are produced in Indonesia and many of the subassemblies are also completed in Indonesia. In your request, the most important subassemblies described above, as well as the vast majority of the additional key components (other than the front and rear housing/covers) are produced in China and are simply assembled in Vietnam.

Therefore, based upon the facts presented, it is the opinion of this office that the assembly process performed in Vietnam for both Scenarios 1 and 2 do not result in a substantial transformation of the Chinese components. The components themselves are not transformed in Vietnam into a new and different article of commerce with a name, character, and use distinct from the components exported from China. Therefore, the GermGuardian Elite 5-in-1 Air Purifier with Pet Pure (model No. AC4300BPTCA), assembled under both Scenarios 1 and 2, given the pre-determined end-use, number and value of the Chinese origin components, is considered a product of China for origin and marking purposes at time of importation into the United States.

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 Jason Christie at Jason.M.Christie@cbp.dhs.gov.

Sincerely,

STEVEN A. MACK
Director
National Commodity Specialist Division

N322364
November 18, 2021
MAR-2 OT: RR: NC: N4:410
CATEGORY: Country of Origin

MS. MICHELLE CAMPBELL
CATALYST CUSTOMS BROKERS, INC.
2252 LANDMEIER ROAD
ELK GROVE VILLAGE, IL 60007

RE: The country of origin of air purifiers

DEAR MS. CAMPBELL:

This is in response to your letter dated October 21, 2021, on behalf of your client Guardian Technologies LLC, requesting a country of origin determination for the air purifiers.

The merchandise under consideration is identified as Germguardian AC4825E 4 in 1 Air Purifying System (the "Air Purifier"). The subject air purifier, roughly cylindrical in shape with a control panel on top, is a device that uses a fan, a carbon filter, HEPA filtration and UV-C Light Technology to trap allergens, fight germs and reduce unpleasant odors. The air purifier removes dust, pet dander and pollen.

You present two manufacturing processing scenarios for the country of origin determination of the Air Purifiers. Under the scenarios, the product's components and parts are produced in Vietnam and sourced from China. The final processing occurs in Vietnam. The Air Purifiers each contain approximately 40 components.

In the first scenario, the UV lamp, UV lamp holder and protection board, PCBA assembly, fan switch, motor switch assembly, HEPA filter, air outlet iron net, and power cord, etc. are imported from China. All other components and parts are manufactured in Vietnam. They include the plastic molding parts (UV lamp box and cover, top cover, cap of top cover, control panel, button and knob, front cover and rear housing, rear cover, blower, blower covers, motor bracket, PCB box, switch covers), motor, screws in additions to labels, packing materials, etc. The Bill of Materials indicates that approximately 56% (by value) of the components and parts used to produce the Air Filter are made in Vietnam.

The production process in Vietnam consists of both the production of the sub-assemblies/parts with the Vietnamese originated and imported components and materials, and the final assembly process. The workers involved in the production of the Air Purifiers in Vietnam include electricians, product engineers, test engineers, and individuals specially trained to ensure the product's quality and specifications.

The following sub-assemblies/parts are made in the manufacturing process before and for the final assembly process in the Vietnamese factory: the control panel (39 steps), UV lamp assembly (19 steps), PCB assembly (4 steps), decorative lamp strip (11 steps), wire/terminal preparation (7 steps), rotary switch assembly (3 steps), UV protective board processing (4 steps), microswitch PCBA installation (17 steps), motor assembly installation (17 steps), rear shell/housing assembly (49 steps).

The final assembly process is to use the above sub-assemblies/parts made in the Vietnamese factory to manufacture the finished air Purifiers. The final manufacturing process includes: inspecting the plastic molded front housing (4 steps), installing the iron outlet to the front housing (4 steps), shaping and

affixing iron outlet locking foot in the machine (4 steps), installing the motor compartment (3 steps), affixing the motor bracket to the front housing (2 steps), affixing the air duct to the front housing (3 steps), connecting the top control panel (6 steps), installing the UV lamp components (8 steps), installing the PCB box (4 steps), installing the PCB fireproof box (4 steps), installing top housing (2 steps); installing the top cover (3 steps), affixing the UV lamp to front housing (3 steps), connecting the front and rear housing wires (6 steps), assembling the front housing and rear housing and installing the UV (10 steps), securing the top cover and UV lamp protection board (4 steps), and affixing the filter to the rear housing (6 steps).

The product cleaning, label affixing, inspection, testing, packing will follow to complete the manufacturing process.

The second manufacturing scenario is similar to the first one presented above but the motor will be imported from China instead of being made in Vietnam. Accordingly, the portion of Vietnamese originated components and parts will decrease to approximate 35% (by value) in this scenario.

Section 134.1(b), Customs Regulations (19 C.F.R. § 134.1(b)), defines "country of origin" as the country of manufacture, production, or growth of any article of foreign origin entering the United States. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the "country of origin".

In order to determine whether a substantial transformation occurs when components of various origins are assembled into completed products, CBP considers the totality of the circumstances and makes such determinations on a case-by-case basis. The country of origin of the item's components, extent of the processing that occurs within a country, and whether such processing renders a product with a new name, character, and use are primary considerations in such cases. Additionally, factors such as the resources expended on product design and development, the extent and nature of post-assembly inspection and testing procedures, and worker skill required during the actual manufacturing process will be considered when determining whether a substantial transformation has occurred. No one factor is determinative.

Based on the information submitted, the components and parts are imported into Vietnam where they are manufactured into different subassemblies, which are ultimately assembled into the subject Air Purifiers. We find that the processing in Vietnam with respect to the Air Purifiers in the first scenario does constitute a substantial transformation of the imported components and parts into "products of" Vietnam. It creates a new and different article of commerce with a distinct character and use that is not inherent in the components imported into Vietnam. The manufacturing process in Vietnam transforms the non-originating components and parts to produce the finished Air Purifiers. Therefore, the "product of" requirement has been satisfied. It is of the opinion of this office that the country of origin for the Air Purifiers in the first scenario will be Vietnam.

However, in the second scenario where the motor will be imported from China (Chinese-originated), we find that the motor is such a significant component in making the air purifiers at issue and also the most expensive component of the air purifiers, the country of origin for the air purifiers in the second scenario will be China.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 CFR Part 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 Michael Chen at michael.w.chen@cbp.dhs.gov.

Sincerely,

STEVEN A. MACK
Director
National Commodity Specialist Division

HQ H323218
OT:RR:CTF:FTM H323218 MD
CATEGORY: Origin

MR. SYDNEY H. MINTZER
MAYER BROWN LLP
1999 K STREET NORTHWEST
WASHINGTON, DISTRICT OF COLUMBIA

Re: Country of Origin of Air Purifiers; Substantial Transformation

DEAR MR. MINTZER,

This is in response to your correspondence, dated January 31, 2022, requesting reconsideration of two New York Ruling Letters ("NY") issued by U.S. Customs and Border Protection ("CBP"), regarding the country of origin of air purifiers on behalf of your client, Lasko Products, LLC ("Lasko") and its related company, Guardian Technologies, LLC ("Guardian"). Specifically, CBP issued NY N322364 to Guardian on November 18, 2021, determining that the country of origin of the air purifier was either Vietnam or China dependent on the presented manufacturing scenarios. On December 1, 2021, CBP issued NY N322681 to Lasko, determining that the country of origin of the air purifier was China under both of the presented manufacturing scenarios. We have reviewed both NY N322364 and NY N322681 and have determined them to be in error for the reasons set forth herein.

FACTS:

In NY N322364, the air purifier at-issue was described as follows:

> The merchandise under consideration is identified as Germguardian AC4825E 4 in 1 Air Purifying System (the "Air Purifier"). The subject air purifier, roughly cylindrical in shape with a control panel on top, is a device that uses a fan, a carbon fiber, [a High Efficiency Particulate Air ("HEPA")] filtration and [Ultraviolet-C ("UV-C")] Light Technology to trap allergens, fight germs[,] and reduce unpleasant odors. The air purifier removes dust, pet dander[,] and pollen.

The air purifier within NY N322681 was similarly described as:

> The merchandise under consideration is an air purifier described as the GermGuardian Elite 5-in-1 Air Purifier with Pet Pure (model No. AC4300BPTCA). The device utilizes a fan, a UV-C light, a carbon prefilter[,] and a HEPA filter to help remove allergens from the air. The HEPA filter captures 99.7% of particles like pet dander, dust mites[,] and pollen. The carbon filter reduces common odors from pets, smoking[,] and cooking. The UV-C light helps reduce airborne bacteria, viruses, mold spores[,] and works with Titanium Dioxide to reduce volatile organic compounds. It is recommended that the HEPA filer be replaced every 6–8 months, depending on the use, indicated by the filter change indicator. The dimensions are 8.88" x 6.38" x 22" and is recommended for use in rooms up to 153 square feet.

In both NY N322364 and NY N322681, two manufacturing scenarios were presented for each of the air purifiers. The manufacturing scenarios discussed within NY N322364 were detailed, in pertinent part, as follows:

> In the first scenario, the UV lamp, UV lamp holder and protection board, [Printed Circuit Board ("PCB")] assembly [("PCBA")], fan switch, motor

switch assembly, HEPA filter, air outlet iron net, and power cord, etc. are imported from China. All other components and parts are manufactured in Vietnam. They include the plastic molding parts (UV lamp box and cover, top cover, cap of top cover, control panel, button and knob, front cover and rear housing, rear cover, blower, blower covers, motor bracket, PCB box, switch covers), motor, screws in addition to labels, packing materials, etc. The Bill of Materials indicates that approximately 56% (by value) of the components and parts used to produce the Air Filter are made in Vietnam.

The production process in Vietnam consists of both the production of the sub-assemblies/parts with the Vietnamese originated and imported components and materials, and the final assembly process. [...] The following sub-assemblies/parts are made in the manufacturing process before and for the final assembly process in the Vietnamese factory: the control panel (39 steps), UV lamp assembly (19 steps), PCB assembly (4 steps), decorative lamp strip (11 steps), wire/terminal preparation (7 steps), rotary switch assembly (3 steps), UV protective board processing (4 steps), microswitch PCBA installation (17 steps), motor assembly installation (17 steps), rear shell/housing assembly (49 steps).

The final assembly process is to use the above sub-assemblies/parts made in the Vietnamese factory to manufacture the finished air [p]urifiers. The final manufacturing process includes: inspecting the plastic molded front housing (4 steps), installing the iron outlet to the front housing (4 steps), shaping and affixing iron outlet locking foot in the machine (4 steps), installing the motor compartment (3 steps), affixing the motor bracket to the front housing (2 steps), affixing the air duct to the front housing (3 steps), connecting the top control panel (6 steps), installing UV lamp components (8 steps), installing the PCB box (4 steps), installing the PCB fireproof box (4 steps) installing top housing (2 steps); installing the top cover (3 steps), affixing the UV lamp to the front housing (3 steps), connecting the front and rear housing wires (6 steps), assembling the front housing and rear housing and installing the UV (10 steps), securing the top cover and UV lamp protection board (4 steps), and affixing the filter to the rear housing (6 steps).

The second manufacturing scenario is similar to the first one presented but the motor will be imported from China instead of being made in Vietnam. Accordingly, the portion of Vietnamese originated components and parts will decrease to approximate 35% (by value) in this scenario.

In NY N322681, the manufacturing scenarios are discussed, in relevant part, as:

In manufacturing scenario 1 numerous components are purchased in China including the HEPA filter, motor assembly, light assembly, PCB[A], power cable, starting capacitor, most UV lamp parts[,] and the color carton for packaging. The PBC[A] is purchased in China as a complete assembly and is loaded with Chinese firmware containing product controls and safety features. The functions of the PCBA are to turn on/off the machine and UV lamp, control the working speeds, the timer for the UV and HEPA working time[,] and the UV and HEPA replacement reminder. The HEPA filter is composed of a plastic frame, PU foam, hot melt glue, tape, white non-woven fabric as well as anti-bacterial and antiallergic

> non-woven fabric. These Chinese-origin materials are shipped to Vietnam for assembly into finished air purifiers. There is no assembly work done at the factory in China except for some minor assembly of the wiring. The processes done at the Chinese factory include inspections, testing[,] and handling of purchased components. [...]
>
> The remaining parts will be manufactured in Vietnam including the housing components, fan, motor frame, control panel, PCB box, brackets and switches, screws and fasteners, Microswitch boxes; and packaging components such as labels, product manual and brochure, paper pallets[,] and bags. [...]
>
> The assembly process in Vietnam includes the following steps: Unpack and combine the front cover components, attach the decorative lamp component[,] and lock fixing the frame. The next steps involve installing the motor assembly, place air duct cover, and attach motor brackets. This is followed by attaching the air duct cover, aligning and installing the UV lamp (including plugging in the terminals), rear housing assembly (inserting terminal wires, plug terminal and apply glue), fix the voltage-reduce capacitor, fix the top cover, align and combine the front and rear covers, fix the rear housing, and install the filter. The final processes include packing the air purifiers, applying logos and labels, and sealing the box. Installation of each of the Chinese assemblies (including microswitch, UV lamp, rear housing, decorative lamp, top cover, motor and light) involve several steps which include plugging in devices, screwing, gluing, and manipulation of wires (separating, straightening, or twisting). The overall production process in Vietnam will involve 94 workers and inspectors and take approximately 64 minutes to assemble the electrical and non-electrical components into each air purifier.
>
> In [manufacturing scenario 2], additional components made in China are sent to Vietnam for final assembly of the air purifier. Additional components sourced in China include the top and bottom fan housing, fan, switch boxes, frames, control panel, brackets[,] and switches.

Within your request for reconsideration, you clarify that, "[f]or both models, the motor, along with the HEPA filter, UV lamp and lamp holder, PCBA, power cord/cable, wire, start capacitor, microswitch, UV protection board, and color cartons are imported from China." In the production of Guardian's Model AC4300 air purifier, you note that the "UV lamp box, lamp cover, and lamp ring subassembly are also sourced from China." In the production of Lasko's Model AC4825 air purifier, you note that the "connecting rod, fan speed switch, iron net for the air outlet, and anti-theft strip are also sourced from China." These above components are all "shipped in bulk to Vietnam for use in assembly of subassemblies and the finished air purifier."

Furthermore, you elaborate that there are several components utilized in the manufacture of both air purifiers that a "fully sourced in Vietnam." Specifically, you state that "all plastic components, including the fan blade, fan housing, housing components, control panels, switch covers, PCBA box, holders/brackets, and the control buttons and knobs" are all injection-molded in Vietnam. Alongside these plastic components, you note that the control panel, UV lamp assembly, PCB assembly, decorative lamp strip, wire/terminal preparation, rotary switch assembly, UV protective board processing, microswitch PCBA installation, motor assembly installation, and rear

shell/housing assembly are all manufactured in Vietnam prior to the ultimate assembly of either air purifier. You highlight that the motor subassembly is also produced in Vietnam; from a Chinese-origin basic motor which is secured into the motor bracket and attached with plastic fan blades and fan housings. Finally, you emphasize that these Chinese-origin basic motors used in the production of the motor subassembly are capable of use in a number of devices, including various small appliances, such as fans and heaters, in addition to air purifiers. You contend that the combination of this Chinese-origin basic motor with electronic components and fan blades, as well as the further combination of the various sub-assemblies via installations, connections, and inspections substantially transforms the basic motor – which cannot move, filter, or purify air in its original state – into the finished air purifier.

ISSUE:

What is the country of origin marking of the air purifiers?

LAW AND ANALYSIS:

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. § 1304), provides that unless excepted, every article of foreign origin imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the United States, the English name of the country of origin of the article. Congressional intent in enacting 19 U.S.C. § 1304 was "that the ultimate purchaser should be able to know by an inspection of the marking on the imported goods the country of which the goods is the product. The evident purpose is to mark the goods so that at the time of purchase the ultimate purchaser may, by knowing where the goods were produced, be able to buy or refuse to buy them, if such marking should influence his will." *United States v. Friedlander & Co.*, 27 C.C.P.A. 297 at 302; C.A.D. 104 (1940) (emphases added).

Part 134, U.S. Customs and Border Protection ("CBP") Regulations (19 C.F.R. Part 134) implements the country of origin marking requirements and exceptions of 19 U.S.C. § 1304. Section 134.1(b) defines "country of origin" as:

> [T]he country of manufacture, production, or growth of any article of foreign origin entering the United States. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the "country of origin" within the meaning of [the marking regulations]...

A substantial transformation is said to have occurred when an article emerges from a manufacturing process with a name, character, and use which differs from the original material subjected to the process. *United States v. Gibson-Thomsen Co.,* 27 C.C.P.A. 267, C.A.D. 98 (1940); *Texas Instruments, Inc. v. United States*, 681 F.2d 778, 782 (1982). In determining whether the combining of parts or materials constitutes a substantial transformation, the determinative issue is the extent of the operations performed and whether the parts lose their identity and become an integral part of the new article. *Belcrest Linens v. United States*, 6 CIT 204, 573 F. Supp. 1149 (1983), *aff'd*, 741 F.2d 1368 (Fed. Cir. 1984). If the manufacturing or combining process is a minor one that leaves the identity of the imported article intact, a substantial transformation has not occurred. *Uniroyal, Inc. v.*

United States, 3 CIT 220, 542 F. Supp. 1026 (1982), *aff'd*, 702 F.2d 1022 (Fed. Cir. 1983). In order to determine whether a substantial transformation occurs when components of various origins are assembled into completed products, CBP considers the totality of the circumstances and makes such determinations on a case-by-case basis. The country of origin of the item's components, extent of the processing that occurs within a country, and whether such processing renders a product with a new name, character, or use are primary considerations in such cases. No one factor is determinative.

NY N322364 (GermGuardian AC4825 4-in-1 Air Purifying System)

Contemplated within NY N322364 were two manufacturing scenarios for the GermGuardian AC4825 4-in-1 Air Purifying System ("Model AC4825"). In the first manufacturing scenario, the UV lamp, UV lamp holder and protection board, PCB assembly, fan switch, motor switch assembly, HEPA filter, air outlet iron net, and power cord were imported from China. All other components are parts – including the plastic molded parts (UV lamp box and cover, top cover and cap, control panel with buttons and knobs, front and rear covers, rear housing, blowers, blower covers, motor bracket, PCB box, and switch covers), motor, screws, and labelling/packing materials – were manufactured in Vietnam. The bill of materials indicates that approximately 56% by value of the components and parts used in this manufacturing scenario were made in Vietnam.

The second manufacturing scenario is virtually identical to the first manufacturing scenario except for one difference; the motor utilized in the second manufacturing scenario is imported from China as opposed to being manufactured in Vietnam. As such, the bill of materials for the second manufacturing scenario indicates that approximately 35% by value of the components and parts were made in Vietnam.

In NY N322364, CBP found that the country of origin of the Model AC4825 was either Vietnam, under the first manufacturing scenario, or China, under the second manufacturing scenario. Specifically, CBP found that "the processing in Vietnam with respect to the [a]ir [p]urifiers in the first scenario does constitute a substantial transformation of the imported components and parts into 'products of' Vietnam." Regarding the second manufacturing scenario, CBP elaborated that no such substantial transformation had occurred because the Chinese-origin "motor is such a significant component in making the air purifiers at issue and also the most expensive component of the air purifiers." Therefore, on the basis of the component motor's origin, CBP bifurcated the country of origin of the Model AC4825 as either Vietnam or China.

Upon further review of the manufacturing processes presented, we find that the Model AC4825 is a product of Vietnam, regardless of whether its component motor is sourced from Vietnam or China. As detailed, the origin of the component motor is the only discernable difference between the two manufacturing scenarios. In both scenarios, several components are fully sourced from Vietnam. These include all plastic components, such as the fan blade, fan housing, housing components, control panels, switch covers, PCBA boxes, holders and brackets, and all control buttons and knobs. The Vietnamese-origin, injection-molded components are combined with each other and Chinese-origin components in Vietnam to produce various subassemblies; including the control panel, UV lamp assembly, PCB assembly, decorative lamp strip, wire/terminal preparation, rotary switch assembly, UV

protective board processing, microswitch PCB assembly, and the motor/fan assembly. These various sub-assemblies are then further assembled in Vietnam into the finished Model AC4825.

We find that the manufacturing scenarios here; involving components of differing origins which are combined into sub-assemblies and ultimately processed into a finished product, are similar to those from prior CBP rulings. One such ruling, elaborated within your request for reconsideration, is Headquarters Ruling Letter ("HQ") H303177, dated May 4, 2020. Within HQ H303177, CBP contemplated the manufacturing scenarios of an air purifier and determined its country of origin. Specifically, HQ H303177 considered two manufacturing scenarios of an air purifier which involved the importation of Chinese-origin electric components, including a motor, and other packaging materials into Indonesia, where they are assembled with Mexican-origin filters and Indonesian-origin components into the finished product.

In the first manufacturing scenario, "Mexican filters and components from China, including the fan, motor, and electronic components [were] shipped to Indonesia [for assembly] with Indonesian plastic components into finished air purifiers." Indonesian operations in the first manufacturing scenario also included "the subassembly of 'small parts,' further processing of certain parts, and the manufacture of the majority of plastic components including the housing components, control panels, switch covers, switch boxes, handles, and brackets."

CBP found that these Indonesian assembly operations, consisting of "injection-molding the plastic parts, installing major components and subassemblies, testing, and packaging, are sufficiently complex and meaningful as to substantially transform the non-originating components." CBP also noted that the plastic components, which are assembled together in Indonesia to for the housing and exterior elements during the subassembly stage, are an "integral part of the finished device's character and use because they form the structure and appearance of the device. Ultimately, CBP held that the "character of the finished air purifier differs from that of the imported materials," because these Chinese-origin components "lose their individual identities and become an integral part of a new article when assembled with the Indonesian components and Mexican filters in Indonesia." Accordingly, CBP found that the air purifiers in HQ H303177 were products of Indonesia under the first manufacturing scenario.

In the second manufacturing scenario, "the main plastic components, including the housing, control panel, switch covers/boxes, handles, and brackets are injection-molded in China and then shipped to Indonesia for assembly with the other Chinese-origin parts and Mexican filters." Notably, "[t]he only components in manufactured in Indonesia [within the second manufacturing scenario are] packaging materials and parts ancillary to assembly, such as screws, washers, and wiring caps." CBP noted that the determinative question at-hand was "whether the assembly operations in Indonesia [were] complex and meaningful enough to substantially transform the imported components."

In the second manufacturing scenario, CBP re-elaborated that "the plastic components are integral to the character and use of the air purifier" and stated that the whole console – assembled from the "plastic components" and other "Chinese-origin parts," is a "complete device, identifiable as an [air purifier]." As the "console alone provides the fundamental structure, appearance, and capacity to operate," CBP found that the console "distinguished the

final product as a household air purifying device." While CBP noted that the "console's primary parts (the plastic components, fan, motor, and electronic components)," are of Chinese-origin, it found that the "overall production process in Indonesia" would transform these "electrical and non-electrical components" into a completed air purifier. As such, CBP found that the air purifiers in HQ H303177 were also products of Indonesia in the second manufacturing scenario.

Additional CBP rulings, detailing the country of origin of vacuum cleaners, support the ultimate determination that the country of origin of the Model AC4825 air purifier is Vietnam. In NY N324519, dated March 23, 2022; NY N322606, dated November 23, 2021; NY N322549, dated November 5, 2021; and NY N319176, dated May 19, 2021; CBP found that the country of origin of subject vacuum cleaners was Vietnam. Each of the vacuum cleaners underwent manufacturing in Vietnam from Chinese and Vietnamese origin parts and components. Notably, the motor assembly utilized in each of the manufacturing processes was of Chinese-origin. In Vietnam, the Chinese and Vietnamese origin parts and components were used to make five distinct sub-assemblies – the dust cap sub-assembly, the floor brush sub-assembly, the nozzle sub-assembly, the handle hose sub-assembly, and the body sub-assembly. The final assembly consisted of combining these sub-assemblies and components. Crucially, CBP found that the Vietnamese processing of non-originating parts and components into sub-assemblies, and the final assembly of these sub-assemblies with any additional non-originating parts and components, resulted in the substantial transformation of those parts and components into finished vacuum cleaners of Vietnamese-origin.

Both manufacturing scenarios of the Model AC4825 are similar to the first manufacturing scenario discussed within HQ H303177. In both manufacturing scenarios, various Chinese-origin electrical and non-electrical components are imported to Vietnam where they are combined with Vietnamese-origin injection-molded plastic components and other parts where they are processed into sub-assemblies and ultimately assembled into finished air purifiers. The sole difference between the manufacturing scenarios detailed within NY N322364 is that, whereas the motor assembly is of Vietnamese-origin in the first manufacturing scenario, it is of Chinese-origin in the second manufacturing scenario. Despite this, in either manufacturing scenario the air purifier is constructed from Vietnamese-origin injection-molded plastic components and assembled in Vietnam. As demonstrated, the "character of the finished air purifier differs from that of the imported materials," because these Chinese-origin components "lose their individual identities and become an integral part of a new article when assembled," with Vietnamese components. One such component is the Chinese-origin, general-use motor. Prior to its arrival in Vietnam, the Chinese-origin general motor has the capability to convert electrical energy into mechanical energy. It is only after the Chinese-origin general-use motor is assembled with electrical components and fan blades in Vietnam that it loses its individual identity, becoming a motor assembly. While this motor assembly can generate airflow, it can neither filter nor purify air until it is combined with the other, Vietnamese-made sub-assemblies to create the finished air purifier. In doing so, each of the foreign components, including but not limited to the Chinese-origin general-use motor, loses its individual identity and becomes and integral part of the finished air purifier.

This understanding is also consistent with the holdings of NY N324519, NY N322606, NY N322549, and NY N319176, in which Chinese and Vietnamese-origin parts and components which underwent manufacture in Vietnam into sub-assemblies and final processing into finished vacuum cleaners of Vietnamese-origin as a result of their substantial transformation. These components included a Chinese-origin motor assembly, capable of converting electrical energy into mechanical energy prior to importation into Vietnam. However, it was not until this Chinese-origin motor assembly was combined with other, functionally crucial sub-assemblies – the dust cap assembly, the nozzle assembly, and the body assembly – that the product could act as a finished vacuum cleaner. As such, each of the foreign components, including but not limited to the Chinese-origin motor assembly, loses its individual identity when manufactured and processed into finished vacuum cleaners. Therefore, we find that the country of origin of the Model AC4825 is Vietnam regardless of its enumerated manufacturing scenario.

NY N322681 (GermGuardian AC4300BPTCA Elite 5-in-1 Air Purifier)

Discussed within NY N322681 were two manufacturing scenarios for the GermGuardian AC4300BPTCA Elite 5-in-1 Air Purifier ("Model AC4300"). In the first manufacturing scenario, the UV lamp, UV lamp holder and protection board, UV lamp box, UV lamp cover, UV lamp ring sub-assembly, PCB assembly, fan switch, motor switch assembly, HEPA filter, air outlet iron net, and power cord were imported from China. The remaining components and parts, including the injection-molded housing components, fan, motor frame, control panel, PCB box, brackets and switches, screws and fasteners, microswitch boxed, and packaging components, are all manufactured in Vietnam.

The second manufacturing scenario is similar to the first manufacturing scenario, except that additional components, such as the top and bottom fan housing, fan, switch boxes, frames, control panel, brackets, and switches, are sourced from China. The remaining components and parts – including the injection-molded plastic parts, screws, and various packing/labelling materials – are manufactured in Vietnam.

In NY N322681, CBP found that the country of origin of the Model AC4300 was China under both manufacturing scenarios. Specifically, CBP found that "the finished device consists of several important subassemblies such as the motor, fan, UV lamp and PCB (with embedded Chinese software, which are previously manufactured in China," and that these "most expensive items [...] impart[] the critical functionality for the air purifier." CBP elaborated that "these items do not lose their core abilities when assembled in Vietnam" because "the assembly operations performed in Vietnam, which consist of attaching, fastening, straightening wires, and gluing, is not complex." Therefore, CBP found that the assembly operations performed in Vietnam were not enough to substantially transform the non-originating parts and components into products of Vietnamese origin, instead finding that the Model AC4300 was a product of China under both manufacturing scenarios.

Based on the information presented, we find that the Model AC4300 is a product of Vietnam regardless of its manufacturing scenario. In both manufacturing scenarios, parts and components utilized in the production of the finished Model AC4300 are of either Chinese or Vietnamese-origin. Regardless of the manufacturing scenario, the UV lamp, UV lamp holder and protection board, UV lamp box, UV lamp cover, UV lamp ring sub-assembly, PCB assembly, fan switch, motor switch assembly, HEPA filter, air outlet iron net, and power cord are imported from China, while the injection-molded

plastic parts, screws, and various packing/labelling materials are of Vietnamese-origin. In the first manufacturing scenario, the top and bottom fan housing, fan, switch boxes, frames, control panel, brackets, and switches are of Vietnamese-origin, whereas they are sourced from China in the second manufacturing scenario. These components are combined with each other in Vietnam to install or produce various sub-assemblies, such as the control panel, UV lamp assembly, decorative lamp strip, various wire/terminal preparation, rotary switch assembly, UV protective board processing, micro-switch PCBA installation, motor assembly installation, and the rear shell/housing assembly. The sub-assemblies and component parts are then utilized to manufacture the finished Model AC4300. This manufacturing process consists of inspecting the plastic molded front housing, installing the iron outlet to the front housing, shaping and affixing iron outlet locking foot in the machine, installing the motor compartment, affixing the motor bracket to the front housing, affixing the air duct to the front housing, connecting the top control panel, installing UV lamp components, installing the PCB box, installing the PCB fireproof box, installing the top housing, installing the top cover, affixing the UV lamp to the front housing, connecting the front and rear housing wires, assembling the front housing and rear housing and installing the UV, securing the top cover and UV lamp protection board, and affixing the filter to the rear housing.

Given that the Model AC4300 is fundamentally identical to the Model AC4825, both in its processes of manufacture and in its identity, we find the aforementioned country of origin analysis pertaining to the Model AC4825 to be informative in our country of origin analysis of the Model AC4300. As such, we again turn to the analyses detailed within HQ H303177, NY N324519, NY N322606, NY N322549, and NY N319176 to determine the country of origin of the Model AC4300. The Model AC4300, like the Model AC4825, begins its manufacture with the importation of Chinese-origin components to Vietnam. These Chinese-origin components are combined with Vietnamese-origin components, including injection-molded plastic components, to form various sub-assemblies. These Vietnamese-manufactured sub-assemblies are assembled with components of either Chinese of Vietnamese-origin to construct the final air purifier.

As in our analysis above, pertaining to the Model AC4825 air purifier, we find that the assembly operations in Vietnam under the first and second manufacturing scenarios of the Model AC4300 – which include the injection-molding of plastic components, the production of sub-assemblies from Chinese and Vietnamese-origin components, and the assembly of these sub-assemblies into the finished air purifiers – as sufficiently complex and meaningful as to substantially transform the non-originating components. The Vietnamese operations are strongly similar to those discussed within HQ H303177 – where the injection molding of plastic components and the ultimate assembly occurred in the same country – as well as NY N324519, NY N322606, NY N322549, and NY N319176 – where non-originating components and parts, including a Chinese-origin motor assembly, were combined with other components and parts to form distinct sub-assemblies, which were then ultimately assembled in the country of origin.

These plastic components formed "an integral part of the finished device's character and use because they form the structure and appearance of the device." Without these plastic components, the finished air purifier would neither be identifiable nor usable for its intended purpose. Although impor-

tant Chinese-origin components serve to render the air purifier operable, these components lose their individual identities and become an integral part of the new article of commerce – the finished air purifier – when assembled with Vietnamese components in Vietnam. One such example is that of the Chinese-origin general-use motor. Prior to its importation into Vietnam and its combination with other parts to form the motor sub-assembly, the Chinese-origin general-use motor can convert electrical energy into mechanical energy, but is incapable of moving, filtering, or purifying air. It is only after the manufacture of the motor sub-assembly, and its subsequent combination with other sub-assemblies, that the finished air purifier possesses the capability of moving, filtering, and purifying air. As such, the components which serve to render the air purifier operable lose their individual identities and become integral parts of the finished air purifier. Therefore, the country of origin of the Model AC4300 is Vietnam regardless of its enumerated manufacturing scenario.

HOLDING:

Based on the facts provided, the country of origin marking of the Model AC4825 is Vietnam.

Based on the facts provided, the country of origin marking of the Model AC4300 is Vietnam.

EFFECT ON OTHER RULINGS:

NY N322364, dated November 18, 2021, is hereby MODIFIED.
NY N322681, dated December 1, 2021, is hereby REVOKED.

Sincerely,

YULIYA A. GULIS
for
GREGORY CONNOR,
Acting Director
Commercial and Trade Facilitation Division

U.S. Court of Appeals for the Federal Circuit

XI'AN METALS & MINERALS IMPORT & EXPORT CO., LTD., Plaintiff SHANXI PIONEER HARDWARE INDUSTRIAL CO., LTD., BUILDING MATERIAL DISTRIBUTORS, INC., Plaintiffs-Appellants v. UNITED STATES, MID CONTINENT STEEL & WIRE, INC., Defendants-Appellees

Appeal No. 2021–2205, 2021–2227

Appeals from the United States Court of International Trade in Nos. 1:20-cv-00103-LMG, 1:20-cv-00111-LMG, 1:20-cv-00116-LMG, Senior Judge Leo M. Gordon.

Decided: September 23, 2022

JOSEPH DIEDRICH, Husch Blackwell LLP, Madison, WI, argued for all plaintiffs-appellants. Plaintiff-appellant Shanxi Pioneer Hardware Industrial Co., Ltd. also represented by JEFFREY S. NEELEY, STEPHEN W. BROPHY, Washington, DC.

LIZBETH ROBIN LEVINSON, Fox Rothschild LLP, Washington, DC, for plaintiff-appellant Building Material Distributors, Inc. Also represented by BRITTNEY RENEE POWELL, RONALD MARK WISLA.

ROBERT R. KIEPURA, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington, DC, argued for defendant-appellee United States. Also represented by SOSUN BAE, BRIAN M. BOYNTON, PATRICIA M. MCCARTHY; AYAT MUJAIS, International Office of the Chief Counsel for Trade Enforcement & Compliance, United States Department of Commerce, Washington, DC.

ADAM H. GORDON, The Bristol Group PLLC, Washington, DC, argued for defendant-appellee Mid Continent Steel & Wire, Inc. Also represented by LAUREN FRAID, JENNIFER MICHELE SMITH.

Before MOORE, *Chief Judge*, NEWMAN and STOLL, *Circuit Judges*.

STOLL, *Circuit Judge*.

Shanxi Pioneer Hardware Industrial Co., Ltd. (Pioneer) and Building Material Distributors, Inc. (BMD) appeal the decision of the United States Court of International Trade affirming the United States Department of Commerce's final results in the tenth administrative review of the antidumping order on certain steel nails from the People's Republic of China. Based on its finding that Pioneer did not cooperate to the best of its ability with Commerce's request for information, Commerce applied adverse facts available against Pioneer and assigned an antidumping margin of 118.04 percent to Pioneer. We affirm the Court of International Trade's judgment based on its conclusion that Commerce's decision to apply adverse facts available was supported by substantial evidence.

BACKGROUND

Commerce protects domestic producers from unfair trade practices, such as dumping, by investigating whether imported merchandise is being sold in the United States at less than fair value and imposing antidumping duties on subject merchandise to level the playing field. 19 U.S.C. § 1673. To determine the fair value of merchandise from non-market economies, such as China, Commerce constructs a respondent-specific per unit "normal value" representing the cost of production of the merchandise. Commerce uses this normal value to determine whether the merchandise is being dumped. If so, Commerce calculates a dumping margin and a corresponding duty assessment rate for that respondent and issues an antidumping duty order. At the request of interested parties, Commerce reviews and reassesses its antidumping duty orders annually after the initial investigation. § 1675(a).

This story begins in 2008. Mid Continent Steel & Wire, Inc. (Mid Continent) petitioned Commerce to investigate the importation and sale of certain steel nails from China. During this initial investigation, Commerce determined that the subject merchandise was being dumped and issued an antidumping duty order. Notice of Antidumping Duty Order: Certain Steel Nails From the People's Republic of China, 73 Fed. Reg. 44961 (Aug. 1, 2008). Because Commerce has designated China as a non-market economy, Commerce applies a rebuttable presumption that all Chinese producers are subject to government control and therefore should be assigned a country-wide dumping margin. Commerce selects a number of producers or importers for individual examination to determine this country-wide dumping margin and other margins. Pioneer—a Chinese producer and importer/exporter of steel nails (the subject merchandise)—applied for and received a separate rate in this initial antidumping investigation. In other words, Pioneer demonstrated that it was independent of government control and should be assessed a rate different from the country-wide rate. Commerce did not select Pioneer for individual examination. Commerce set the country-wide margin for China at 118.04 percent. *Id*. at 44965.

In 2013, Commerce published the results of its third administrative review of the antidumping order, covering merchandise entries that occurred between August 1, 2010, and July 31, 2011. Commerce announced its intention to

> require that [a respondent in the third administrative review] and *all other future respondents* for this case report all FOPs [factors of production] data on a CONNUM-specific basis using all product characteristics in subsequent reviews, as documen-

> tation and data collection requirements should now be fully understood by [the particular respondent] and all other respondents.

Certain Steel Nails From the People's Republic of China; Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review, A-570–909, ARP 10–11, at 36–40 (Dep't of Com. Mar. 5, 2013) (*2010–2011 Final IDM*) (emphasis added); *see also* Certain Steel Nails From the People's Republic of China; Final Results of Third Antidumping Duty Administrative Review; 2010–2011, 78 Fed. Reg. 16651 (Mar. 18, 2013).

"'CONNUM' is a contraction of the term 'control number,' and is Commerce jargon for a unique product." *Xi'an Metals & Mins. Imp. & Exp. Co. v. United States*, 520 F. Supp. 3d 1314 (Ct. Int'l Trade June 9, 2021) (*CIT Op.*). A particular CONNUM roughly corresponds to a particular product defined "in terms of a hierarchy of specified physical characteristics determined in each antidumping proceeding." *Id*. Commerce defines CONNUMs by identifying "key physical characteristics of the subject merchandise" that are "commercially meaningful" in the United States marketplace and "have an impact on costs of production." Gov't Br. 7. CONNUM-specific data allows Commerce to perform comparisons of its constructed normal values to export prices on as precise a basis as possible. *CIT Op.*, 520 F. Supp. 3d. at 1322; Gov't Br. 7–8. Commerce has required reporting factors of production (FOPs) on a CONNUM-specific basis using similar language in various antidumping proceedings for over a decade.

In 2018, Commerce initiated the administrative review underlying this appeal, the tenth administrative review of the antidumping order covering the period of August 1, 2017, to July 31, 2018. Commerce selected three mandatory respondents, including Pioneer, for examination from among the companies that requested to be considered separate rate companies. Certain Steel Nails from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2017–2018, 84 Fed. Reg. 55906 (Oct. 18, 2019) (*2017–2018 Preliminary Results*). This marked the first time that Pioneer was selected as a mandatory respondent in the course of this antidumping proceeding and was therefore the first time that Pioneer had an individual obligation to cooperate with Commerce's investigation, including responding to Commerce's questionnaires designed to obtain information necessary to calculate dumping margins.

Commerce issued questionnaires to the mandatory respondents, requesting FOP data for the subject merchandise using "actual quan-

tities consumed . . . on a CONNUM-specific basis." J.A. 279. The questionnaire stated that a respondent could alternatively provide FOP data using a different allocation methodology if the respondent provided a "detailed explanation of all efforts undertaken to report the actual quantity . . . on a CONNUM-specific basis," how the estimated FOP consumption was derived, and "why the methodology[] selected is the best way to accurately demonstrate an accurate consumption amount." *Id*. Pioneer responded to the questionnaire, representing that it had "reported the factors of production (FOPs) using actual quantities consumed to produce the merchandise under investigation on a CONNUM-specific basis." J.A. 824.

As part of the administrative review process, interested parties can submit comments to Commerce regarding the respondents' responses. In this case, Mid Continent challenged the integrity of Pioneer's data, asserting that although Pioneer "indicate[d] that it ha[d] provided CONNUM-specific FOPs, it clearly ha[d] not." J.A. 1012 (footnote omitted). Explaining that Pioneer had "made no attempt whatsoever to differentiate" its estimated FOP values on a product-by-product basis "in any way," Mid Continent contended that this "failure to calculate product-specific FOPs is highly distortive as it allocates consumption equally across all CONNUMs and distorts the margin calculations." J.A. 1013.

Based on Mid Continent's comments, Commerce issued Pioneer a supplemental questionnaire seeking clarification. Again, Commerce asked Pioneer to "provide a narrative description and any supporting documentation to explain why [it was] unable to provide more specific material input FOPs on a CONNUM or product group basis." J.A. 1026–27. And again, Commerce offered Pioneer the option to develop an alternative "methodology that captures consumption differences based on the different sizes/weights of the nails produced" to the extent Pioneer did not "track these material consumptions on a more specific basis." J.A. 1027. Pioneer responded to Commerce's supplemental questionnaire, this time admitting that it was not providing the FOPs on a CONNUM-specific basis. J.A. 1042–45. Instead, Pioneer repeatedly asserted that it had "no cost records that would support any other allocation methodology" and provided no further explanation. *Id*.

On October 18, 2019, Commerce published its preliminary results. *2017–2018 Preliminary Results*, 84 Fed. Reg. 55906. [J.A. 82] Using the FOP data that Pioneer provided in its initial questionnaire response, Commerce calculated a dumping margin of 13.88 percent for Pioneer. *Id*. at 55907. At Commerce's invitation, Mid Continent filed comments on the preliminary results, highlighting Pioneer's "fail-

[ure] to provide information critical to the calculation of accurate margins," despite the fact that it had an "opportunity to remedy these deficiencies" in its supplemental response. J.A. 1192. According to Mid Continent, despite Commerce's "specific[] instruct[ions to] Shanxi [Pioneer] to revise its . . . FOPs to capture product distinctions," or, alternatively, to "develop a methodology to take distinctions in weight, size, or surface area into account," Pioneer did neither. J.A. 1194. Mid Continent asserted that, as the producer of the subject merchandise, Pioneer "[c]learly . . . possesse[d] knowledge and/or records . . . of its products that would have allowed it to develop more accurate FOP allocation methodologies." *Id*. From Mid Continent's perspective, Pioneer's failure to do so "rendered [its] response unusable for margin calculations." J.A. 1192.

On April 22, 2020, Commerce published its final results. Commerce reconsidered Pioneer's rate assignment in view of the comments submitted by Mid Continent. Because Pioneer "withheld information" requested of it, "failed to provide data in the form and manner requested," and "significantly impeded" the administrative review, Commerce resorted to facts otherwise available (FA). Certain Steel Nails from the People's Republic of China; Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review, A-570–909, ARP 17–18, at 34 (Dep't of Com. Apr. 15, 2020) (*2017–2018 Final IDM*). In particular, Commerce noted that although "Pioneer had notice of the general record-keeping requirements relating to this order," Pioneer "did not heed . . . instructions to maintain appropriate data such that it could properly report FOPs." *Id*. at 32. And, Commerce explained, applying adverse inferences when selecting from facts available (AFA) was also warranted because Pioneer failed to act to the best of its ability to comply with a request for information. Specifically, Pioneer's failure to "maintain[] adequate records" or "develop[] a methodology to report product-specific costs," *id*. at 34, despite "multiple opportunities" throughout the underlying administrative review, constituted a failure to act to the best of its ability, *id*. at 32. Commerce assigned a margin of 118.04 percent—the country-wide rate for China—to Pioneer.

Pioneer and two separate rate respondents, BMD and Xi'an Metals & Minerals Import & Export Co., appealed Commerce's final results to the Court of International Trade, which consolidated the cases. *CIT Op*., 520 F. Supp. 3d at 1318–19. The respondents argued that Commerce violated the Administrative Procedure Act (APA) when it announced it would require future respondents to comply with the CONNUM-specific reporting requirement. Pioneer argued that re-

quiring respondents to "report CONNUM-specific costs amount[ed] to a 'rule' that Commerce 'promulgated . . . without proper notice and comment rule making'" under the APA. *Id*. at 1322–23 (alteration in original). Furthermore, Pioneer complained that Commerce "denied respondent [Pioneer] the opportunity to use another allocation methodology by requiring a more specific method of reporting and record-keeping." *Id*. at 1327.

The Court of International Trade sustained Commerce's final results. The court explained that "Commerce's adoption of a CONNUM-specific reporting requirement d[id] not amount to the implementation of a legislative rule that would require notice-and-comment rulemaking." *Id*. at 1323. And because Commerce "determined that it needed data that more accurately reflected the costs associated with the production and sale of the subject merchandise," Commerce's announcement of the CONNUM-specific reporting requirement was "a statement of policy" and not an "explicit invocation of general legislative authority" that would have triggered the notice-and-comment requirement of the APA. *Id*. at 1324. Additionally, the court determined that substantial evidence supported Commerce's application of AFA. Specifically, the court explained that despite having been on notice of Commerce's reporting requirement since 2013 and having been given multiple opportunities throughout the course of the underlying administrative review to comply or explain why it could not comply, Pioneer did neither. The court concluded that these facts supported Commerce's determination that Pioneer failed to cooperate to the best of its ability, warranting application of AFA.

Pioneer and BMD appeal. Our court consolidated the appeals. We have jurisdiction under 28 U.S.C. § 1295(a)(5).

DISCUSSION

We review de novo the Court of International Trade's judgments, reapplying the same statutory standard of review as that court. *NEXTEEL Co. v. United States*, 28 F.4th 1226, 1233 (Fed. Cir. 2022). Commerce's "special expertise in administering the anti-dumping law entitles its decisions to deference." *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1379 (Fed. Cir. 2003) (citing cases). Both the Court of International Trade and our court review Commerce's findings for substantial evidence. *Id*. Substantial evidence is "such evidence that a reasonable mind might accept as adequate to support a conclusion." *SeAH Steel VINA Corp. v. United States*, 950 F.3d 833, 840 (Fed. Cir. 2020) (cleaned up).

On appeal, Pioneer[1] primarily argues that Commerce's use of FA and AFA based on Pioneer's failure to comply with the CONNUM-specific reporting requirement was unlawful because the CONNUM-specific reporting requirement is a legislative rule that should have been promulgated through notice-and-comment rulemaking. Separately, Pioneer asserts that Commerce's decision to apply AFA and assignment of the 118.04 percent margin was unsupported by substantial evidence. We address each issue in order.

I

We begin with Pioneer's arguments that the CONNUM-specific reporting requirement is unlawful. Pioneer asserts that Commerce's CONNUM-specific reporting requirement is a rule promulgated without the requisite notice-and-comment rulemaking procedure under the APA and therefore null. Appellants' Br. 20–21. In the alternative, Pioneer claims that even if the CONNUM-specific reporting requirement is exempt from notice-and-comment rulemaking, the rule is inconsistent with the Tariff Act of 1930 and therefore invalid. *Id*. at 31. We address each argument in turn.

A

Under the APA, certain proposed "legislative rules" advanced by agencies must be promulgated through notice-and-comment rulemaking. 5 U.S.C. § 553(b). The APA, however, makes an exception for "interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice." § 553(b)(3)(A). Our court has articulated the distinction between legislative rules, which require notice-and-comment rulemaking, and other rules that do not: "Legislative rules alter the landscape of individual rights and obligations, binding parties with the force and effect of law; interpretive rules, on the other hand, merely clarify existing duties for affected parties." *Stupp Corp. v. United States*, 5 F.4th 1341, 1352 (Fed. Cir. 2021) (citing *Kisor v. Wilkie*, 139 S. Ct. 2400, 2420 (2019)); *see also Splane v. West*, 216 F.3d 1058, 1063 (Fed. Cir. 2000).

On appeal, Pioneer "direct[s] our attention to *American Mining Congress v. Mine Safety & Health Administration*, 995 F.2d 1106 (D.C. Cir. 1993)," where our sister circuit held that a rule is a legislative rule "if any one of [a number of] conditions are satisfied." *Nat'l Org. of Veterans' Advocates, Inc. v. Sec'y of Veterans Affs*., 260 F.3d 1365, 1376 n.11 (Fed. Cir. 2001) (citing *Am. Mining*, 995 F.2d at 1112); see Appellants' Br. 22. Here, Pioneer argues that the fourth *American Mining* factor—"whether the rule effectively amends a prior legisla-

[1] BMD joined Pioneer in its opening and reply briefs and waived oral argument.

tive rule," *Veterans' Advocates*, 260 F.3d at 1376—is satisfied. Specifically, Pioneer argues that Commerce's CONNUM-specific reporting requirement is a legislative rule because it "effectively amends" Commerce's existing regulation, 19 C.F.R. § 351.401(g).

Section 351.401(g) recites, in relevant part:

> **(2) Reporting allocated expenses and price adjustments.** Any party seeking to report an expense or a price adjustment on an allocated basis must demonstrate to the Secretary's satisfaction that the allocation is calculated on as specific a basis as is feasible, and must explain why the allocation methodology used does not cause inaccuracies or distortions.
>
> **(3) Feasibility.** In determining . . . whether an allocation is calculated on as specific a basis as is feasible, the Secretary will take into account the records maintained by the party in question in the ordinary course of its business, as well as such factors as the normal accounting practices in the country and industry in question and the number of sales made by the party during the period of investigation or review.

§ 351.401(g)(2), (3).

According to Pioneer, § 351.401(g) requires only that respondents offer records that are maintained "in the ordinary course of [the respondent's] business" and according to "normal accounting practices in the country and industry," or according to generally accepted accounting practices (GAAP). Appellants' Br. 22–23. Pioneer argues that, in contrast, the CONNUM-specific reporting requirement "requires all foreign exporters and producers of nails to maintain records in a particular way—regardless of GAAP." *Id*. at 25. Pioneer further contends that the CONNUM-specific requirement relieves Commerce of its obligation to consider the feasibility of the reporting method requested and the form of the records kept by the exporters and producers. Pioneer thus asserts that the CONNUM-specific requirement alters the legal responsibilities of all respondents and of Commerce itself and therefore does not merely clarify the regulation.

As we have previously held, however, "[a] rule does not . . . become an amendment merely because it supplies crisper and more detailed lines than the authority being interpreted." *Veterans' Advocates*, 260 F.3d at 1376 (alterations in original) (quoting *Am. Mining*, 995 F.2d at 1112); *see also CIT Op*., 520 F. Supp. 3d at 1323 (citing *Apex Frozen Foods Private Ltd. v. United States*, 144 F. Supp. 3d 1308, 1319–20 (Ct. Int'l Trade Feb. 2, 2016), *aff'd on other grounds*, 862 F.3d 1337 (Fed. Cir. 2017)). While Pioneer is correct that § 351.401(g) contemplates records that are maintained "in the ordinary course of [the respondent's] business" or according to "normal accounting practices

in the country and industry," the regulation also very clearly states that the respondent "must explain why the allocation methodology used does not cause inaccuracies or distortions." Here, Commerce explained that cost information in formats other than the requested CONNUM-specific format resulted in information that "did not reasonably reflect the costs of production of the merchandise." *CIT Op.*, 520 F. Supp. 3d at 1323 (citing *2017–2018 Final IDM* at 34). Commerce was therefore entitled to clarify the regulation regarding the data used in performing margin calculations in the third administrative review because it needed data that "more accurately reflected the costs associated with the production and sale of the subject merchandise." *Id*. at 1324. We agree with the Court of International Trade that Commerce's pronouncement "reflects a statement of policy rather than the agency's explicit invocation of general legislative authority." *Id*. Accordingly, we see no error in the Court of International Trade's determination that the CONNUM-specific rule is not subject to the notice-and-comment rulemaking provisions of the APA.

B

Pioneer separately asserts that the CONNUM-specific reporting requirement is unlawful because it is inconsistent with the Tariff Act and our decision in *Hynix Semiconductor, Inc. v. United States*, 424 F.3d 1363 (Fed. Cir. 2005). We disagree.

Pioneer contends that 19 U.S.C. § 1677b, concerning the calculation of the normal value of merchandise, "clearly and unambiguously expresses a preference for Commerce to rely on a respondent's GAAP-compliant normal books and records" and "does not contemplate the CONNUM-Specific Rule." Appellants' Br. 33. The relevant portion of § 1677b recites:

> Costs shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles of the exporting country (or the producing country, where appropriate) and reasonably reflect the costs associated with the production and sale of the merchandise. The administering authority shall consider all available evidence on the proper allocation of costs, including that which is made available by the exporter or producer on a timely basis, if such allocations have been historically used by the exporter or producer, in particular for establishing appropriate amortization and depreciation periods, and allowance for capital expenditures and other development costs.

§ 1677b(f)(1)(A).

In *Hynix*, we held that § 1677b(f)(1)(A) permits Commerce to disregard a respondent's GAAP-compliant records upon a finding, supported by substantial evidence, "that the costs do not reasonably reflect the costs of production and should not, therefore, be used." 424 F.3d at 1369. Pioneer claims that Commerce failed to make such a finding here. Specifically, Pioneer takes issue with Commerce's rejection of Pioneer's accounting methods without explaining "why reporting on a CONNUM-specific basis or on a size/weight-specific basis was necessary or why Pioneer's proposed methodology was inadequate." Appellants' Br. 36.

But Commerce did explain its reasoning here. As the Court of International Trade explained, and as we discussed above, Commerce determined in the third administrative review that CONNUM-specific data is essential for the accurate calculation of costs due to the variations in physical characteristics of the merchandise. *CIT Op*., 520 F. Supp. 3d at 1324–25 (citing *2017–2018 Final IDM* at 34 (describing the product-specific costs as "essential to the accurate calculation of Pioneer's dumping margin")). Commerce "explained that CONNUM-specific reporting yields data more specific to the costs of the subject merchandise than standard GAAP records." *Id*. at 1325. In other words, Commerce found that Pioneer's non-product-specific FOP data did not "reasonably reflect the costs of production and should not, therefore, be used." *Hynix*, 424 F.3d at 1369. On this record, we agree with, and therefore affirm, the Court of International Trade's determination that Commerce's conclusion was based on substantial evidence.

II

Pioneer also argues that substantial evidence does not support Commerce's decision to apply AFA. We disagree.

Under 19 U.S.C. § 1677e, Commerce can rely on facts otherwise available when "necessary information is not available on the record" or "an interested party or any other person withholds information that has been requested." § 1677e(a). After determining that it can rely on FA, Commerce can further apply adverse facts available if a party has "failed to cooperate by not acting to the best of its ability to comply with a request for information." § 1677e(b). The "best of its ability" standard requires the respondent to put forth its maximum effort to investigate and obtain full and complete answers to Commerce's inquiries. *Nippon Steel*, 337 F.3d at 1382.

The Court of International Trade correctly determined that Commerce's application of FA and AFA was supported by substantial

evidence. First, in deciding to apply FA, Commerce reasonably determined that Pioneer's repeated failure to submit its cost information on a CONNUM-specific basis meant that necessary information reasonably reflecting the costs of production was not available.[2] *CIT Op*., 520 F. Supp. 3d at 1323–24.

Second, in deciding to apply AFA, Commerce determined that Pioneer "failed to cooperate by not maintaining adequate records and by not developing a methodology to report product-specific costs" and thus "failed to act to the best of its ability to comply with a request for information." *2017–2018 Final IDM* at 34. Substantial evidence supports this determination. In particular, as the Court of International Trade explained, "Pioneer failed to even provide more than short, conclusory statements as to why it could not comply with Commerce's requests, much less actually attempt to develop a methodology." *CIT Op*., 520 F. Supp. 3d at 1327 (citing *2017–2018 Final IDM* at 32). Moreover, Commerce's requests for CONNUM-specific data should not have come as a surprise. Commerce announced during the third administrative review, nearly seven years prior to the underlying tenth administrative review, that it intended to require that "all other future respondents for this case report all FOPs data on a CONNUM-specific basis using all product characteristics in subsequent reviews," explaining that by this stage in the antidumping proceeding, "documentation and data collection requirements should now be fully understood" by all respondents. *2010–2011 Final IDM* at 39. In this announcement, Commerce specifically stated that respondents would have the responsibility to "maintain accounting and production records on a monthly, product-specific basis." *Id*. at 39–40. Commerce even gave an example of how to maintain records: "For instance, in order to calculate product-specific ratios for an input, such as steel wire rod, Hongli and all future respondents should maintain warehouse records, workshop records, etc., on a monthly, product-specific basis for that input." *Id*. at 40 n.132. Notwithstanding its protest that the underlying administrative review "marked the first time Pioneer was selected as a mandatory respondent in an administrative review," Appellants' Br. 7, Pioneer has been on notice of Commerce's reporting requirements as of 2013. Other respondents complied with Commerce's directive and properly provided the requested data. Pioneer provided no reason that it could not have similarly done so. At a

[2] Although Commerce incorrectly characterizes Pioneer's initial response as one "refusing" to provide the CONNUM-specific data, the error was harmless because Pioneer did not actually provide CONNUM-specific data and also admitted that it would not do so in response to the supplemental questionnaire. Pioneer stated that it did not have any "cost records that would support any other allocation methodology." J.A. 1041–44.

minimum, Pioneer should have explained to Commerce why it was unable to comply and developed and documented an alternative methodology.

On appeal, Pioneer asserts that "[n]ails are a simple product with minor variations," and that "Pioneer reported selling nails with three thicknesses." Appellants' Br. 36. In Pioneer's view, "[t]o suggest that failure to report FOPs on a size/weight-specific basis significantly distorts the margin defies common sense given the minor physical variations of this product." *Id*. at 36–37. But in making this argument Pioneer bolsters the case against it. Although the "best of its ability" standard "does not require perfection," "it does not condone inattentiveness, carelessness, or inadequate record keeping." *Nippon Steel*, 337 F.3d at 1382. If a methodology for recordkeeping could have been easily derived, Pioneer cannot argue in good faith that it has acted to the best of its ability. Pioneer "[c]learly . . . possesse[d] knowledge and/or records of the weight, size, and surface area of its products that would have allowed it to develop more accurate FOP allocation methodologies," as Commerce's instructions required, but Pioneer refused to do so. J.A. 1194. Pioneer is responsible for being "familiar with the rules and regulations"; "hav[ing] familiarity with all of the records it maintains in its possession, custody, or control"; and "conduct[ing] prompt, careful, and comprehensive investigations of all relevant records that refer or relate to the imports in question to the full extent of [its] ability to do so." *Nippon Steel*, 337 F.3d at 1382. Pioneer's refusal to participate in Commerce's investigation to the best of its ability, despite having the opportunity to do so, supports Commerce's application of AFA. For these reasons, we agree with the Court of International Trade that Commerce's application of AFA was supported by substantial evidence.

Pioneer next argues that even if Commerce's application of AFA was appropriate, "the application of at most *partial* AFA, as opposed to *total* AFA, 'is directed by the statute' in this case." Appellants' Br. 50 (quoting *Nat'l Nail Corp. v. United States*, 390 F. Supp. 3d 1356, 1375 (Ct. Int'l Trade June 12, 2019)). But our court has upheld Commerce's use of total AFA as reasonable when a respondent has failed to cooperate to the best of its ability despite a number of opportunities to do so—specifically in the context of failing to provide CONNUM-specific FOPs. *Mukand Ltd. v. United States*, 767 F.3d 1300 (Fed. Cir. 2014). As we stated in *Mukand*, "[p]roduct-specific information is a fundamental element in the dumping analysis, and it is standard procedure for Commerce to request product-specific data in anti-

dumping investigations." *Id*. at 1307. Because of the importance of the information requested, Commerce was entirely reasonable to expect "more accurate and responsive answers to the questionnaire." *Id*. Pioneer did not provide such answers, and therefore we cannot find the application of AFA unsupported by substantial evidence.[3]

CONCLUSION

We have considered Pioneer's remaining arguments and find them unpersuasive. For the foregoing reasons, we affirm the Court of International Trade's decision sustaining Commerce's final results.

AFFIRMED

[3] Pioneer also asserts that even if we conclude that Commerce properly applied AFA, Commerce failed to explain its selection of 118.04 percent, as opposed to a lower AFA margin. Appellants' Br. 50–53 (citing our decision in *BMW of N. Am. LLC v. United States*, 926 F.3d 1291, 1300 (Fed. Cir. 2019)). We note, however, that Pioneer did not raise this argument before Commerce or the Court of International Trade. J.A. 1288 (only asserting that "Commerce should be required to explain . . . why a margin of 108.04 [sic] percent is appropriate" in the context of alleging that Commerce should have relied on respondent's books and records). Pioneer did not identify alternative AFA margins or legal support for the specific argument it now makes. Pioneer has thus waived this argument because it cannot "raise[] issues for the first time on appeal." *Hylete LLC v. Hybrid Athletics*, LLC, 931 F.3d 1170, 1175 (Fed. Cir. 2019). To the extent that Pioneer presents this argument as it did below to demonstrate that Commerce erred in applying adverse facts available, we are not persuaded for the reasons above.

U.S. Court of International Trade

Slip Op. 22–112

KAPTAN DEMIR CELIK ENDUSTRISI ve TICARET A.S., Plaintiff, v. UNITED STATES, Defendant, and REBAR TRADE ACTION COALITION, et al., Defendant-Intervenors.

Before: Judge Gary S. Katzmann
Court No. 22–00149

[Plaintiff's Motion to Stay the proceedings is denied.]

Dated: September 22, 2022

Andrew T. Schutz, *Jordan C. Kahn*, *Kavita Mohan*, and *Michael S. Holton*, Grunsfeld, Desiderio, Lebowitz, Silverman & Klestadt LLP, of Washington, D.C., for Plaintiff Kaptan Demir Celik Endustrisi ve Ticaret A.S.

Kelly Geddes, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of Washington, D.C., for Defendant United States. With her on the brief were *Brian M. Boynton*, Principal Deputy Assistant Attorney General, *Patricia M. McCarthy*, Director, and *L. Misha Preheim*, Assistant Director. Of counsel on the brief was *W. Mitch Purdy*, Attorney, Office of the Chief Counsel for Trade Enforcement and Compliance, U.S. Department of Commerce, of Washington, D.C.

Alan H. Price, Wiley Rein, LLP, of Washington, D.C., for Defendant-Intervenors Rebar Trade Action Coalition, Byer Steel Group, Inc., Commercial Metals Company, Gerdau Ameristeel U.S. Inc., Nucor Corporation, and Steel Dynamics, Inc.

OPINION AND ORDER

Katzmann, Judge:

Before the court is Plaintiff Kaptan Demir Celik Endustrisi ve Ticaret A.S.'s ("Kaptan") Motion to Stay the case, Court No. 22–00149 ("*2022 Case*"), pending resolution of a prior case involving the same countervailing duty order. As the balance of interests does not favor the Plaintiff, the motion is denied.

BACKGROUND

In the case filed in this court in 2022, that is the subject of the stay motion, Kaptan, a Turkish producer and exporter of steel concrete reinforcing bar, seeks review of the final results from the U.S. Department of Commerce's ("Commerce") countervailing duty administrative order, published in *Steel Concrete Reinforcing Bar From the Republic of Turkey: Final Results of Countervailing Duty Administrative Review and Rescission, in Part; 2019*, 87 Fed. Reg. 21,640 (Dep't

of Commerce, April 12, 2022) ("*Final Results*"). Kaptan now moves for a stay of proceedings pending the final resolution of its separate action filed in 2021 in this court arising from the previous administrative review of the same countervailing duty order, *Kaptan Demir Celik Endustrisi ve Ticaret A.S. v. United States*, No. 21–00565 ("*2021 Case*"). *See* Pl.'s Mot. to Stay at 1, Jul. 20, 2022, ECF No. 22 ("Pl.'s Br.").

Kaptan argues that the court should stay this action because the legal issues underlying three of its four claims in the instant action are "virtually identical" to the legal issues it raises in the *2021 Case*. Pl.'s Br. at 2, 7. According to Kaptan, the issues "flow from Commerce's determination that Nur was a cross-owned input supplier of Plaintiff" and "[t]he basis on which Commerce found Nur to be a cross-owned inputs supplier, i.e., that it supplied Plaintiff with scrap during the period of review, is identical" in both administrative reviews ("AR"). *Id.* at 2–3. Kaptan further argues that the stay will not harm or prejudice the other parties, and that the court has stayed proceedings in analogous circumstances. *Id.* at 6–7.

Defendant United States ("the Government") opposes Kaptan's motion. The Government argues that because Kaptan challenges separate AR results from different periods of review ("POR"), the court need not reach the same conclusion on the legal issues. *See* Def.'s Resp. in Opp. to Pl.'s Mot. to Stay at 4, Aug. 10, 2022, ECF No. 23 ("Def.'s Br."). Further, the Government argues that the *2021 Case* "does not involve all of the issues raised before the [c]ourt in this proceeding, [and] thus additional briefing [...] would need to be filed [in the *2022 Case*] regardless of the outcome of [the *2021 Case*]." *Id.* at 5. The Government also contends that parties may easily raise the same arguments without expending significant effort, and thus granting the stay would only conserve limited resources. Additionally, the Government argues that the prospect of appeal would not warrant an indefinite stay, that Kaptan has failed to meet its burden by making out a clear case of hardship, and that the proposed stay presents a fair possibility of harm to the Government. *Id.* at 5–6.

Defendant-Intervenors Rebar Trade Action Coalition and its individual members ("RTAC") have expressed no position regarding Kaptan's Motion to Stay. Pl.'s Br. at 8.

STANDARD OF REVIEW

The court has broad discretion in granting a stay of proceedings. *See, e.g. Cherokee Nation of Oklahoma v. United States*, 124 F.3d 1413, 1416 (Fed. Cir. 1997); *see also Procter & Gamble Co. v. Kraft Foods Glob., Inc.*, 549 F.3d 842, 849 (Fed. Cir. 2008) (citing *Landis v.*

N. Am. Co., 299 U.S. 248, 254–55 (1936)). In the touchstone *Landis* opinion, Justice Cardozo wrote that this discretion is "incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Landis*, 299 U.S. at 254–55; *see also Groves v. McDonough*, 34 F. 4th 1074, 1080 (Fed. Cir. 2022). When deciding on a motion to stay the case, the court will exercise its judgment and "weigh competing interests and maintain an even balance." *Landis*, 299 U.S. at 255.

A court's discretion to stay proceedings is not without bounds. *Cherokee Nation*, 124 F. 3d. at 1416. A protracted stay, or a stay so extensive that it is "immoderate or indefinite, may be an abuse of discretion," *Groves*, 34 F. 4th at 1080 (citing *Landis*, 299 U.S. at 257; *Gould v. Control Laser Corp.*, 705 F.2d 1340, 1341 (Fed. Cir. 1983)). To issue such a protracted or indefinite stay, there must be a "pressing need" and the tribunal must "balance [the] interests favoring a stay" against the opposing interests. *Id.* This balancing requires examination of the court's "*paramount obligation to exercise jurisdiction timely* in cases properly before it." *Id.* (citing *Cherokee Nation*, 124 F.3d at 1416) (emphasis added). If the stay has "even a fair possibility" to damage another, the movant "must make out a *clear case of hardship or inequity* in being required to go forward." *Landis*, 299 U.S. at 225 (emphasis added)*; Columbia Forest Prod. v. United States*, 42 CIT __, __, 352 F. Supp. 3d 1274, 1276 (2018); *see also Georgetown Steel Co. v. United States*, 27 CIT 550, 553, 259 F. Supp. 2d 1344, 1346–47 (2003).

DISCUSSION

Kaptan submits that: (1) staying the proceedings would conserve resources; (2) the Government would not suffer harm from the stay; and (3) the court should look to analogous cases. The court denies Plaintiff's motion for the reasons set forth below.

1. Kaptan argues that staying the proceedings would promote judicial economy. Pl.'s Br. at 4 (citations omitted). According to Kaptan, the issues in its complaint "flow from Commerce's determination that Nur was a cross-owned input supplier of Plaintiff" and "[t]he basis on which Commerce found Nur to be a cross-owned inputs supplier, i.e., that it supplied Plaintiff with scrap during the period of review, is identical" in both administrative reviews ("AR"). *Id.* at 2–3.

In support of its argument, Kaptan cites several cases of this court where proceedings were stayed pending resolution of an issue that was common to the actions. Those cases, however, involved a specific issue such as zeroing that was on appeal before the Federal Circuit.

See, e.g., Union Steel Mfg. Co. v. United States, 37 CIT 346, 354, 896 F. Supp. 2d. 1330, 1335–36 (2013), *as amended* (May 1, 2013); *SKF USA Inc. v. United States*, 36 CIT 842, 843–46 (2012); *NSK Bearings Europe Ltd. v. United States*, 36 CIT 854, 855–58 (2012); *RHI Refractories Liaoning Co. v. United States*, 35 CIT 407, 408, 774 F. Supp. 2d 1280, 1282 (2011). In those cases, a stay would promote judicial economy as the Federal Circuit decision would be determinative of the legal issue.

The instant case does not fall into this special category. Unlike the stays granted in the aforementioned cases, the Federal Circuit is not currently reviewing a common legal issue that may determine the outcome of the two cases in issue here. Rather, both actions filed by Kaptan are pending before this very court. In the current action, as the Government points out, additional briefing would need to occur on Commerce's specificity finding issue regardless of how the *2021 Case* is decided, as that legal issue is not common to both actions. Def.'s Br. at 5. Even if there are similar issues that are "virtually identical" across both actions as Kaptan argues, the parties can easily raise the same arguments without significant effort, and the court can examine the arguments again without significantly expending resources, as both actions are ultimately pending before the court.[1] Pl.'s Br. at 4–6; Def.'s Br. at 5.

The court also notes that although the two cases may share commonalities in some of the issues presented, "each administrative review is a separate exercise of Commerce's authority that allows for different conclusions based on different facts in the record." *Jiaxing Bro. Fastener Co., Ltd. v. United States*, 822 F.3d 1289, 1299 (Fed. Cir.

[1] Kaptan also points to a previous case that involved two actions before the court, and argues that a stay may warranted "even where the other litigation would only clarify or simplify the issues." Pl.'s Br. at 5 (citing *An Giang Agri. & Food Imp. Exp. Co. v. United States*, 28 CIT 1671, 1672, 350 F. Supp. 2d 1162, 1163 (2004)). Of course, the decisions of other trial courts are not binding. *Algoma Steel Corp. v. United States*, 865 F.2d 240, 243 (Fed. Cir. 1989). In any event, it can be noted that the stay granted in *An Giang* was a "relatively modest stay" of limited duration that requested a stay of proceedings until the court affirmed Commerce's redetermination following the court's remand issues in the previous year. *An Giang*, 350 F. Supp. 2d at 1163. Moreover, the plaintiffs in *An Giang* had expressed the desire to voluntarily dismiss the case depending on the court's post-remand opinion. *Id.* Under these unique circumstances, an argument for conservation of resources may have some merit.

The instant case, however, does not fall under these unique circumstances. Kaptan is not seeking a relatively modest stay, but rather seeks "further appeal(s) to the U.S. Court of Appeals for the Federal Circuit" if necessary to "finalize" the issues. Pl.'s Br. at 5. Nor has Kaptan expressed the desire to voluntarily dismiss the claim as the plaintiffs did in *An Giang*. *See generally*, Pl.'s Br. Under these circumstances, it is questionable whether granting Kaptan's motion would conserve resources in the way the *An Giang* court envisioned. Further, as will be discussed in more detail below, Kaptan's proposed stay for a "final resolution" of the issues is overly extensive. *See* Pl.'s Br. at 9.

2016) (quoting *Qingdao Sea-Line Trading Co., Ltd. v. United States*, 766 F.3d 1378, 1387 (Fed. Cir. 2014)). The court's review of Commerce's determination is limited to the underlying administrative record developed in each administrative review, see 19 U.S.C. § 1516a(a)(2); 28 U.S.C. § 2635(b)(1). For example, just because an issue might be remanded in the *2021 Case*, that does not mean that remand would necessarily be appropriate on the specific factual records of the *2022 Case*.

In sum, while the proposed stay might "temporarily conserve resources by pausing litigation" in this action, see *NLMK Pennsylvania, LLC v. United States*, 45 CIT __, __, 553 F. Supp. 3d 1354, 1366 (2021), it would not significantly conserve resources. Unlike other stays that involved a pending case before the Federal Circuit that may provide controlling precedent, or unique circumstances that may provide some benefit in staying one action, Kaptan's proposed stay would not meaningfully advance judicial economy.

2. Kaptan further argues that there is no evidence of harm to the Government or RTAC if the stay is granted. Pl.'s Br. at 6. Kaptan's argument rests on the premise that Commerce may continue to administer current reviews, that the stay would not delay final resolution of the administrative review appeal before the court, and that the resources of all parties will be conserved. *Id*.

However, as the Government correctly argues, "some harm is inherent in any denial of the right to proceed" because parties have an interest to quickly resolve the dispute before the court. *Neenah Foundry Co. v. United States*, 24 CIT 202, 205 (2000); *see also NLMK Pennsylvania, 553 F. Supp. 3d at 1365*. Public policy also favors expeditious resolution of disputes. *Kahn v. General Motors Corp.*, 889 F.2d 1078, 1080 (Fed. Cir. 1989) ("Recognition must be given to the strong public policy favoring expeditious resolution of litigation."). Here, Kaptan has identified no "pressing need" for a stay.

In response to Kaptan's argument that neither the Government nor Defendant-Intervenors RTAC would suffer specific harm or "fair possibility of prejudice" from the stay of proceedings, the Government argues that "memories of agency personnel and other interested parties will fade. . . . [n]ew personnel may replace the agency employees with knowledge of the case." Pl.'s Br. at 6–7; Def.'s Br. at 6–7. Whether or not those considerations have some merit here, it should be noted that *Landis* does not always require the showing of "fair possibility of prejudice." *See NLMK Pennsylvania*, 553 F. Supp. 3d at 1365 ("The lack of prejudice, by itself, is just one factor that may be considered on a motion to stay. The court must balance the competing interests

weighing for and against a stay." (citing *Landis*, 299 U.S. at 254–55)). The interests to be considered, including benefits, harms, and prejudice, are not only those of the litigants, but also of counsel and the court itself. *Landis*, 299 U.S. at 254. Moreover, interests of the general public, such as public welfare or convenience, may be considered as well in deciding whether to grant a stay. *Id.* at 256. Here, in light of the court's overarching duty to timely resolve disputes, the interests of the litigants in resolving disputes quickly, as well as the general interest of the public in expeditiously resolving matters of great economic importance, the court finds that the extensive stay of proceedings requested by Kaptan does not meet the "pressing need" required for such stays. *See Landis*, 299 U.S. at 255; *Cherokee Nation*, 124 F.3d at 1416; *see also Kahn*, 889 F.2d at 1080. Insofar as Kaptan's motion rests on the argument that no or minimal harm would result from the stay, it fails because it does not present "a clear showing of hardship or inequity in being required to go forward." *Landis*, 299 U.S. at 255; *Columbia Forest Prod.*, 352 F. Supp. 3d at 1276.

There is no talismanic formula for the determination of when a motion to stay proceedings should be granted. To be sure, as Justice Cardozo cautioned "[w]e must be on our guard against depriving the processes of justice of their suppleness of adaptation to varying conditions." *Landis*, 299 U.S. at 256. In the end, after weighing all the relevant considerations, the court concludes that Kaptan's request for a protracted stay should be denied.

CONCLUSION

For the foregoing reasons, Kaptan's Motion to Stay further proceedings is denied.

SO ORDERED.

Dated: September 22, 2022
New York, New York

/s/ Gary S. Katzmann
GARY S. KATZMANN, JUDGE

Slip Op. 22–113

HISTEEL CO., LTD., Plaintiff, v. UNITED STATES Defendant, and NUCOR TUBULAR PRODUCTS INC., Defendant-Intervenor.

Before: Judge Gary S. Katzmann
Court No. 22–00142

[The court grants Dong-A-Steel Co., Ltd.'s Motion to Intervene.]

Dated: September 22, 2022

Jeffrey M. Winton, *Michael J. Chapman*, *Amrietha Nellan*, *Vi N. Mai*, *Jooyoun Jeong* and *Ruby Rodriguez*, Winton & Chapman PLLC, of Washington, D.C., for Plaintiff HiSteel Co. Ltd. and Plaintiff-Intervenor Dong-A-Steel Co., Ltd.

Kara M. Westercamp, Trial Attorney, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of Washington, D.C., for Defendant United States. With her on the briefs were *Brian M. Boynton*, Principal Deputy Assistant Attorney General, *Patricia M. McCarthy*, Director, *Claudia Burke*, Assistant Director. Of counsel on the briefs was *Vania Wang*, Attorney, Office of the Chief Counsel for Trade Enforcement and Compliance, U.S. Department of Commerce, of Washington, D.C.

Robert E. DeFrancesco, III, Wiley Rein, LLP, of Washington, D.C., for Defendant-Intervenor Nucor Tubular Products Inc.

OPINION AND ORDER

Katzmann, Judge:

Before the court is a Motion to Intervene in *Histeel Co., Ltd., v. United States*, Court No. 22–00142, filed by putative Plaintiff-Intervenor Dong-A-Steel Co., Ltd. ("DOSCO").

Underpinning *Histeel Co., Ltd., v. United States* is Plaintiff HiSteel Co., Ltd. ("HiSteel")'s challenge to the Department of Commerce's final determination in an administrative review of the antidumping order on *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea*. *See* Histeel Compl. at 1, June 8, 2022, ECF No. 18; *see also Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2019–2020*, 87 Fed. Reg. 20,390 (Dep't Commerce April 7, 2022), P.R. 37 ("*Final Results*").

Putative Plaintiff-Intervenor DOSCO is a foreign producer of heavy walled rectangular welded carbon steel pipes and tubes. DOSCO and

Plaintiff Histeel participated as mandatory respondents[1] in the administrative review, through which they received weighted-average dumping margins of 1.64 percent and 10.24 percent, respectively. *See Final Results* at 20,391. Histeel subsequently filed a timely summons and complaint to challenge its individual weighted-average dumping margin before the court. *See* Histeel Summons, May 9, 2022, ECF No. 1; Histeel Compl. For its part, DOSCO did not file a summons or complaint to challenge its individual dumping margin, but instead moved to intervene as a matter of right as Plaintiff-Intervenor in Plaintiff Histeel's action pursuant to USCIT Rule 24(a). *See* DOSCO's Mot. to Intervene, July 7, 2022, ECF No. 26 ("DOSCO's Mot.").

Defendant United States ("the Government") opposes DOSCO's Motion to Intervene on the grounds that DOSCO lacks Article III standing and fails to satisfy the requirements of intervention as of right. *See* Def.'s Resp. in Opp. to DOSCO's Mot. to Intervene, July 28, 2022, ECF No. 36 ("Def.'s Resp."). The court granted DOSCO's Unopposed Motion for Leave to File a Reply to the Government's response, *see* DOSCO's Mot. for Leave to File Reply to Def.'s Cmts. in Opp. to DOSCO's Mot. to Intervene, Aug. 11, 2022, ECF No. 37; *see also* Ct.'s Order, Aug. 11, 2022, ECF No. 38, and deemed DOSCO's reply filed that same day, *see* Reply to Def.'s Cmts. in Opp. to DOSCO's Mot. to Intervene, Aug. 11, 2022, ECF No. 39 ("Reply").

Upon consideration of DOSCO's Motion and all other relevant papers and proceedings, the court grants DOSCO's Motion to Intervene as Plaintiff-Intervenor.

I. DOSCO Has Established "Piggyback" Standing.

As a threshold matter, the Government urges the court to deny DOSCO's Motion to Intervene because DOSCO lacks Article III standing. *See* Def.'s Resp. at 3; *see also Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992) ("[S]tanding is an essential . . . part of the case-or-controversy requirement of Article III."). The Government

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[1] In antidumping duty investigations or administrative reviews, Commerce may select mandatory respondents pursuant to 19 U.S.C. § 1677f-1(c)(2), which provides:

> If it is not practicable to make individual weighted average dumping margin determinations [in investigations or administrative reviews] because of the large number of exporters or producers involved in the investigation or review, the administering authority may determine the weighted average dumping margins for a reasonable number of exporters or producers by limiting its examination to—
>
> (A) a sample of exporters, producers, or types of products that is statistically valid based on the information available to the administering authority at the time of selection, or
>
> (B) exporters and producers accounting for the largest volume of the subject merchandise from the exporting country that can be reasonably examined.

maintains that DOSCO has not made the tripart showing for standing — which requires (i) injury in fact; (ii) causation; and (iii) redressability, *see* 504 U.S. at 560–61 — because DOSCO will not "suffer [an] injury if Commerce's determination regarding Histeel's calculated dumping margin . . . is not reversed." Def.'s Resp. at 3. By contrast, DOSCO argues that it need not establish independent constitutional standing — including, the "injury in fact" requirement — because DOSCO "has met the requirements for 'piggyback' standing." *See* Reply at 3. DOSCO is correct.

"Under our precedents, at least one party must demonstrate Article III standing for each claim for relief." *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 140 S. Ct. 2367, 2379 n.6 (2020). Where a putative intervenor seeks only the same relief as an existing party to the litigation, the proposed intervenor may "piggyback" on the existing party's standing. *See Cal. Steel Indus., Inc. v. United States*, __ F.4th __, __, 2022 WL 4100241, at *5 (Fed. Cir. Sept. 8, 2022) (holding putative defendant-intervenors established "piggyback" standing where their "requested relief [wa]s largely identical to the [Defendant] [G]overnment's prayer for relief"). But where an intervenor "pursues relief that is broader than or different from the party invoking a court's jurisdiction," the intervenor "must independently demonstrate Article III standing." *Little Sisters of the Poor*, 140 S. Ct. at 2379 n.6.

Here, there is no contest that Plaintiff Histeel has independent constitutional standing to lodge its claims for relief. The question, then, is whether DOSCO can "piggyback" on Histeel's standing. The court applies the Federal Circuit's recent ruling in *California Steel* to find that DOSCO can. Per *California Steel*, "'a simple comparison of [Histeel's] prayer for relief with th[at] [of DOSCO] . . . establishes that' [DOSCO] and [Histeel] seek the same relief, thereby conferring standing upon [DOSCO]." 2022 WL 4100241, at *4. For example, in its Complaint, Histeel asks this court to declare Commerce's *Final Results* to be arbitrary, capricious, unsupported by substantial evidence, and otherwise not in accordance with law based, in part, on the agency's "application of its so-called 'differential pricing analysis.'" Histeel Compl. at 3–4. Correspondingly, DOSCO purports solely "to support [Histeel's] litigation of the differential pricing analysis issue." Reply at 2–3. Because DOSCO does not seek any relief separate from that sought by Histeel, DOSCO may "piggyback" on Histeel's standing and need not establish independent constitutional standing.

II. DOSCO May Intervene as of Right.

In addition, the Government argues that DOSCO has not met the requirements to intervene as of right under USCIT Rule 24(a)(1) because DOSCO has not shown that it would be "*adversely affected or aggrieved* by a decision in a civil action pending" before this court for purposes of 28 U.S.C. § 2631(j)(1)(B). *See* Resp. at 4 (emphasis in original). By contrast, DOSCO maintains that it satisfies the requirements for intervention as of right under 28 U.S.C. § 2631(j)(1)(B) and that the Government improperly asks this court to apply the standards for permissive intervention under 28 U.S.C. § 2631(j)(1) to DOSCO's motion. *See* Reply at 3–4. Here too, DOSCO is correct.

USCIT Rule 24(a)(1) states that "[o]n timely motion,[2] the court must permit anyone to intervene who is given an unconditional right to intervene by a federal statute." USCIT R. 24(a)(1) (footnote not in original). Section 2631(j) of 28 U.S.C. further instructs, in relevant part:

> **(j)**
>
> > **(1)** Any person who would be adversely affected or aggrieved by a decision in a civil action pending in the Court of International Trade may, by leave of court, intervene in such action, *except that—*
> >
> > . . .
> >
> > **(B)** in a civil action under section 516A of the Tariff Act of 1930, only an interested party who was a party to the proceeding in connection with which the matter arose may intervene, and such person may intervene as a matter of right.

28. U.S.C. § 2631(j) (emphasis added).

By its plain text, 28 U.S.C. § 2631(j) provides for both permissive intervention as well as intervention as of right. *Compare id.* § 2631(j)(1) ("[a]ny person . . . may, by leave of court, intervene"), *with id.* § 2631(j)(1)(B) ("such person may intervene as a matter of right"). Paragraph 2631(j)(1) — a general provision — establishes a path to permissive intervention where a movant "would be adversely affected or aggrieved" by an action before this court; whereas subparagraph 2631(j)(1)(B) carves out an exception to 2631(j)(1)'s general provision — providing for intervention as of right where a civil action arises under section 516A of the Tariff Act of 1930 and the movant otherwise qualifies. Offset by the phrase "except that," it is clear that 2631(j)(1)'s requirement that a person "be adversely affected or aggrieved" is

[2] The parties do not dispute that DOSCO's Motion to Intervene was timely filed. *See* Reply at 5 n.18.

confined to that general provision on permissive intervention and does not extend to the exception of 2631(j)(1)(B) providing for intervention as of right. Thus, where "a civil action [arises] under section 516A of the Tariff Act of 1930" — and the movant, thereby, falls within the "as of right" exception — the movant need only show that it is (i) an "interested party" (ii) who was a "party to the [underlying agency] proceeding" to be entitled to intervene as of right under 2631(j)(1)(B).[3] DOSCO satisfies these requirements:

First, the underlying litigation — *Histeel Co., Ltd., v. United States*, Court No. 22–00142 — is a civil action commenced under section 516A of the Tariff Act of 1930. *See* Histeel Compl. at 1 ("This action is commenced pursuant to Sections 516A(a)(2)(A) and (B)(iii) of the Tariff Act of 1930."). Accordingly, DOSCO falls within the "as of right" exception under 28 U.S.C. § 2631(j)(1)(B).

Next, DOSCO is an "interested party." By statute, an "interested party" includes "a foreign manufacturer, producer, or exporter, or the United States importer, of subject merchandise." 19 U.S.C. § 1677(9)(A); *id.* § 1516a(f)(3). DOSCO is a "foreign producer of heavy walled rectangular welded carbon steel pipes and tubes subject to the Department's review." *See* DOSCO's Mot. at 1; Reply at 5 n.17.

Finally, DOSCO is a "party to the proceeding." Agency regulations define a "party to the proceeding" as "any interested party that actively participates, through written submissions of factual information or written argument, in a segment of a proceeding." 19 C.F.R. § 351.102(b)(36). DOSCO participated as a mandatory respondent in the underlying administrative review of the antidumping order on *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea*. *See* Resp. at 1–2; *Final Results* at 20,390–91.

In sum, because the underlying litigation consists of a civil action commenced under section 516A of the Tariff Act of 1930, and because DOSCO is "an interested party who was a party to the proceeding[s]," DOSCO is entitled to intervene as of right by operation of 28 U.S.C. § 2631(j)(1)(B) and USCIT Rule 24(a)(1).

For the foregoing reasons, it is hereby:

ORDERED that DOSCO's Motion to Intervene, ECF No. 26, is granted; and it is further

[3] *See N. Am. Interpipe, Inc. v. United States*, 45 CIT __, __, 519 F. Supp. 3d 1313, 1324 n.18 (2021) ("By statute, interested parties that participate in administrative proceedings before Commerce and the ITC in antidumping and countervailing duty matters may intervene as of right in any ensuing litigation in the CIT." (citing 28 U.S.C. § 2631(j)(1)(B))); *see also* Ct.'s Order Granting SEAH Steel's Mot. to Intervene, Ct. No. 22–138, July 29, 2022, ECF. No 50 (granting SEAH Steel's motion to intervene as of right under 28 U.S.C. § 2631(j)(1)(B) where movant was "an interested party that was a party to Commerce's review," without discussion of whether SEAH Steel would be "adversely affected or aggrieved by a decision in a civil action pending" before this court).

ORDERED that DOSCO is entered as Plaintiff-Intervenor in *Histeel Co., Ltd., v. United States*, Court No. 22–00142; and it is further

ORDERED that the Parties shall confer and submit to the court by no later than October 5, 2022 a revised proposed scheduling order for this action, if necessary.

Dated: September 22, 2022
New York, New York

/s/ Gary S. Katzmann
GARY S. KATZMANN, JUDGE

Slip Op. 22–114

AG der DILLINGER HÜTTENWERKE, Plaintiff, and ILSENBURGER GROBBLECH GMBH, SALZGITTER MANNESMANN GROBBLECH GMBH, SALZGITTER FLACHSTAHL GMBH, SALZGITTER MANNESMANN INTERNATIONAL GMBH, AND FRIEDR. LOHMANN GMBH, Consolidated Plaintiffs, and THYSSENKRUPP STEEL EUROPE AG, Plaintiff-Intervenor, v. UNITED STATES, Defendant, and NUCOR CORPORATION AND SSAB ENTERPRISES LLC, Defendant-Intervenors.

Before: Leo M. Gordon, Judge
Consol. Court No. 17–00158

[Remanding Commerce's *Second Remand Results*.]

Dated: September 23, 2022

Marc E. Montalbine, *J. Kevin Horgan*, *Gregory S. Menegaz*, *Alexandra H. Salzman*, and *Merisa A. Horgan*, deKieffer & Horgan, PLLC, of Washington, D.C., for Plaintiff AG der Dillinger Hüttenwerke.

David E. Bond, *Ron Kendler*, and *Allison Kepkay*, White & Case LLP, of Washington, D.C., for Consolidated Plaintiffs Ilsenburger Grobblech GmbH, Salzgitter Mannesmann Grobblech GmbH, Salzgitter Flachstahl GmbH, and Saltzgitter Mannesmann International GmbH.

Kelly A. Krystyniak, Trial Attorney, Commercial Litigation Branch, Civil Division, U.S. Department of Justice of Washington, D.C., for Defendant United States. On the brief were *Brian M. Boynton*, Principal Deputy Assistant Attorney General, *Patricia M. McCarthy*, Director, *Tara K. Hogan*, Assistant Director. Of counsel was *Ayat Mujais*, Attorney, U.S. Department of Commerce, Office of Chief Counsel for Trade Enforcement and Compliance of Washington, D.C.

Roger B. Schagrin, *Luke A. Meisner*, and *Nicholas J. Birch*, Schagrin Associates, of Washington, D.C., for Defendant-Intervenor SSAB Enterprises LLC.

Alan H. Price, *Christopher B. Weld*, and *Stephanie M. Bell*, Wiley Rein LLP, of Washington, D.C., for Defendant-Intervenor Nucor Corporation.

MEMORANDUM and ORDER

Gordon, Judge:

This consolidated action involves a challenge to the final determination in the antidumping ("AD") investigation conducted by the U.S. Department of Commerce ("Commerce") of certain carbon and alloy steel cut-to-length plate ("CTL plate") from the Federal Republic of Germany. *See Certain Carbon and Alloy Steel Cut-to-Length Plate from the Federal Republic of Germany*, 82 Fed. Reg. 16,360 (Dep't of Commerce Apr. 4, 2017) ("*Final Determination*"), and accompanying Issues and Decision Memorandum, A-428–844 (Mar. 29, 2017), http://enforcement.trade.gov/frn/summary/germany/2017–06628–1.pdf (last visited this date) ("*Decision Memorandum*").

Before the court are Commerce's Final Results of Redetermination Pursuant to Court Remand, ECF No. 129 ("*Second Remand Results*")

filed pursuant to the court's remand order in *AG der Dillinger Huttenwerke v. United States*, 45 CIT ___, 534 F. Supp. 3d 1403 (2021) ("*Dillinger I*"). The court presumes familiarity with the history of this action. Plaintiff AG der Dillinger Hüttenwerke ("Dillinger") challenges Commerce's determination to use "likely selling price" for the cost of production for non-prime plate as "facts available" when the record was missing necessary actual cost information, and Consolidated Plaintiffs Ilsenburger Grobblech GMBH, Salzgitter Mannesmann Grobblech GMBH, Salzgitter Flachstahl GMBH, and Salzgitter Mannesmann International GMBH (collectively "Salzgitter") challenge Commerce's determination to use partial AFA for certain home market CTL plate sales made by their respective affiliates when Plaintiff failed to submit manufacturing. *See* Pl. Dillinger Comments on Remand Redetermination, ECF No. 134 ("Dillinger Comments"); Salzgitter Consol. Pls.' Comments on Remand Redetermination, ECF No. 135 ("Salzgitter Comments"); Def.'s Resp. to Comments on Remand Redetermination, ECF No. 141 ("Def.'s Resp."); Def.-Int. SSAB's Comments on Remand Redetermination, ECF 139 ("Def.-Int. SSAB's Comments"); Def.-Int. Nucor Corporation's Comments on Remand Redetermination, ECF No. 146 ("Def. Int. Nucor's Comments"). The court has jurisdiction pursuant to Section 516A(a)(2)(B)(iii) of the Tariff Act of 1930, as amended, 19 U.S.C. § 1516a(a)(2)(B)(iii)[1] , and 28 U.S.C. § 1581(c) (2018).

For the reasons set forth below, the court remands this action to Commerce for further explanation, and if appropriate, reconsideration, regarding its determination as to whether the "likely selling price" of non-prime plate recorded in Dillinger's books and records is "the best available information on the record" for evaluating and adjusting the cost of production under 19 U.S.C. § 1677b(f). The court reserves decision on Salzgitter's challenge to Commerce's use of partial AFA.

I. Standard of Review

The court sustains Commerce's "determinations, findings, or conclusions" unless they are "unsupported by substantial evidence on the record, or otherwise not in accordance with law." 19 U.S.C. § 1516a(b)(1)(B)(i). More specifically, when reviewing agency determinations, findings, or conclusions for substantial evidence, the court assesses whether the agency action is reasonable given the record as a whole. *Nippon Steel Corp. v. United States*, 458 F.3d 1345, 1350–51

[1] Further citations to the Tariff Act of 1930, as amended, are to the relevant provisions of Title 19 of the U.S. Code, 2018 edition.

(Fed. Cir. 2006); see also *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 488 (1951) ("The substantiality of evidence must take into account whatever in the record fairly detracts from its weight."). Substantial evidence has been described as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *DuPont Teijin Films USA v. United States*, 407 F.3d 1211, 1215 (Fed. Cir. 2005) (quoting *Consol. Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938)). Substantial evidence has also been described as "something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence." *Consolo v. Fed. Mar. Comm'n*, 383 U.S. 607, 620 (1966). Fundamentally, though, "substantial evidence" is best understood as a word formula connoting reasonableness review. 3 Charles H. Koch, Jr. & Richard Murphy, *Administrative Law and Practice* § 9.24[1] (3d ed. 2022). Therefore, when addressing a substantial evidence issue raised by a party, the court analyzes whether the challenged agency action "was reasonable given the circumstances presented by the whole record." 8A *West's Fed. Forms*, National Courts § 3.6 (5th ed. 2022).

II. Discussion

In a parallel matter involving the similar parties and subject merchandise, albeit involving a different country of production and a different administrative record, the U.S. Court of Appeals for the Federal Circuit ("Federal Circuit") remanded Commerce's determination to adjust the reported costs of the respondent's non-prime plate based on the "likely selling price" for non-prime plate reported in the respondent's normal books and records, directing that § 1677b(f) requires Commerce to determine the *actual cost of production* for prime and non-prime CTL plate. *See Dillinger France S.A. v. United States*, 981 F.3d 1318, 1321–24 (Fed. Cir. 2020). In doing so, the court explained that "[b]ecause Dillinger's books and records did not reasonably reflect the costs associated with the production and sale of the merchandise as required by 19 U.S.C. § 1677b(f)," Commerce's determination could not be sustained. *Id.* Given the near identical nature of the challenge to Commerce's cost adjustment under § 1677b(f) in this matter, which also involved Commerce's reliance on an internal factory report ("FER") from Dillinger indicating the "likely selling price" of non-prime plate, this Court similarly remanded Commerce's cost adjustment determination so that Commerce could apply the Federal Circuit's guidance and make its adjustment based on the actual cost of production of prime and non-

prime CTL plate. *See Dillinger I*, 45 CIT at ___, 534 F. Supp. 3d at 1407.

On remand, Commerce "reopened the administrative record and issued a supplemental questionnaire to Dillinger to obtain the physical characteristics of the non-prime products produced and the actual cost of producing the non-prime products." *Second Remand Results* at 4. In response, Dillinger informed Commerce that it could not provide any actual cost information and that it had already submitted the limited information it had on the physical characteristics of non-prime plate. *Second Remand Results* at 6–7. Dillinger argued that instead Commerce should rely on the average cost of total CTL production for calculating any cost of production adjustment under § 1677b(f) "because non-prime plate can only be distinguished from prime plate at the end of the production process and therefore both types of plate use precisely the same materials and undergo precisely the same processing steps." *Id.*; *see also* Dillinger Comments at 4. Commerce, however, rejected Dillinger's proposed alternative after determining that using such an average would distort the disparity in cost across prime CTL products as well as the disparity in "size, specification, and grade" amongst non-prime products. *See Second Remand Results* at 8–9. Given these circumstances, Commerce found that there was a gap in the record as to the requisite information of the actual cost of production for Dillinger's non-prime plate. *Id.* at 12–13. Commerce concluded that it was therefore necessary to select from facts available pursuant to 19 U.S.C. § 1677e(a)(1), and consequently would rely on "the cost assigned to the prime and non-prime merchandise as recorded in Dillinger's normal books and records [(*i.e.*, the FER)], as facts otherwise available." *Id.* at 13 (further explaining that Commerce "selected the selling prices of the non-prime products as facts otherwise available because this amount is used by Dillinger in its normal books and records; importantly, was verified by Commerce; and it is the best available information on the record.").

In the remand proceedings in the parallel action, Commerce made nearly identical findings and reached the same conclusion. *See Dillinger France S.A. v. United States*, Court No. 17–00159, ECF No. 85 (Aug. 25, 2021) (results of remand redetermination addressing allocation of costs between Dillinger France's production of non-prime and prime plates). When plaintiffs there challenged Commerce's determination to continue relying upon the "likely selling price" from Dillinger's FER, as facts otherwise available, in making its cost adjustments for prime and non-prime plate, the court sustained "Commerce's general invocation of facts available to supply the costs of

production for Dillinger's prime and non-prime products." *See Dillinger France S.A. v. United States*, Slip Op. 22–97, 46 CIT ___, 2022 WL 3453574 at *6 (Aug. 18, 2022). However, the court also held that Commerce failed to explain why it was reasonable to rely on the "likely selling price" from the FER in Dillinger's normal books and records as the best available information for determining the cost of producing the merchandise as directed by the Federal Circuit. *Id.* at *7 (noting that Commerce's purported explanation in the remand failed to address "why relying on Dillinger's normal books and records -- which reflect the likely *selling* price of non-prime pipe rather than the costs of production -- better accords with Commerce's obligation to ensure that the reported costs of production reasonably reflect the *cost of producing the merchandise* under consideration." (internal quotation marks omitted)). The court further observed that this "analytic deficiency is particularly apparent given that both data sets under consideration exhibit the same Commerce-identified flaw of assigning costs without variance for physical characteristics." *Id.* (internal citation omitted). Accordingly, the court remanded the matter to Commerce again for further explanation and/or reconsideration of this issue. *Id.*

Since the issue, Commerce's analysis, and the arguments of the parties are nearly identical to those presented in *Dillinger France*, the court concludes that a remand is equally appropriate here. Because Dillinger has failed to place information on the record demonstrating the actual cost of production of its non-prime products, Commerce may reasonably rely on facts otherwise available pursuant to § 1677e(a)(1); however, in making its selection of facts otherwise available, Commerce must explain how its reliance on information indicating the "likely selling price" of non-prime products accords with its obligation to ensure that the reported costs of production reasonably reflect the *cost of producing the merchandise* under consideration.

III. Conclusion

For the foregoing reasons it is hereby

ORDERED that this action is remanded to Commerce; it is further

ORDERED that Commerce shall file its remand results on or before December 15, 2022; and it is further

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

Dated: September 23, 2022
New York, New York

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

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